

PARKING LOT LEASE AGREEMENT

THIS PARKING LOT LEASE AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO, and IDAHO FALLS DOWNTOWN DEVELOPMENT CORPORATION (hereinafter "LEASE AGREEMENT"), made this 24 day of OCTOBER, 2018, by and between City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, whose address is P.O. Box 50220, Idaho Falls, Idaho, 83405, (hereinafter "CITY"), and Idaho Falls Downtown Development Corporation, an Idaho non-profit corporation, whose address is 450 B Street, Idaho Falls, Idaho 83402 (hereinafter "LESSEE").

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants, conditions and obligations set forth herein, the parties agree as follows:

1. **Premises.** CITY agrees to lease to LESSEE, subject to the full and faithful performance of the terms, conditions and covenants contained herein, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter "Leased Premises"). LESSEE shall be entitled to the exclusive use of such leased Premises solely for the purpose of providing parking spaces to its employees, agents and customers.

2. **Initial Term and Options to Renew.** The term of this LEASE AGREEMENT shall commence on October 1, 2018, and shall terminate on September ^{30 PA 10/22/18} 20, 2021. LESSEE shall have the right and option to renew this LEASE AGREEMENT by a new mutual written agreement between the parties for a term not yet determined.

3. **Rental and Payment.** LESSEE agrees to pay to CITY as rental for the Leased Premises, the sum of One Dollar (\$1) commencing on the Commencement Date of this LEASE AGREEMENT, and on each anniversary thereafter throughout the term hereof.

4. **Use of Premises.** LESSEE is hereby granted the privilege of using the Leased Premises for the purpose of providing off-street parking for its employees and invitees to its business premises.

5. **Limitation on Use.** LESSEE agrees that the Leased Premises and improvements thereon shall be used only for the temporary parking of private motor vehicles incidental to LESSEE's use, operation, and maintenance. LESSEE further agrees that the Leased Premises shall not be used for parking of commercial vehicles as defined by Idaho Code § 49-123 or for any other commercial purpose, without the express written consent of CITY.

6. **Utilities.** CITY shall be responsible for and pay all utilities for the Leased Premises. LESSOR shall have no obligation to construct or provide water or sanitary sewer service lines, electrical, sanitation, telephone, or other utility services to the Leased Premises.

7. **Maintenance of Premises.** LESSEE is responsible for all maintenance to the parking lot including keeping it clear of snow, ice, debris, trash, weeds, or any hazard to its use as a parking lot and pedestrian way.

8. **Waste.** LESSEE agrees it will not commit nor permit any waste, or destruction of the Leased Premises or the improvements thereon, and shall upon the expiration of the term hereof, return the Leased Premises to CITY in the same condition as now exists, reasonable wear and tear excepted.

9. **Compliance With Applicable Law.** LESSEE agrees at all times herein to comply with all applicable rules, regulations, ordinances, statutes or administrative laws of the City of Idaho Falls, the State of Idaho, the United States of America or any agency or political subdivisions thereof having jurisdiction over the premises.

10. **Compliance With Environmental Laws.** LESSEE agrees not to store, dispose, use or allow the use of any “hazardous substance” or “hazardous waste” upon the premises, as such term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” 42 U.S.C. § 9601, *et seq.*), the Clean Water Act (“CWA,” 33 U.S.C. § 1251, *et seq.*), the Clean Air Act (“CAA,” 42 U.S.C. § 7401, *et seq.*), the Toxic Substances Control Act (“TSCA,” 15 U.S.C. § 2601, *et seq.*), the Resource Conservation and Recovery Act of 1976 (“RCRA,” 42 U.S.C. § 6901, *et seq.*), the Idaho Environmental Protection and Health Act of 1972 (“IEPHA,” Title 39, Chapter 1, Idaho Code), the Idaho Hazardous Waste Management Act of 1983 (“IHWIVIA,” Title 39, Chapter 44, Idaho Code) or any other similar state or federal law or regulation regulating the use, storage, transport or manufacture of a hazardous substance (such laws and regulations are hereafter referred to as “Environmental Laws”).

CITY, and its agents, attorneys, employees, consultants and contractors, hereby reserve the right to enter upon and inspect the real property and facilities leased hereby at any time for the purpose of determining LESSEE's compliance with the provisions of this paragraph, including without limitation, the right to perform such inspections, examinations, subsurface testing, soils and ground water testing and other tests necessary to protect CITY's interest in the property and ensure LESSEE's compliance with the terms and provisions of this paragraph.

If LESSEE fails to strictly comply with the Environmental Laws, CITY may immediately and without prior notice enter upon the Leased Premises and take such response action as reasonably necessary to bring the property into compliance with such laws and comply with any response action taken by any agency charged with the enforcement thereof. In such event, all costs, expenses and consultants' fees incurred by CITY for such response or remediation effort

shall be promptly and immediately paid by LESSEE, and together with interest at a rate of twelve percent (12%) per annum until paid, from the date such costs were incurred by CITY.

CITY may, at the termination of this LEASE AGREEMENT, perform an environmental audit of such scope and extent determined necessary by CITY, in order to determine LESSEE's compliance with the terms and provisions of this paragraph. Such audit shall be performed at the sole expense of CITY.

LESSEE agrees to indemnify and save CITY harmless from any and all damages, remedial orders, judgments, decrees, costs and expenses, including but not limited to attorneys' fees, consultants' fees, clean-up costs, removal and response costs arising from LESSEE's failure to strictly comply with the terms and provisions of this paragraph. The terms and provisions of this paragraph shall survive the termination of this LEASE AGREEMENT, and shall remain in effect for the full period of any statute of limitations with respect to the enforcement of the Environmental Laws or the terms and conditions of this LEASE AGREEMENT, whichever is longer. Nothing herein shall be deemed to impose upon LESSEE any obligation or duty to indemnify CITY on account of any violation of the environmental laws by CITY or by any leaseholder who was in possession of the demised premises prior to the commencement of the term of this LEASE AGREEMENT.

