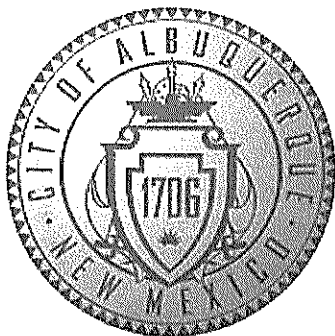


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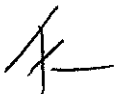
**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

June 7, 2022

**TO:** Isaac Benton, City Council President

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** Lease Agreement between Black Bow Events, LLC., and the City of Albuquerque for Office Space located at 100 Arno St. NE

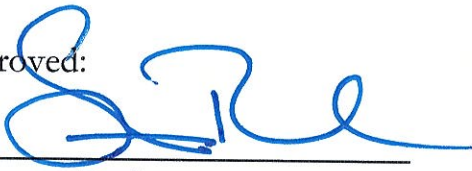
The City of Albuquerque's Department of Municipal Development wishes to continue to lease 458 square feet of office space to Black Bow Events located at 100 Arno Street NE.

The proposed Lease Agreement is for a two (2) year period with the option to renew for an additional two (2) one (1) year period with a 3% escalation, if lessee is in compliance with the lease and if properly exercised. Proposed annual rent will generate \$6,600.00 in revenue for the City.

This Lease Agreement is forwarded to City Council for approval.

**Title/Subject of Legislation:** Lease Agreement between Black Bow Events, LLC., and the City of Albuquerque for Office Space located at 100 Arno St. NE

Approved:



\_\_\_\_\_  
Lawrence Rael                      Date  
Interim Chief Administrative Officer

Recommended:

DS  
ml

 7/11/22

\_\_\_\_\_  
Patrick Montoya                      Date  
Director, Department of Municipal Development

## **Cover Analysis**

### **1. What is it?**

Lease Agreement between the Black Bow Events, LLC and the City of Albuquerque's Economic Development Department.

### **2. What will this piece of legislation do?**

Enter into a new lease with the Black Bow Events, LLC and the City of Albuquerque's Economic Development Department.

### **3. Why is this project needed?**

To continue to generate revenue for the City's Department of Municipal Development and to continue to have the space occupied.

### **4. How much will it cost and what is the funding source?**

There is no cost associated with the lease.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

The lease will generate \$13,6000.00 for 2 years, and 3% escalation if the lessee is in compliance with the lease and property exercises the option to renew.

### **6. What will happen if the project is not approved?**

Loss of revenue for the Department of Municipal Development.

### **7. Is this service already provided by another entity?**

No.

**LEASE AGREEMENT**  
**BLACK BOW EVENTS, LLC**

THIS LEASE AGREEMENT (hereinafter "Lease") is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (hereinafter the "City") and Black Bow Events, LLC, a New Mexico limited liability company (hereinafter "Tenant"). City and Tenant may be referred to herein each individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the City owns the real estate and building located at 100 Arno St., NE, Albuquerque, NM 87102 (the "Property"); and

WHEREAS, Tenant desires to lease from City, and City is willing to lease to Tenant that portion of the Property designated as Suite A (hereinafter the "Premises"); and

WHEREAS, the Parties wish to enter into a long-term lease agreement.

THEREFORE, for mutual consideration of the leased Premises, and on the terms and conditions set forth herein, City and Tenant hereby agree as follows:

**1. BASIC LEASE PROVISIONS.**

A. **The Premises.** Suite A of the building located at 100 Arno St., SE, Albuquerque, NM 87102, which Suite and building are shown on **Exhibit A** attached hereto and incorporated herein by reference, Suite containing approximately 458 square feet.

B. **Base Term.** The "Initial Term" shall be for two (2) years, beginning on the Rent Commencement Date and ending on the Expiration Date.

C. **Effective Date and Lease, Rent, Term, and Expiration Dates.** This Lease will not be binding upon the Parties until it is approved by the Albuquerque City Council and signed by the Chief Administrative Officer or his authorized designee (hereinafter the "Effective Date").

- i. The "Lease Commencement Date" shall be the same as the Effective Date.
- ii. The "Rent Commencement Date" is July 1, 2022.
- iii. The "Term Commencement Date" is July 1, 2022.
- iv. The "Expiration Date" is June 30, 2024.

D. **Extension Option.** So long as the Tenant is not in default (beyond the applicable period of notice and cure) at the time of any extension, and upon written notice at least ninety (90) days prior to the expiration of the Initial Term or then-current Extended Term (defined below), Tenant shall have the right ("Option to Extend") to extend the term for two (2) consecutive terms of one (1) years each (each an "Extended Term") upon the

same terms and conditions as are in effect under this Lease immediately preceding the commencement of such Extended Term, except that the Base Rent due from Tenant shall be increased as 3% over the Base Rent paid during the previous year. If Tenant fails to deliver to City written notice of exercise of an Option to Extend within the prescribed time period (and City does not otherwise agree to a late submission from Tenant), such Option to Extend, and if applicable, the succeeding Option to Extend shall lapse, and there shall be no further right to extend the Lease. If prior to the exercise or commencement of the Option to Extend, Tenant subleases any portion of the Property or assigns or otherwise transfers any interest under the Lease to an entity without City's consent, such Option to Extend and any succeeding Options to Extend shall lapse.

E. **Base Rent.** Tenant shall pay to City, in advance, on the first day of each calendar month, beginning on the Rent Commencement Date, rent without deduction or offset, except as specifically provided in this Lease ("Base Rent" or "Rent"). Base Rent payable with respect to a period consisting of less than a full calendar month shall be prorated.

Period	Monthly Base Rent	Annual Base Rent
July 1, 2022 to June 30, 2023	\$550.00	\$6,600.00
July 1, 2023 to June 30, 2024	\$550.00	\$6,600.00
FOR EXTENDED TERMS (if options are properly exercised by Tenant)		
July 1, 2024 to June 30, 2025	\$566.50	\$6,798.00
July 1, 2025 to June 30, 2026	\$566.60	\$6,798.00

F. **Tenant's Trade Name, Permitted Use, and Exclusive Use.**

- i. Trade Name: Black Bow Events, LLC
- ii. Use: Tenant shall continuously (except for short term closures due to fire, casualty, condemnation, permitted or approved Tenant remodeling not exceeding thirty (30) days), or other causes beyond Tenant's reasonable control ("Permitted Closures") use the leased Premises exclusively as a full-service boutique florist, subject to the terms, conditions, and limitations set forth in this Lease.

