

7.813 Acre Tract located in Tarrant County, TX

GROUND LEASE AGREEMENT

between

City of Keller, Texas
A Texas municipal corporation

as Landlord ("CITY")

and

ME Development LLC
A Texas limited liability company

as Tenant

Dated [Oct. 17], 2023

GROUND LEASE AGREEMENT WITH OPTION

THIS GROUND LEASE AGREEMENT WITH OPTION (this "Lease") is entered into by and between City of Keller, Texas, a Texas municipal corporation ("City") as landlord for that certain real property described on Exhibit A attached hereto and incorporated by reference herewith and ME Development LLC, a Texas limited liability company ("Tenant"), as of [Oct. 17], 2023 (the "Effective Date"). City and Tenant shall each at times be referred to herein individually as a "Party," and collectively as the "Parties."

1. **Demise.** City hereby leases to Tenant, and Tenant hereby leases from City that certain parcel of land located at 401 Golden Triangle Boulevard, Keller, Texas 76248 having an area of approximately [7.813] acres and being more particularly described in Exhibit A attached hereto. The grant shall include, all improvements thereon and all rights, privileges and appurtenances thereto, including but not limited to cross access easements across other property owned now or will be owned by City for ingress and egress (collectively referred to as the "Land") (these easements to run with the land). The Land, the improvements, the right to ingress and egress, all other easements benefitting the Land, and the rights, privileges and appurtenances, are collectively called the "Premises" herein.

2. **Term.** The term of this Lease commences on the Effective Date and expires fifty(50) years later, on [Oct. 17], 20[73] (unless terminated earlier in accordance with the terms of this Lease (including without limitation Section 49 hereof)) which is the last day of the [Feb] ([50]th) full calendar year after the Effective Date (the "Term"). The Term may be extended pursuant to the terms of Section 50.

3. **Due Diligence.** In consideration of a fee paid by Tenant to City upon execution of this Lease in the amount of FIVE HUNDRED AND 00/100 USD (\$500.00) (the "DD Fee"), City grants to Tenant, an option (the "Option") extending for a period of six (6) months from the Effective Date (the "Option Period"), to lease the Land and Premises on the terms set forth herein. During the Option Period, Tenant shall have the exclusive right to analyze the suitability of the Land and Premises for the Permitted Use. Tenant and its employees, agents, contractors, engineers, and surveyors shall have the right to enter upon the Land and Premises to inspect, conduct, perform, and examine soil, drainage, conduct testing, sample materials, conduct surveys and other geological or engineering tests or studies, apply for and obtain all licenses and permits required for Tenant's Permitted Use of the Land and Premises from all applicable governmental or regulatory entities, and to do such things on or off the Land and Premises that, in the sole opinion of Tenant, are necessary to determine the physical condition of the Land and Premises, the environmental history of the Land and Premises, title to the Land and Premises and the feasibility or suitability of the Land and Premises for Tenant's permitted use as defined in this Lease, all at Tenant's expense (the "Due Diligence Investigation"). Activities conducted in connection with Tenant's Due Diligence Investigation shall not be deemed to constitute exercise of the Option or commencement of any construction of any Improvements.

During the Option Period, City shall cooperate with Tenant in its efforts to perform its Due Diligence Investigation and to take no action that would adversely affect the Land or Premises. City shall furnish to Tenant, within seven (7) days of the Effective Date, all books, records, and files pertaining to or related to the Premises, including all information in the City's possession as requested on Exhibit E attached hereto and incorporated by reference herewith. Additionally, City understands that applications for permits for any requirements for the Permitted Use may require City's cooperation, which City hereby agrees to reasonably provide. City agrees to execute such

documents as may be necessary to obtain any permits and maintain the approval therefore and agrees to be named as the applicant if so required. In accordance with the above, if at any time during the Option Period, tenant wishes to terminate this Lease as to the Land, Tenant shall send written notice thereof to City and upon such sending, this Lease shall be terminated with no recourse against a Party as to the entirety of the Lease. City shall retain its DD Fee. In the event no such termination is delivered during the Option Period, or if Tenant provides notice to City during the Option Period of its right to enact such Option, the Option will be deemed elected and each Party shall be governed pursuant to the term of this Lease moving forward.

4. **Rent.** Commencing on April, 202⁴~~3~~, Tenant shall pay to City the following fixed minimum rent during the Term ("**Base Rent**") as follows:

- a. Lease Year 1 through Lease Year 9: \$15,000.00
- b. Lease Year 10 through Lease Year 19: \$19,000.00
- c. Lease Year 20 through Lease Year 29: \$23,000.00
- d. Lease Year 30 through Lease Year 39: \$27,000.00
- e. Lease Year 40 through Lease Year 50: \$31,000.00

The minimum rent shall be per lease year for each lease year commencing with the 1st lease year and continuing thereafter through the expiration or early termination of this lease, which amount shall be payable in equally quarterly payments payable on or before the first day of each calendar quarter (January 1, April 1, July 1, October 1) of each lease year (any partial quarter either from the Effective Date of the Lease or the final partial quarter shall be prorated).

All charges, costs and expenses which Tenant assumes or agrees to pay under this Lease, together with all interest and penalties (if any) that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, and all other damages, costs and expenses which City may suffer or incur and any and all other sums which may become due (under this Lease or otherwise) by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease on Tenant's part to be performed, are deemed to be additional rent ("**Additional Rent**"). As used in this Lease, the term "**Rent**" means, individually and/or collectively, as the context requires, Base Rent and Additional Rent (or any portion of either).

