

**LEASE AGREEMENT BETWEEN
THE CITY OF SANTA FE AND HIGHGARDEN ENTERTAINMENT, LLC**

This LEASE AGREEMENT (“Lease Agreement”) is made and entered into as of the date of the last signature (“Effective Date”), by and between the CITY OF SANTA FE, a municipal corporation (“City” or “Lessor”) and HIGHGARDEN ENTERTAINMENT, LLC, a New Mexico limited liability company (“Lessee”), collectively the “Parties”.

WHEREAS, the City owns property and railroad facilities commonly known as North Santa Fe Railyard and Baca Railyard Properties (“Railyard Property”) within the City of Santa Fe, Santa Fe County, New Mexico; and

WHEREAS, the City granted the Santa Fe Conservation Trust (“Conservation Trust”) a deed of conservation easement for an approximately fifteen (15.714) acres of real property located within the Railyard Property for the purposes of preserving and protecting the conservation and public benefit values of the easement area (“Conservation Easement”); and

WHEREAS, within the Conservation Easement is a tract of land commonly known as the Montezuma Pocket Park that adjoins the historic Jean Cocteau Cinema located at 418 Montezuma Avenue in Santa Fe New Mexico, this area is listed as Tract 1, which is considered a Civic Place and Public Access Zone under the Conservation Easement; and

WHEREAS, under the Amended and Restated Conservation Easement, paragraph 5, page 10 states the following regarding “Civic Places and Public Access Zone” and the City is the Grantor listed in the paragraph below:

5. Civic Places and Public Access Zone. It is expressly understood that the portion of the Easement Area within, (i) Tract 1, (ii) Tract 6, and (iii) Parcel W, as shown on Exhibit A (referred to herein as the "Civic Places and Public Access Zone") shall allow for a variety of economic and community-benefit uses otherwise not allowed within the Easement Area. Grantor shall retain all regulatory control over the Civic Places and Public Access Zone including, but not limited to, licensing, approval of lease or rail easement agreements, rail line operating agreements and related agreements...

WHEREAS, the City desires to lease the westerly portion of Pocket Park bordered by the historic Jean Cocteau Cinema to the west, Montezuma Street to the north and a railroad track to the east for the purpose of constructing an open-air beer garden and special events venue; and

WHEREAS, the City is allowed to lease this area under the Conservation Easement and supports the economic development of the Railyard Property, and desires to lease a portion of Pocket Park to Lessee.

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby gives Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on, make use of, and develop the real property of Lessor as an open-air beer garden and special events venue.

1. PREMISES

Lessor allows Lessee to use, occupy, and develop, subject to the terms and conditions of this Lease Agreement, a certain parcel of land consisting of approximately 2,589.46 square feet of mostly unimproved real property identified as "City of Santa Fe Leased Parcel" (the "Premises"), as depicted in yellow on the attached **Exhibit A** of this Lease Agreement.

Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises.

2. LEASE TERM

- a. Initial Term. The initial term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Lease Agreement shall consist of an "Initial Term" of three (3) years with two (2) "Option Terms" of one (1) year each.
- b. Option Term. Lessee's exercise of any Option Term is contingent upon compliance with this Lease Agreement and with proper written notice by Lessee to Lessor at least ninety (90) days prior to the expiration of the Initial Term and shall be at Lessor's sole discretion. All terms, covenants and conditions of this Lease Agreement, excepting the amount of rent to be paid, shall remain in full force and effect during any extension of the term.
- c. Hold Over. In the event Lessee remains in possession of the Premises after the expiration of the Term of this Lease Agreement, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the Rent due shall be prorated and payable on a monthly basis, and the terms and conditions of the Lease Agreement shall be otherwise applicable.

3. RENT

- a. Base Rent. Annual Rent of \$5,610.00 is due on the Effective Date and thereafter due in full on the anniversary of the Effective Date during the Term without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make payments to the Lessor's cashier office, Room 114, 200 Lincoln Ave., Santa Fe, NM.
- b. Option Terms Rent. The amount of rent to be paid during each exercised Option Term shall be the then-prevailing fair market rental value of the Premises (less the value of Lessee's improvements and inventory on the Premises), as determined by Lessor in good faith, and in no event shall the amount of annual rent be less than the amount of annual rent paid during the previous year. At least one-hundred twenty (120) days prior to the expiration of the Initial Term or any exercised Option Term, Lessor shall notify Lessee in writing of the amount of rent to be paid during the upcoming Option Term. In the event that Lessor fails to deliver

timely notice to Lessee, the amount of annual rent shall be equivalent to the amount paid during the previous year.

- c. Penalty for Late Rent Payment. If money payable to Lessor as a condition of this Lease Agreement is not paid in full when due, a penalty of 10% of the amount due and unpaid shall be added to the amount due, and the total sum of the then-due rental payment plus penalty shall become immediately due and payable to Lessor. A further penalty of 10% of the amount due and unpaid, including previously assessed penalties, shall be added for each additional month that said amount remains unpaid. The assessment and collection of the 10% penalty is in addition to any other rights of Lessor, if Lessee does not faithfully perform the terms, covenants and conditions of this Lease Agreement.