2. **LEASE OF PREMISES.** In consideration of the mutual covenants and agreements set forth herein, the City hereby leases to Tenant the Premises in the County of Bernalillo, State of New Mexico, along with one parking space in the secure area behind the garage doors. Tenant shall also have the option to lease two additional parking spaces to be charged at the then current market rate, for which the City will be paid monthly, and the parking rate may be adjusted annually by the City. The leasehold interest granted by this Lease shall be subject and

subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace and reconstruct all public utilities in, under, across, and upon the Premises and to all easements, licenses, and restrictions now or hereafter granted by the City to third parties in the Premises.

**3. TERMINATION.** Notwithstanding any provision in this Lease to the contrary and without limitation, the City or the Tenant may terminate this Lease at any time without cause by giving the other Party ninety (90) day's written notice. If either Party terminates the Lease pursuant to this Section, Rent shall abate at the end of the ninety (90) day notice period.

**4. SECURITY DEPOSIT AND GUARANTY.**

A. **Security Deposit.** Upon execution of this Lease, Tenant shall deposit with City the amount set forth hereinabove to secure Tenant's performance of its obligations under this Lease (the "Security Deposit"). The deposit shall not bear interest, shall not be required to be maintained in a separate account, and shall be returned, less any unpaid claims against Tenant, upon the expiration of this Lease and the surrender of possession of the Premises, to Tenant or the last assignee of Tenant's interest. If Tenant fails to perform with respect to any provision of this lease, City may apply the Security Deposit for the payment of any sum in default, or for the payment of any other amount that City may spend or become obligated to spend by reason of Event of Tenant Default, or to compensate City for any loss or damage that City suffers from an Event of Tenant Default. Application of the deposit is not a cure of the default by Tenant to which the application relates. If any portion of the Security Deposit is applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with the City in an amount sufficient to restore the Security Deposit to its original amount. In the event of the assignment or conveyance of City's interest in this Lease as permitted by its terms, City shall transfer said deposit to City's successor in interest and thereafter shall have no further liability for the return of such Security Deposit.

B. **Guaranty.** Tenant is not required to provide a "Guaranty" to City. Notwithstanding the foregoing, upon three or more Events of Tenant Default in any twelve (12) month period, or upon the assignment or sub-letting of the Premises to a party that is not an Affiliate of Tenant, City may require a Guaranty in the form required by City from all persons identified by City, and if married, from their spouses, and/or from a firm or corporation other than Tenant that is acceptable to City. In the event of a default by the guarantors of this Lease, either under this Lease or the Guaranty, or upon an assignment or subletting of the Premises, City may, at its option, require an additional or a replacement guaranty of the obligations of the Tenant hereunder by a person, and his or her spouse, if any, or a firm or corporation other than Tenant, acceptable to City, in the form required by City.

**5. HOLDING OVER.** Holding over by the Tenant after the expiration of this Lease, whether with or without the consent of the City, shall not operate to extend or renew this Lease. Any such holding over shall be construed as a tenancy from month to month and Tenant shall be

bound by all terms and conditions of this Lease but only as they are applicable to a month-to-month tenancy, provided however, that all rents and charges shall be in an amount equal to one hundred fifty percent (150%) of the rates and charges required herein. Nothing in this Lease shall be construed to grant Tenant the right to hold over at any time, and City shall be entitled to exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by City, including attorneys' fees.

**6. ADDITIONAL RENT, LATE CHARGES, AND INTEREST.**

A. **Excise Taxes.** Tenant shall pay to City all sales, use, transaction privilege, or other excise tax levied or imposed upon, or measured by, any amount payable by Tenant under this Lease.

B. **Additional Rent.** All monetary obligations other than Rent owed by Tenant to City under this Lease, including but not limited to, taxes, and the interest upon unpaid obligations, shall all be deemed to be "Additional Rent", and in the event of nonpayment by Tenant, City shall have all the rights and remedies with respect thereto as City has for the nonpayment of the Rent.

C. **Payments.** All amounts payable to City shall be payable without notice, demand, deduction, or offset.

D. **Late Charge and Interest.** Any monthly installment or other cash sum paid on or after the 15<sup>th</sup> day after the due date shall result in a late charge of \$100.00. Tenant hereby expressly acknowledges that such late charge is a reasonable estimation of City's actual damages and does not constitute a penalty. The assessment or collection of a late charge shall not constitute the waiver of any breach or default and shall not bar the exercise of other remedies for nonpayment. In addition to the Late Charge, any installment more than 15 days late shall accrue interest at 12% per annum until paid with interest calculated from the date due, i.e. the 1<sup>st</sup> day of the calendar month in which the installment was due. Tenant shall pay to City such additional fees and charges as itemized in this Lease, if any, immediately upon presentation of invoice.

E. **Effect of Payment.** No payment by Tenant or receipt by City of a lesser amount than the monthly payment of Rent herein stipulated is deemed to be other than on account of the earliest stipulated Rent, nor is any endorsement or statement on any check or any letter accompanying any check or payment of Rent deemed an acknowledgment of full payment or accord and satisfaction, and City may accept and cash any check or payment without prejudice to the City's right to recover the balance of the Rent due and pursue any other remedy provided in this Lease, regardless of any attempt to impose binding conditions on such payment by restrictive endorsement on Tenant's check or otherwise.

**7. QUIET ENJOYMENT.** Upon the performance of all terms, conditions, and covenants of this Lease, which the Tenant is required to perform, the Tenant shall, at all times during the Term peaceably and quietly enjoy the Premises without any disturbance from the City. Any

entry by the City pursuant to the rights, terms, and conditions of this Lease shall not be deemed a constructive or actual eviction of Tenant and shall not be considered to be a breach of City's covenant of quiet enjoyment.