11. Indemnification. LESSEE agrees to indemnify, defend and hold CITY, its agents, officers, representatives, and employees harmless from any and all costs, expenses, fees, penalties, liability or loss resulting from any claim or claims, of any kind or nature, arising directly or indirectly from the acts of LESSEE, its agents, servants, guests, employees or invitees, under this LEASE AGREEMENT or by reason of any act or omission of LESSEE.

CITY agrees to indemnify, defend and hold LESSEE, its agents, officers, representatives, and employees harmless from any and all costs, expenses, fees, penalties, liability or loss resulting from any claim or claims, of any kind or nature, arising directly or indirectly from the acts of CITY, its agents, servants, guests, employees or invitees, under this LEASE AGREEMENT or by reason of any act or omission of CITY.

12. **Assignment.** Except as set forth hereafter, LESSEE shall not assign, mortgage, encumber, sublease, or transfer this LEASE AGREEMENT or any part thereof, or improvements thereon or any privileges arising hereunder, without the prior written consent of CITY, which consent shall not be unreasonably withheld.

13. **Termination of Lease.** LESSEE shall have the option to terminate this LEASE AGREEMENT at any time by giving written notice of said termination to CITY, sixty (60) days prior to said termination. LESSEE agrees to surrender and quit the Leased Premises immediately upon the termination of this LEASE AGREEMENT.

14. **Default.** In the event LESSEE shall file or have filed against it a petition under the Bankruptcy Act, or shall make an assignment for the benefit of creditors, become insolvent, or fail to fully and faithfully comply with the terms and provisions hereof, then and in such event, LESSEE shall be deemed to be in default of this LEASE AGREEMENT, and in the event LESSEE shall fail to cure such default within sixty (60) days after written notice shall have been given to them by CITY in a manner provided herein below, CITY may elect to terminate this LEASE AGREEMENT or alternatively or in addition thereto, CITY may pursue any other remedies at law or in equity to enforce the performance of this LEASE AGREEMENT. Such notice shall generally set forth the nature of the default claimed by CITY.

15. **Notices.** All notices required under the terms of this LEASE AGREEMENT shall be given by depositing a copy of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the receiving party at the address set forth below, or such other addresses as may be given in a writing delivered to the sending party. All notices shall be deemed to be received upon their deposit in the United States mail in the manner provided above.

For the purposes of this paragraph, the parties' addresses are as follows:

City of Idaho Falls
Attn: Director of Municipal Services
P.O. Box 50220
Idaho Falls, Idaho 83405

Idaho Falls Downtown Development Corporation
450 B Street
Idaho Falls, Idaho 83402

16. **Attorney's Fees.** In the event either party is required to commence legal action to enforce the terms and provisions hereof, the prevailing party shall be entitled to recover from the defaulting party a reasonable attorney's fee and court costs as determined by the court.

17. **Waiver/Invalidity.** If either party waives a breach of this LEASE AGREEMENT, such waiver shall not be construed as a waiver of any other simultaneous or subsequent breach of this LEASE AGREEMENT. If any provision of this LEASE AGREEMENT is found invalid, such invalidity shall not affect the enforceability of any other term or provision of this LEASE AGREEMENT.

18. **Binding Effect.** This LEASE AGREEMENT shall be binding upon the heirs, successors, personal representatives or assigns of the parties hereto.

19. **Complete Agreement.** The parties acknowledge and agree that this writing shall constitute the complete and final agreement of the parties hereto, that all prior negotiations, representations or understandings of the parties shall be deemed to merge into and are superseded by this LEASE AGREEMENT. This LEASE AGREEMENT may be amended only by written agreement duly and regularly executed by the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day and year first above written.

ATTEST:

CITY OF IDAHO FALLS

Kathy Hampton
Kathy Hampton
City Clerk

By: Rebecca L. Noah Casper
Rebecca L. Noah Casper
Mayor



LESSEE

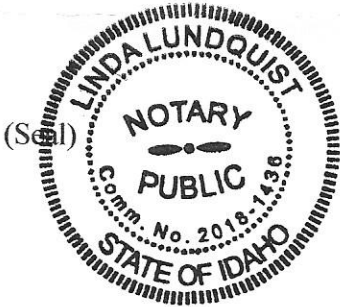
By: Greg Crockett
Greg Crockett
President

ANTONIO MEZA

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 24 day of OCTOBER, 2018, before me, the undersigned, a notary public, in and for said State, personally appeared Rebecca L. Noah Casper, known to me to be the Mayor of the City of Idaho Falls, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that such City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

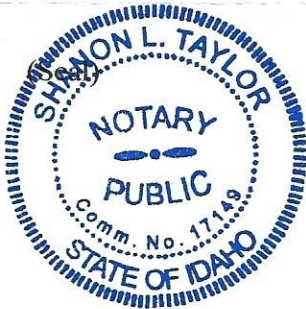


Linda Lundquist
Notary Public of Idaho
Residing at: Idaho Falls
My Commission Expires: 7/25/2024

STATE OF IDAHO)
) ss:
County of)

On this 19 day of October, 2018, before me, the undersigned, a notary public, in and for said State, personally appeared Greg Crockett, known or identified to me to be the President of the Idaho Falls Downtown Development Corporation, and whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Shannon L Taylor
Notary Public of Idaho
Residing at: Idaho Falls
My Commission Expires: 2-14-21