4. USE OF PREMISES

- a. Conditions of Use. Lessee shall use the Premises solely for the specific purpose of constructing and operating an open-air beer garden and special events venue subject to the following conditions:
 - i. Alcoholic Beverages – Lessee may serve alcoholic beverages within the Premises only in accordance with all applicable federal, state and local laws and regulations, including and not limited to, the New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
 - ii. Impediment of Traffic - Lessee, and Lessee's operations, shall at no time impede railroad traffic, and pedestrian or vehicular traffic on sidewalks or public right-of-ways. Upon verbal or written notice by Lessor, or Lessor's employees or agents, Lessee shall immediately remove such impediments. In the event Lessee fails to remove impediments at a standard acceptable to Lessor, as determined in Lessor's sole discretion, Lessor may terminate this Lease Agreement in accordance with Section 13 herein.
- b. Improvement of the Premises. Lessee may, with the prior written consent of Lessor, which shall not be unreasonably withheld, and at no cost to Lessor, make minor improvements to the Premises as it deems necessary in furtherance of the intended use of the Premises as provided in Section 4.a above. Lessee shall upon Lessor's request, remove all such improvements made to the Premises at the termination of this Lease Agreement.
- c. Trade Fixtures. All trade fixtures installed by Lessee after the Effective Date of this Lease Agreement shall remain the property of Lessee, who may remove the same upon termination of this Lease Agreement, provided that removal shall be done in such a manner as not to injure or damage the Premises. In the event that Lessee fails to remove said trade fixtures after receipt of notice from Lessor to do so, Lessor may remove and dispose of the same as it sees fit and Lessee agrees to sell, assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to said trade fixtures and any personal property not removed by Lessee. Lessee further agrees that should Lessor remove said trade fixtures pursuant to this paragraph, that Lessee shall pay Lessor upon demand the cost of such removal, plus the cost of transportation and disposal thereof.
- d. Compliance with Laws. Lessee's use of the Premises shall at all times be in compliance with the City of Santa Fe Municipal Code and other applicable local, state and federal regulations

including but not limited to compliance with the City of Santa Fe Integrated Pest Management Policy (§ 10-7 SFCC 1987) (the Pest Management Policy).

5. REPAIRS & MAINTENANCE

- a. During the term of this Lease and any extension or renewal thereof, Lessee shall not cause or permit any waste, damage or injury to the Premises or to any improvements made to the Premises.
- b. During the term of this Lease and any extension or renewal thereof, Lessee shall, at its sole expense, keep and maintain the Premises in good and clean condition at all times and shall be responsible for the costs of any and all required repairs, replacements, and capital improvements that arise during the Term of this Lease Agreement.
- c. Repairs and replacements required to be made by the Lessee shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises.
- d. During the term of this Lease and any extension or renewal thereof, Lessee shall maintain the landscaping and plants between the building and the sidewalk along the entire perimeter of the building.
- e. Lessee shall at all times during the term of this Lease and any extension or renewal thereof, and in a timely manner, provide a safe Premises by eliminating conditions caused by, including and not limited to, snow, ice, debris, mold and standing water.
- f. Lessor reserves the right to inspect the Premises at any time during the Term of this Lease Agreement to verify Lessee's compliance with this Section 5. In the event Lessee fails to maintain the Premises at a standard acceptable to the Lessor, as determined in Lessor's sole discretion, Lessor may terminate this Lease Agreement in accordance with Section 13 herein.
- g. Repair and maintenance shall be to the sole satisfaction of Lessor, and if Lessee fails to fulfill any duty imposed under this Section 5 within a reasonable period of time, City may, and is not required to, perform those duties at Lessee's sole cost. Lessee shall promptly cooperate with Lessor if Lessor undertakes to perform such duties. No action by Lessor taken pursuant to this Section 6 shall constitute a waiver of Lessee's obligations.

6. UTILITIES & SERVICES

Lessee, at Lessee's sole cost and expense, agrees to provide the following:

- a. All gas, electricity, water, sanitary sewer service and refuse disposal services; and
- b. Janitorial supplies and services; and
- c. Pest control services; and
- d. Snow removal services.

7. TAXES

Lessee shall pay all taxes levied and assessed, if any, upon any personal property, fixtures and improvements belonging to Lessee and located upon the demised Premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

8. SUBLEASE, ASSIGNMENT OR TRANSFER

Lessee shall not sublet, assign or otherwise transfer this Lease Agreement, without the prior written consent of Lessor, which Lessor may withhold for any or no reason. Any such actions taken by Lessee without Lessor's consent shall result in the immediate termination of this Lease Agreement.