**8. USE OF THE PREMISES.** Tenant acknowledges and represents that it has examined the Premises and has determined by its own independent evaluation that the Premises are suitable and usable for the purposes, uses, and activities intended by Tenant and contemplated by this Lease.

**A. Tenant shall:**

- ii. Use and operate the Premises only for the purposes set forth in this Lease and for no other purpose whatsoever without City's prior written consent.
- iii. Operate and maintain the Premises in a safe and operable condition.
- iv. At Tenant's sole cost, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, rules, and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by Tenant.
- v. Properly handle and dispose of all Hazardous Substances pursuant to Environmental Laws (both as defined below). Tenant shall take all appropriate measures necessary to prevent the release on or from the Premises of any Hazardous Substances. Neither Party shall create or bring on the Premises any Hazardous Substances or permit any third party to do so in violation of Environmental Laws. Should Tenant become aware of the existence of any Hazardous Substance on the Premises, Tenant shall immediately notify City of such Hazardous Substance.
- vi. Tenant shall and shall cause its agents, employees, contractors, and Vendors to comply with any rules and regulations for the Property promulgated by City from time to time. City from time to time by notice to Tenant may amend such rules in any manner not inconsistent with the express provisions herein.

**B. Tenant shall not:**

- i. Use, occupy, or permit the Premises to be used or occupied for any unlawful purposes or for purposes not specified in this Lease.
- ii. Use, occupy, or permit the Premises or any part of the Premises to be used or occupied, or do or permit anything to be done in or on the Premises in any manner which will:
  - a. Cause or be likely to cause structural damage to the Premises or any part thereof, or adversely affect the mechanical, electrical, plumbing, or other base building systems.
  - b. Constitute waste or a public or private nuisance.



- c. Violate City rules, regulations or policies promulgated for the use and operation of City-owned property.
- d. Cause, permit, or suffer any waste or damage, disfigurement, or injury to the Premises or the fixtures or equipment thereof other than due to normal wear and tear.
- e. Cause the cancellation of any insurance policies related to the Property. Tenant shall reimburse City for any increases in insurance premiums payable by City as a result of Tenant's use of the Premises or the nature of Tenant's business. All property kept, stored, or maintained by Tenant within the Premises shall be there at Tenant's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or from any other cause, no part of said loss or damage is to be charged to or borne by City, unless and then only to the extent such loss or damage is due to the negligence or willful misconduct of City, its employees, agents, or contractors.
- f. Place or install any signs, racks, stands, trade fixtures, pedestal signs or other displays of products or services, advertisement, notice, lettering, or decoration on any part of the outside of the Premises or building without the prior written approval of the City. Tenant, at its expense, may install its standard signs and logos so long as they are in compliance with the Edo/Huning Highlands Urban Conservation Overlay Zone ("Edo UCOZ") design standards. Tenant shall pay for all fees and costs associated with obtaining the approval of its sign package by the City. All signs shall be kept in good condition and in proper operating order at all times. Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached, and this obligation shall survive the expiration or earlier termination of this Lease.

**9. PERMITS AND LICENSES.** Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations.

**10. REPAIRS AND MAINTENANCE; TENANT'S NEGLIGENCE; SUBSTANTIAL DAMAGE.**

**A. Tenant Build-Out and Improvements:** Subject to the requirements regarding alterations, Tenant may pay for any additional finishing and upgrades to the Premises, but such items, once affixed, shall become the sole property of the City, and no reimbursement will be provided to Tenant at any time for such fixtures.

**B. City Repairs and Maintenance.** City shall keep the roof (including the membrane), the foundation, structural elements of the Premises (except storefronts, storefront glass, plate glass windows, doors, door closure devices, window and door frames, molding, locks and hardware and painting or other treatment of interior and exterior walls), and pipes and conduits outside of the Premises, in good condition and repair in accordance with standards then prevailing for comparable properties of like age and character or such higher standard as City may determine, except that City shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, contractors, or Vendors, which repairs shall be made by Tenant at Tenant's sole expense. In the event that the Premises should become in need of repairs required to be made by City hereunder, Tenant shall give immediate written notice thereof to City and City shall not be responsible in any way for failure to make any such repairs until thirty (30) days after delivery of such notice, or such longer period of time as may be necessary under the circumstances, has elapsed after delivery of such written notice. City shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs unless the damage results from the City's negligence or willful misconduct. City shall not be liable or responsible for breakdowns or temporary interruptions in access or utilities nor for interference with Tenant's business or Tenant's access to the Premises during the course of repairs or remedial work, unless resulting from the negligence or willful misconduct of City. Notwithstanding anything herein to the contrary, City shall not be liable for consequential, punitive, or speculative damages.

**C. Tenant Repairs and Maintenance.** Tenant shall maintain, repair and replace the interior, non-structural elements of the Premises and the improvements thereon, including all storefronts, storefront glass, doors, plate glass, door closure devices, window and door frames, molding, locks and hardware, interior demising walls, painting or other treatment of interior walls, interior floor coverings, and heating, air conditioning (including curbs and flashings), ventilation, interior utilities (including plumbing, electrical, water, gas and telecommunications) serving the Premises, and Tenant's interior and exterior signage, but excluding the roof and structural elements thereof, in good condition and repair consistent with the quality of materials and workmanship of the original work. Tenant shall provide and pay for all janitorial services related to the cleaning of the Premises.

**D. Tenant's Service Contracts.** Tenant shall obtain and keep in effect a preventative maintenance service contract for all heating, air conditioning, ventilation and water heating equipment, exclusively servicing the Premises, with qualified licensed contractors and shall provide copies of such contracts to City when entered into and thereafter whenever renewed or replaced or as requested by City from time to time. The service contracts must provide for regular servicing and include all services suggested by the equipment manufacturer within the operation/maintenance manual (if any) and must become effective (and a copy thereof delivered to City) within thirty (30) days of the date Tenant takes possession of the Premises. Within the thirty (30) day period preceding move-out by Tenant, Tenant shall have the systems and equipment checked and serviced to ensure proper functioning and shall furnish City satisfactory proof thereof upon request.

Tenant shall also arrange for pest control services to prevent vermin and insects in and around the Premises or refuse container area.

E. **Tenant's Failure.** If Tenant refuses or neglects to commence or complete any repairs or replacements or maintenance as required by this Lease, the City may, at its option, make or complete the repairs or replacements or maintenance and Tenant shall reimburse the City for such costs and expenses promptly upon receipt of an invoice. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed an Event of Tenant Default. Such unpaid obligations to the City are deemed Additional Rent.

F. **Substantial Damage-Tenant's Negligence.** In the event the Premises are destroyed or so damaged and rendered untenable so that they cannot reasonably be repaired within thirty days and such damage is a result of the negligent act or omission of Tenant, its officers, agents, servants, employees, contractors, subcontractors, Vendors, or invitees, the Rent, Additional Rent, and other fees payable hereunder shall not abate and the City may, at its discretion, require Tenant to complete repair and reconstruction of the Premises promptly and pay the costs, or the City may repair and reconstruct the Premises and Tenant shall be responsible for reimbursing City for the costs and expenses incurred in such repair and reconstruction. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed an Event of Tenant Default. Such unpaid obligations to the City are deemed Additional Rent.

G. **Substantial Damage-City's Responsibility.** If the damage to the Premises is not due to the negligent act or omission of the Tenant, its officers, agents, servants, employees, contractors, subcontractors, Vendors, or invitees, and if such repairs or rebuilding can, in the judgment of the City, be completed within ninety (90) consecutive calendar days from the date the damage occurred, the City, at its option may proceed promptly with such repairs, in which event abatement of the Rent, Additional Rent, and other fees shall be allowed, or the City may terminate this Lease. If such damages cannot be repaired within ninety (90) consecutive calendar days from the date the damage occurred, as determined by the City, either the City or the Tenant may terminate the Lease. Neither Tenant nor City shall be deemed in default under this Lease in the event it elects to terminate pursuant to this Section.

11. **PARKING.** As provided above, this Lease includes one free parking space behind the garage doors, and provided the City agrees, the option to lease at an additional cost two (2) additional parking spaces as designated from time to time. Tenant shall notify the City's designated representative in writing of the desire to exercise the option to lease additional parking and the City will provide such parking depending on availability as determined by the City at the time of the request for additional spaces. Tenant agrees to complete and submit the City's standard, required agreement for parking and to abide by the City's rules and regulations governing the parking garage, all of which may be reasonably modified from time to time.

**12. SURRENDER UPON TERMINATION.** At the expiration of the Term of this Lease, Tenant shall surrender the Premises to the City in as good condition as it was in at the beginning of the Term, reasonable use, wear, and tear excepted, clean and free of debris. Tenant shall remove Tenant's personal property from the Premises. Any and all improvements made to the Premises during the term hereof shall, unless City requests their removal, belong to the City without compensation, allowance, or credit to Tenant, except movable trade fixtures, furnishings, and equipment of the Tenant which can be removed without defacing the Premises or the Property. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings, and equipment. Any of Tenants' personal property left by Tenant at the expiration of the Term of this Lease shall, at the option of the City, become the property of the City, and the City shall be entitled to use, sell, or otherwise dispose of such personal property.

**13. ALTERATIONS AND LIENS.**

A. **Alterations.** Tenant shall not make any alterations, improvements, additions or changes to the Premises without the prior written consent of the City. All alterations will be made by a contractor licensed and insured in the State of New Mexico and performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved by City. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give City at least 5 business days written notice so that City may post appropriate notices to avoid any liability for liens.

B. **Liens.** Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Property free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of the City in the Premises and the Property shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Property in connection with any such Tenant work, Tenant shall, within 15 days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law.

**14. UTILITIES.** All utilities for the Premises, including but not limited to electric, telephone, internet, and cable, shall be arranged directly by Tenant with the utility supplier, including the posting of any required deposits, and paid directly by Tenant to the utility supplier when due. The City shall pay for water consumption on the Premises. Tenant shall not install any equipment or fixtures, or use the same, in any manner that exceeds the safe and lawful capacity of any utility equipment or lines serving the Premises. City shall not be liable in damages or otherwise for any failure, variation, shortage or interruption of any utilities or services, nor for interference with Tenant's business or access to the Premises during the course

of repairs or remedial work, and Tenant shall not be entitled to terminate this Lease or abate any portion of the Rent as a result of such failure, variation, shortage or interruption. Tenant shall also arrange directly for all refuse removal services from the Premises to the central dumpsters provided by City and shall cause all refuse to be removed with sufficient frequency to prevent odors or accumulation. The location of refuse containers outside the Premises shall be subject to City's approval. If Tenant's water, sewer, refuse account is delinquent and could become a lien on the Premises or Property, the City or its designated property manager will pay such accounts and invoice the Tenant. Failure to reimburse the City within 30 days of presentation of any invoice for utilities shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent. Notwithstanding anything herein to the contrary, if a separate meter is not installed in the Premises, and City receives the bill for any utility, then the related utility charges shall be billed by City to Tenant on an equitable basis based upon the area of the Premises in relationship to the leasable area of the building or buildings utilizing the same meter.

## **15. DEFAULT AND REMEDIES.**

A. **Default.** The occurrence of any one or more of the following events shall constitute a default by Tenant (each an "Event of Tenant Default"):

- i. Failure to make payment when due.
- ii. The abandonment of the Premises by Tenant for a period of thirty (30) consecutive calendar days.
- iii. The failure by Tenant to observe or perform any of the express covenants or provisions of this Lease, where such failure shall continue for a period of ten (10) consecutive calendar days after written notice thereof from the City to Tenant, provided that if the nature of Tenant's default is such that more than ten (10) consecutive calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within the ten (10) day period, and thereafter diligently and continuously prosecutes such cure to completion.
- iv. Tenant (a) files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing; or
- v. A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is

filed against Tenant and such petition is not dismissed within one hundred, eighty (180) days; or

- vi. Tenant assigns this Lease or subleases all or any portion of the Premises without City's prior written consent.