9. INSURANCE

Lessee shall at all times maintain and provide adequate insurance coverage, which includes, without limitation, each of the following:

- a. Casualty Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement casualty insurance ("extended coverage" and "additional extended coverage") as may be available for all improvements to the Premises in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.
- b. Liability Insurance. Lessee shall carry and maintain in full force and effect during the Term of this Lease Agreement, public liability insurance covering bodily injury and property damage, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than as stated in the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property, against all claims and lawsuits arising from Lessee's use of the Premises. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.
- c. Workman's Compensation Insurance. Lessee shall carry and maintain in full force and effect during the Term of this Lease Agreement, workers' compensation insurance at statutory limits for its employees working at the Premises. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.
- d. Certificates of Insurance. Prior to the Effective Date of this Lease Agreement, and thereafter at any time during the Term of this Lease Agreement that Lessor requests, Lessee shall provide Lessor with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified for any reason without thirty (30) days prior written notice to the Lessor. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

10. INDEMNIFICATION

Lessee shall indemnify, hold harmless and defend Lessor from all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from damages occurring on the Premises and Lessee's use of the Premises hereunder, including use of the Premises by Lessee's employees, agents, representatives, contractors, agents, guests, invitees or permitted assigns.

Lessee shall cause any and all agreements that Lessee enters into with any of the above parties to contain language indemnifying Lessor as provided in this Section.

11. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by Lessor in connection with the Lease Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision of this License modifies or waives any provision of the New Mexico Tort Claims Act.

12. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises. Lessor shall notify Lessee in writing prior to Lessor's grant of any easement through the Premises. In the event that Lessor's grant of an easement on or through the Premises substantially interferes with Lessee's use of the Premises, Lessee may terminate the Lease Agreement and receive a prorated refund of annual rent by delivering written notice of termination to Lessor.

13. TERMINATION

- a. Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying:
 - i. the breach;
 - ii. the action required to cure the breach;
 - iii. a date, not less than fifteen (15) days from the date the notice is hand delivered or mailed to Lessee, by which such breach must be cured; and
 - iv. that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease Agreement.
- b. At the termination of this Lease Agreement Lessee shall surrender the Premises in the condition in which they were at the inception of this Lease Agreement, excepting:
 - i. Deterioration caused through reasonable use and ordinary wear and tear;
 - ii. Alterations, improvements or conditions made with Lessor's written approval.

14. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor: City of Santa Fe
 Attn. City Manager
 P.O. Box 909
 Santa Fe, NM 87504

To Lessee: Highgarden Entertainment, LLC
 Attn. General Manager
 418 Montezuma Ave., Unit 11
 Santa Fe, NM 87501

With a copy to: City of Santa Fe
Attn. Asset Development Manager
P.O. Box 909
Santa Fe, New Mexico 87504

15. NO WAIVER

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

16. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

17. ENTIRE AGREEMENT

The foregoing constitutes the entire Lease Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title, and interests as well as all of their duties, responsibilities and obligations. Any and all prior lease agreements and understandings between the Parties related to the Premises, if any, are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the Parties.

18. BINDING EFFECT

This Lease Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective successors and permitted assigns.

19. LITIGATION EXPENSE

In the event of litigation between the Parties, Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which Lessor shall incur in enforcing this Lease Agreement or in recovering any and all damages caused to the Premises by Lessee, or Lessee's contractors, agents, employees or permitted assigns.

20. HEADINGS

The section headings contained in this Lease Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Lease Agreement.

21. APPLICABLE LAW; VENUE

In any action, suit or legal dispute arising from this Lease Agreement, Lessee agrees that the laws of the State of New Mexico shall govern. The Parties agree that any action or suit arising from this Lease Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

22. AMENDMENT

This Lease Agreement shall not be altered, changed or modified except by an amendment in writing executed by the Parties hereto.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of this 11
day of March, 2022.

LESSOR: CITY OF SANTA FE

John Blair
John Blair (Mar 11, 2022 17:08 MST)

JOHN BLAIR, CITY MANAGER

ATTEST:

Kristine Bustos Mihelcic
KRISTINE BUSTOS MIHELICIC,
CITY CLERK *XIV*

CITY ATTORNEY'S OFFICE:

Marlene Heston
SENIOR ASSISTANT CITY ATTORNEY

APPROVED AS TO FINANCE:

Mary T. McCoy
MARY T. MCCOY, FINANCE DIRECTOR
Object Org. Code 2122800-460350

LESSEE: HIGHGARDEN ENTERTAINMENT, LLC

George RR Martin
By: George RR Martin

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 1 day of
MARCH 20 22 by George RR Martin,

Catherine Jaramillo
Notary Public

My commission expires: 08/31/24

STATE OF NEW MEXICO
NOTARY PUBLIC
CATHERINE JARAMILLO
COMMISSION # 1129440
COMMISSION EXPIRES 08/31/2024

EXHIBIT "A"