**B. City's Remedies.** In the event of an Event of Tenant Default as defined above, the City, in addition to any other remedies set forth in this Lease, may without further notice or demand exercise any one or more of the following remedies concurrently or in succession:

- i. Terminate this Lease, in which event this Lease and the leasehold estate hereby created shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease. City shall thereupon be entitled to take possession of the Premises, and Tenant shall immediately surrender the Premises to City and agrees to pay to City, on demand, the following damages:
  - a. any unpaid Rent and other amounts due at the time of termination plus interest thereon at the maximum lawful rate per annum from the due date until paid;
  - b. the net present value of the balance of the Rent for the remainder of the term, less the net present value of the fair market value rental of the Premises for said period taking into consideration a reasonable lease up period and reasonable expenses that would be incurred by City in re-letting the Premises (spread evenly throughout the term of the new lease), however this sum shall not be less than zero as in no event shall City be obligated to pay Tenant if the difference is a negative number. Both future payments computed in accordance with this provision shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum. For purposes of this Section, Tenant's obligations shall be projected based on the average rate of annual increases from the Rent Commencement Date through the date of Default.
  - c. Any other amount arising out of Tenant's failure to perform its obligations under the Lease, or which in the ordinary course of events would be likely to result therefrom, including the cost of recovering the Premises.
- ii. Continue this Lease in effect, and as long as the City does not terminate Tenant's right to possession, and City may enforce all its rights and remedies under the Lease, including the right to recover the Rent and any Additional Rent. Actions to collect amounts due by Tenant to City as provided in this Section may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration of the Lease term.

- iii. Terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State in which the Property is located, without demand or notice of any kind to Tenant, in which event City may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Property is located), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to City. Tenant shall be responsible for rent for the period that the Premises are vacant and all direct and reasonable costs of recovering possession, re-letting the Premises, and collecting amounts owed, as provided below. Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the term of this Lease. City may, at its discretion, elect to accelerate all future payments due in this paragraph and such future payments shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum. If said breach of the Lease continues, City may, at any time thereafter, elect to terminate the Lease as provided above;
- iv. From time to time recover accrued and unpaid Rent and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of 18% per annum or the highest lawful rate, whichever is less.
- v. Subject to any subordination of lien expressly granted by City in writing, enforce the statutory Landlord's lien on Tenant's property.
- vi. In case of any event of default or breach by Tenant, Tenant shall also be liable for and shall pay to City, at the address specified for notice to City herein, in addition to any sum provided to be paid above, brokers' fees incurred by City in connection with re-letting the whole or any part of the Premises; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants and all reasonable expenses incurred by City in enforcing or defending City's rights and/or remedies, recovering possession, re-letting the Premises, or collecting amounts owed, including reasonable attorneys' fees (including, but not limited to, the reasonable fees and disbursements of City's legal counsel and the reasonable charges of City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees).
- vii. Alter all locks and other security devices at the Premises without terminating this Lease. City shall not be obligated to provide a key or other means of ingress to the Tenant or Tenant's agents, or to pay for any damage to any security system, or to provide re-entry for any reason or under any circumstances whatsoever.
- viii. In the event that City shall have taken possession of the Premises pursuant to the authority herein granted, then City shall have the right to keep in

place and use all of the furniture, fixtures, and equipment at the Premises. The City shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within Bernalillo County; and in such event, Tenant shall be liable to City for costs incurred by City in connection with such removal and storage and shall indemnify and hold City harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. The rights of City herein stated shall be in addition to any and all other rights which City has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted City are commercially reasonable.

- ix. To secure the payment of all rental and other sums of money due and to become due hereunder and the faithful performance of this lease by Tenant, Tenant hereby gives to landlord an express first and prior contract lien and security interest on all property (including fixtures, equipment, chattels, and merchandise) which may be placed in the demised premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of landlord until all arrearages in rental and other sums of money then due to landlord hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in lieu of the landlord's statutory lien. Upon the occurrence of an event of default, this lien may be foreclosed with or without court proceedings by public or private sale, provided landlord gives Tenant at least fifteen days' notice of the time and place of said sale, and landlord shall have the right to become the purchaser, upon being the highest bidder at such sale. Contemporaneous with the execution of this lease (and if requested hereafter by landlord), Tenant shall execute and deliver to landlord uniform commercial code financing statements in sufficient form so that when properly filed, the security interest hereby given shall thereupon be perfected. If requested hereafter by landlord, Tenant shall also execute and deliver to landlord uniform commercial code financing statement change instruments in sufficient form to reflect any property amendment or modification in or extension of the aforesaid contract lien and security interest hereby granted. Landlord shall, in addition to all of its rights hereunder also have all of the rights and remedies of a secured party under the uniform commercial code as adopted in the state in which the demised premises is located. Upon receipt of a commercially reasonable subordination agreement, city shall subordinate its lien priority and security interest to Tenant's furniture, fixtures, and equipment institutional lender.
- x. Seek injunctive relief, including, if applicable, a mandatory injunction.



- xii. Once a failure to make a payment of Rent or a failure to perform or observe any other term or condition contained in this Lease has occurred, City, in its sole discretion, may at any time require that all future payments from Tenant pursuant to this Lease be in cash or certified funds or made by automatic electronic bank transfers.
- xiii. Pursue any other remedies provided in specific provisions of this Lease, available at law, or provided in equity. All of the remedies provided in this Section shall survive the termination of this Lease.

**16. RIGHT OF ENTRY.** The City, agents and other representatives shall have the right to enter into and upon the Premises or any part thereof at reasonable times for the purpose of inspecting the Premises, making repairs, showing the Premises to prospective lenders or purchasers of the Property and prospective tenants during the six months preceding the expiration of the term. In the event of an emergency as determined by the City, the City, agents and other representatives may enter at any time, without notice and without the presence of Tenant. Tenant will permit City at any time within 180 days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit potential tenants to inspect the Premises, provided that such inspections do not unreasonably interfere with the operations of Tenants business activities.

**17. FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY.** The City shall not be liable for any damage or loss of the Tenant's personal property on the Premises from any cause, including, but not limited to, bursting or leaking of water pipes, leaking roof, fire, theft and negligence of co-Tenants. Tenant shall be solely responsible for obtaining and paying for insurance covering Tenant's personal property in the Premises, operations losses, and liability insurance. Tenant shall not be insured for such losses by the City and shall not be entitled to make loss claims under the insurance coverage of the City.

**18. INDEMNIFICATION.** Tenant agrees to defend, indemnify and hold harmless the City, its officers and employees against liability, claims, damages, losses or expenses arising out of bodily injury to person, including death or damage to property caused by or resulting from Tenant's and/or its employees', agents', contractors', or Vendors' (defined below) negligent acts or omissions while Tenant and/or its employees, agents, contractors, or Vendors perform(s) or fails to perform its obligations and duties under the terms and conditions of this Lease. Provided, however, Tenant is not required to indemnify the City to the extent of the negligence or intentional acts, errors, or omissions of the City or of its employees or agents.

**19. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublet the whole or any part of the Premises at any time for any reason. Notwithstanding the foregoing, Tenant shall have the right to allow occasional, short-term use of a portion of the Premises by one or more "pop-up" vendors ("Vendor(s)"), provided no such use by a Vendor shall exceed three (3) consecutive days or a total of ten (10) days in any given calendar month. Tenant shall ensure that any Vendors utilizing the Premises pursuant to this provision are aware of the terms and conditions set forth in this Lease, and Tenant assumes all responsibility and liability for such

Vendors and for any claims for personal injury or property damage arising out of Vendors' use of the Premises.

**20. TAXES AND ASSESSMENTS.** Tenant shall promptly pay all taxes and other exactions assessed or assessable and pay all license and permit fees applicable to the Tenant's operation, and acquire and keep current all licenses, municipal, state or federal, required as a result of the Tenants' operation on the Premises.

**21. INSURANCE.**

**A. Minimum Insurance Requirements.** At its expense, the Tenant shall procure and maintain, insurance in the kinds and amounts set forth below:

- i. Commercial general liability insurance applying to third party claims for bodily injury or property damage, including coverage for "premises/operations", "products and completed operations", and "blanket contractual" liabilities, written on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 personal or advertising injury, \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate, or such higher amounts and additional coverages as City may reasonably require from time to time.
- ii. The policies of insurance must include coverage for all operations performed by the Tenant and contractual liability coverage, which shall specifically insure the hold harmless provisions of the Lease.
- iii. Plate glass insurance coverage.
- iv. Workmen's Compensation Insurance for its employees in accordance with the provisions of the Workmen's Compensation Act of the State of New Mexico, and employer's liability insurance with a limit not less than \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease - each person and \$1,000,000 bodily injury by disease - policy limit, or such higher amounts and additional coverages as City may reasonably require from time to time.

**B. Policy Requirements.** Tenant's insurance policies shall:

- i. Be issued by insurers reasonably acceptable to City and rated A- VII or better by A.M. Best.
- ii. Cover all operations under this Lease, whether performed by Tenant;
- iii. As to liability policies, name City, its property managers, and any mortgagee(s), and their respective directors, officers, partners, agents, employees, members, trustees, and shareholders as additional insureds, by endorsement approved by City;

- iv. Contain a mortgage clause satisfactory to City and a waiver of any subrogation rights that Tenant's insurers may have against City and those for whom City is legally responsible;
- v. Be non-contributing and apply as primary, and not as excess to, any other insurance available to City;
- vi. Not be invalidated with respect to the interests of City and the holder of any encumbrance on the Property by reason of any breach or violation by Tenant of any warranties, representations, declarations or conditions contained in the policies;
- vii. Contain a requirement by the insurer to notify City and the holder of any encumbrance on the Property designated by City, in writing not less than thirty days prior to any cancellation, termination, or non-renewal of the policy; and
- viii. Be reasonably satisfactory in form, substance, limits, deductibles and retentions to City.

C. **Evidence of Coverage.** Tenant shall deliver to the City certificate(s) of insurance or, if required by the City, certified copies of each such insurance policy as soon as practicable after the placing of the required insurance and periodically thereafter upon renewal or replacement of the policies then in force, which shall occur at least 30 days prior to the expiration or cancellation thereof. A certificate of insurance that states that the failure to give the City notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Director, Risk Management Department, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed or not renewed. The City shall have the right to request current confirmation of insurance coverage from time to time. No review or approval of any such insurance certificate by the City shall derogate or diminish the City's rights or Tenant's obligations.

## **22. ETHICS AND CAMPAIGN PRACTICES BOARD, FAIR DEALING AND CONFLICT OF INTEREST.**

A. Tenant agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Lease whenever such records or information are within Tenant's custody, are germane to an investigation authorized by the Board and are requested by the Board. Tenant further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Tenant agrees to require that all contractors, subcontractors, or sub-consultants employed by Tenant for any of the services performed under the terms of this Lease will agree in writing to comply with the provisions of this paragraph. Tenant will not be compensated for its time or any costs it incurs in complying with the requirements of this paragraph.

B. Upon execution of this Lease, Tenant shall disclose in writing to the City whether any City Councilor or other officer or employee of the City has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Tenant or in any contract, Lease or agreement between the City and Tenant or in any franchise, concession, right or privilege of any nature granted by the City to the Tenant in this Lease.

C. Tenant covenants and warrants that the only person or firm interested in this Lease as principal or principals is named in this Lease, and that this Lease is entered into by the Tenant without collusion on the part of the Tenant with any person or firm, without fraud and in good faith. The Tenant also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Lease, will be offered or given by the Tenant or any agent or representative of the Tenant to any officer or employee of the City with a view towards securing this Lease or for securing more favorable treatment with respect to making any determinations with respect to performing this Lease.

**23. AUDITS AND INSPECTIONS.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Tenant's records with respect to all matters covered by this Lease. The Tenant shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Lease. The Tenant understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

**24. NO COLLUSION.** The Tenant represents that this Lease is entered into by the Tenant without collusion on the part of the Tenant with any person or firm, without fraud, and in good faith. The Tenant also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Lease, will be offered or given by the Tenant or any agent or representative of the Tenant to any officer or employee of the City with a view towards securing this Lease or for securing more favorable treatment with respect to making any determinations with respect to performing this Lease.

**25. ENFORCEMENT.** The Tenant agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Lease.

**26. PUBLIC RECORDS.** The Parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Tenant for any disclosure of Confidential Information pursuant to the Act or pursuant to the

City of Albuquerque's public records act laws, rules, regulations, instructions, or other legal requirement.

**27. ELECTRONIC SIGNATURES.** Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The Parties agree that this Lease may be electronically signed and that the electronic signatures appearing on the Lease are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**28. HEADINGS AND CAPTIONS.** Headings and captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

**29. REPRESENTATION.** Each Party hereto acknowledges that it has been represented or has had ample opportunity to obtain representation of counsel, with respect to this Lease. Accordingly, each Party hereto represents to the other that it has read and understood the terms of this Lease, and the consequences of executing this Lease, and that except as expressly set forth herein, no representations have been made to induce the other Party to execute this Lease.

**30. DISCRIMINATION PROHIBITED.** In the operation and use of the Location, the Tenant shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. The Tenant agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

**31. AMERICANS WITH DISABILITIES.** Tenant agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on Tenant or that would be imposed on the City as a public entity. Tenant agrees to be responsible for knowing all applicable requirements of the ADA to defend, indemnify and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of Tenant or its agents in violation of the ADA.

**32.** Tenant shall indemnify the City against any loss, liability, and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone having dealt with the Tenant.

**33. RIGHTS RESERVED BY CITY.** Except as expressly provided in this Lease, City reserves all rights of ownership and control over all portions of the Premises and Property, including without limitation the following:

A. **Access.** Upon reasonable notice to Tenant, City shall have access to the Premises for purposes of showing the Premises to current or prospective lenders, to prospective purchasers of the Property, and, during the twelve-month period preceding the expiration of the Term of this Lease, to prospective tenants. City shall also at all reasonable times with or without notice have access to the Premises for purposes of inspection and performing City's obligations and exercising its rights under this Lease.

B. **Use.** City reserves the right to use (or grant others the right to use) any portion of the Property, the subject building, or the surrounding areas other than the Premises, including but not limited to the exterior of all buildings and improvements on the Property, and air rights, surface rights, subsurface rights, and water rights appurtenant to the Property and Premises.

C. **Restriction of Access.** City reserves the rights to: (i) prevent or restrict access to any portion of the Property and Premises by such security procedures or devices as City may consider necessary or appropriate; (ii) control or prevent access by and remove any person who is loitering or whose presence in the judgment of City's security or management personnel has the potential to jeopardize to the safety, character, reputation, and interests of the Property, or who in the judgment of such City personnel is intoxicated or under the influence of liquor or drugs; and (iii) limit or prevent access to all or any portion of the Property; activate emergency controls or procedures; or otherwise take such action or preventive measures as deemed necessary by City to ensure the safety of tenants, other occupants, and/or invitees of the Property or for the protection of the Property or other property located thereon or therein; in case of fire or other casualty; due to riot or other civil disorder, strike or labor unrest or public excitement; in the event of a public health emergency, quarantine, or pandemic; or other dangerous condition or threat thereof.

D. **Changes.** City reserves the right to: (i) change the name of the Property and the address or designation of the Premises; (ii) install, maintain, alter, and remove signs on or about the Property; (iii) add land or other real property interests to or eliminate the same from the Property and grant interests and rights in the Property to other parties; (iv) add, alter, expand, reduce, eliminate, relocate or change the shape, size, location, character, design, appearance, use, number, or height of any permanent or temporary buildings, structures, improvements, parking areas and structures, kiosks, planters, driveways, and landscaped areas, (v) change the striping of parking areas and direction and flow of traffic, (vi) enclose any area, remove any such enclosure, or add one or more additional levels or stories to the structures on the Property or any portion thereof other than the Premises, and add structural supports that may be required within the Premises; and (vii) in connection with the foregoing matters or with any other inspections, repairs, maintenance, improvements, or alterations in or about the Property or as a result of any casualty, incident, strike, condemnation, act of God, law or governmental requirement or request, or other cause, erect scaffolding, barricades, and other structures.

**34. MISCELLANEOUS.**

A. **Waiver of Default.** No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Lease or to exercise any right or remedy available on the breach thereof, and no acceptance of full or partial Rent during the continuance of any breach will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Lease that Tenant is required to perform, and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City.

B. **Relation to Other Leases.** This Lease is separate and distinct from and shall be construed separately from any other agreement between City and Tenant or the City and any other tenant.

C. **Time is of the Essence.** Time is of the essence in the performance of this Lease.

D. **Exhibits.** All exhibits referred to in this Lease are hereby incorporated herein by reference and are made a part hereof as though set forth in full in this Lease to the extent they are consistent with the terms and conditions herein.

E. **No Partnership or Agency.** Nothing contained in this Lease is intended or shall be construed in any respect to create or establish any relationship other than that of landlord and tenant, and nothing herein shall be construed to establish any partnership, joint venture, or association, or to make Tenant the general representative or agent of City for any purpose whatsoever.

F. **Non-liability of City; Tort Claims Act.**

- i. **Non-Liability of City.** City shall not in any event be liable for any acts or omissions of Tenant or its agents, servants, employees, Vendors, independent contractors, or for any condition resulting from the operations or activities of Tenant, its agents, servants, employees, Vendors, or independent contractors, either as to Tenant or to any other person. City shall not be liable for Tenant's failure to perform any of its obligations under this Lease, or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City. Notwithstanding anything to the contrary in this Lease, neither the City, nor City's administration, councilors, directors, employees, agents, representatives, successors, or assigns (collectively, "City's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking, or agreement contained in the Lease, and the sole right and remedy of Tenant or any subsequent sublessee or assignee shall be against City's interest in the Premises. Neither Tenant nor any subsequent sublessee or assignee shall seek to obtain any judgment imposing personal liability against the City, City's Affiliates, or their successors or assigns, nor execute upon any judgment or place any lien against any property other than City's interest in the Premises.

- ii. New Mexico Tort Claims Act. Any liability incurred in connection with this Lease is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

G. **Force Majeure.** In the event City or Tenant is delayed, hindered, or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws regulations, riots, insurrection, war, acts of God, pandemic, public health emergency, or other causes beyond the reasonable control of City or Tenant, neither Party shall be liable for the delay, and the period for the performance by either Party shall be extended for a period equivalent to the period of such delay. The foregoing shall be inapplicable to the payment of Rent by Tenant and, subject to Section 33, shall not be applicable to the delivery of the Premises by City.

H. **Contract Review.** City and Tenant acknowledge that they have thoroughly read this Lease including all exhibits thereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Tenant further acknowledge that this Lease is the result of negotiations between them and that this Lease shall not be construed against either Party hereto by reason of that Party's preparation of all or part of this Lease.

I. **Notices.** Any notice from one Party to the other must be in writing and shall be deemed duly given three days after deposit in the United States Mail if mailed by registered or certified mail, return receipt requested, or upon receipt or refusal to accept if personally delivered or deposited with a national overnight deliver courier who obtains written confirmation of delivery, addressed to the other Party at the address set below, or such other address as either Party may designate in writing. The Parties shall be responsible for notifying each other of any change of address.

Notice to Tenant:

Black Bow Events, LLC  
Attn: Danessa Gonzales  
100 Arno St., NE, Suite B  
Albuquerque, NM 87102

Notice to the City:

City of Albuquerque  
Attn: Real Property Manager  
P.O. Box 1293  
Albuquerque, NM 87103

With a copy to:

Municipal Development Department  
Attn: Municipal Development Department, Director



P.O. Box 1293  
Albuquerque, NM 87103

J. **Recording:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of City.

K. **Subordination:**

- i. Existing and Future Mortgages or Deeds. This Lease is and shall be subject and subordinate in all respects to all existing and future mortgages or deeds of trust now or hereafter encumbering the Property or any part hereof. The holder of any mortgage or deed of trust may elect in writing at any time to be subordinate to this Lease.
- ii. Documentation. The subordination provisions of this Section shall be self-operating, and no further instrument shall be necessary. Nevertheless Tenant, within ten days after written request, shall execute and deliver any and all instruments requested by City or any Mortgagee further evidencing such subordination.
- iii. Other Transactions. City may at any time and from time to time grant, receive, dedicate, relocate, modify, surrender, or otherwise deal with easements, rights of way, restrictions, covenants, equitable servitudes, or other matters affecting the Property without notice to or consent by Tenant.

L. **Estoppel Certificates.** Tenant shall at any time within ten days after written request from City execute, acknowledge and deliver to City a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (b) confirming the commencement and expiration dates of the term; (c) confirming the amount of the security deposit held by City; (d) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of City hereunder, or specifying such defaults if any are claimed; and (e) confirming such other matters as City may reasonably request. A prospective purchaser or encumbrancer of the Premises or the Property may conclusively rely upon any such statement. If Tenant fails to respond within the required period, Tenant shall conclusively be deemed to have certified, confirmed and acknowledged all matters requested by City. If City desires to finance or refinance the Property, Tenant hereby agrees to deliver to any lender designated by City such financial statements of Tenant and any Guarantors named in this Lease as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant and any Guarantors. All such financial statements shall be received by City in confidence and shall be used only for the purposes herein set forth.

M. **Binding Effect.** Once this Lease is made, the covenants, terms, and conditions of this Lease will be binding upon and inure to the benefit of the Parties, their successors, assigns, subtenants, and subleases.

N. **Entire Agreement and Modification.** This Lease, including the attached exhibits, constitutes the full and final agreement of the Parties and incorporates all of the conditions, agreements, and understandings between the Parties concerning the subject matter of this contract, and all such conditions, understandings, and agreements have been merged into this written Lease. No subsequent agreement may modify this Lease unless it is in writing and signed by the Parties or their authorized agents. At any time and from time to time, each Party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Lease. Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

O. **Severability.** In the event any covenant, condition, or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without materially altering the intention of the Parties, it shall be stricken. If stricken, all other covenants, conditions, and provision of this Lease shall remain in full force and effect provided that the striking of such covenants, conditions, or provisions does not materially prejudice either the City or Tenant in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Lease.

P. **Authorization.** Tenant and the person executing this Lease on behalf of Tenant represent and warrant that such entity is duly qualified to do business in the State of New Mexico and that the individual executing this Lease is duly authorized to execute and deliver this Lease on Tenant's behalf.

Q. **Attorney's Fees.** If either Party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, each Party shall be responsible for its own attorney's fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees and service of process fees.

R. **Governing Law.** This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of New Mexico, and the ordinances, rules, and regulations of the City of Albuquerque, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Mexico. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Lease shall only be brought, and shall be pursued to completion in Bernalillo County, New Mexico Albuquerque, New Mexico. The provisions of this Section shall survive the termination of this Lease.

S. **WAIVER OF THE RIGHT TO TRIAL BY JURY:** CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY OR TENANT MAY HEREINAFTER INSTITUTE

AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE OR THE LEASED PREMISES.

T. **Final dates.** If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word “days” is used herein, it shall be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.

U. **Multiple Counterparts.** The Lease may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document.

IN WITNESS WHEREOF, the Parties hereto have signed this Lease as of the date indicated by each signature, and being effective after approval and upon the signature of the City’s Chief Administrative Officer or authorized designee.

CITY OF ALBUQUERQUE  
A New Mexico municipal corporation

Approved by the City Council

EC#\_\_\_\_\_

\_\_\_\_\_  
Lawrence Rael, Interim Chief Administrative Officer

Approval Date:\_\_\_\_\_

Date:\_\_\_\_\_

RECOMMENDED BY:

\_\_\_\_\_  
Patrick Montoya, Director  
Department of Municipal Development

Date:\_\_\_\_\_

TENANT:

DANESSA GONZALES  
BLACK BOW EVENTS,  
A NEW MEXICO LIMITED LIABILITY COMPANY

By: \_\_\_\_\_  
Danessa Gonzales

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "A"

The Premises: 100 Arno, NE, Suite A