Tenant acknowledges that late payment of Rent involves additional costs to City for collection and bookkeeping, and, accordingly, Tenant agrees that if Rent due hereunder is not paid by the tenth (10th) day after it is due, then Tenant shall pay upon demand, as additional rent, a late charge equal to five percent (5%) of the amount required to be paid. The foregoing provisions for payment of a late charge shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the time or times herein stipulated, and neither the demand for, nor collection by, City of such late charge shall be construed as a cure of Tenant's default in the payment of Rent.

5. **Survey.** City, at City's expense, has provided Tenant with a current boundary survey of the Land which includes the approximate utility locations (the "**Survey**").

6. **Grant of Easements.** In accordance with Section 1 of this Lease, City grants the

following easements and rights-of-way over, under and upon the Land, Premises and abutting land to Tenant, Tenant's employees, agents, invitees, contractors, sublessees, licensees and their employees, agents and contractors: (1) an easement over such portions of City's property as is reasonably necessary for the construction, repair, maintenance, replacement, demolition, and removal of the Improvements on the Premises; (2) an easement at a location as set forth on Exhibit F attached hereto and incorporated by reference herewith providing access, ingress and egress to the Premises from Golden Triangle Boulevard; (3) an easement as set forth on Exhibit F allowing the use of the parking lots set forth thereon pursuant to any restrictions as may be set forth on Exhibit F; and utility easements as may be necessary for the installation, repair, replacement, and maintenance of utility wire, poles, cables, conduits, and pipes to ensure utility hookups are present and maintained in furtherance of the Permitted Use. The grant above is a direct grant of easements whether temporary or permanent by City to Tenant TO HAVE AND TO HOLD for the Permitted Use and other such purposes provided for by this Lease during the Term and thereafter for a reasonable period of time for Tenant to remove the Improvements as limited by this Lease.

7. **Title.** City has provided to Tenant a commitment for title insurance for the Premises, which includes copies of all exception documents referenced in the commitment (the "**Title Commitment**"). Tenant may obtain, at Tenant's expense, a leasehold title insurance policy ("**Leasehold Title Policy**") issued by the Title Company in an amount determined by Tenant.

8. **Use of Premises.** Tenant shall use the Premises solely for the operation of a recreational, arena, and training facility for sports and athletics, including volleyball, basketball, cheer academy, as well as the sport of Futsal as well as the sale of concessions including food and beverage and merchandise (the "**Permitted Use**"), and Tenant may not occupy or use or permit the Premises to be occupied or used for any other purpose. The Permitted Use shall include non-sports and athletic uses ancillary to the operations on site by Tenant including but not limited to, strength and fitness training, sports medicine and imaging, physical therapy services, med-spa, cryotherapy, and wellness services, Pilates, yoga, cycle barre, and wellness services, and other concession sales and light retail related to the same. Any other uses shall require City's prior written approval. If required by applicable Law, Tenant shall obtain a Certificate of Occupancy from a proper governmental authority approving Tenant's Permitted Use of the Premises. Tenant covenants and agrees that the Premises shall be used in compliance with the rules, regulations, and uses listed on Exhibit C. In addition, Tenant may not use the Premises or permit the use or occupancy of the Premises in any manner which: (a) is unlawful or is in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule; (b) uses or allows the Premises to be used for any improper or objectionable purpose, or would otherwise tend to injure the reputation of the City and/or the Premises; (c) may invalidate any insurance policy affecting the Premises (whether held by City or Tenant) or increase the amount of premiums for any insurance policy affecting the Premises (or any portion thereof); or (d) violates any covenants, conditions or restrictions of record affecting the Premises. Tenant and City shall work together and be jointly responsible for verifying that any use by Tenant of the Premises is permitted under all Laws, including zoning laws, applicable thereto. Tenant shall in the conduct of its business comply with the requirements of all Laws from time to time applicable to the business conducted upon the Premises. As used herein the term "**Laws**" shall mean the constitution, statutes, charters, laws, ordinances, rules, regulations, orders and the like of the United States, or any political subdivision or agency thereof, the State of Texas, Tarrant County, and any and all other governmental entities or authorities having jurisdiction over the Premises including specifically the City of Keller, Texas.

9. **Premises. Construction:** Tenant shall, within eighteen (18) months of the Effective Date, obtain a building permit for an approximately 60,000 to 75,000 square foot building, currently expected to cost approximately \$18,000,000, to be constructed on the Land, generally meeting the design and specifications as shown on attached Exhibit D. Construction of the building shall commence within thirty (30) months of the Effective Date. Construction shall be completed (as evidenced by the issuance of a certificate of occupancy issued by the City) within eighteen (18) months from the commencement of construction.

10. **Termination for Failure.** If the deadlines contained in Section 9 are not met, the City shall terminate the Lease and retain all respective funds delivered as Rent prior to the date of termination.

11. **Condition of Premises.** TENANT HEREBY ACKNOWLEDGES THAT TENANT HAS INSPECTED AND ACCEPTS THE PREMISES AND ANY AND ALL IMPROVEMENTS THEREON IN THEIR PRESENT CONDITION AS SUITABLE FOR TENANT'S INTENDED USE OF THE PREMISES. TENANT ACKNOWLEDGES AND AGREES THAT BY TAKING POSSESSION OF THE PREMISES TENANT WILL BE DEEMED CONCLUSIVELY TO ESTABLISH THAT THE PREMISES AND ANY AND ALL IMPROVEMENTS THEREON ARE IN GOOD AND SATISFACTORY CONDITION AS OF THE TAKING OF SUCH POSSESSION. TENANT UNDERSTANDS AND AGREES THAT TENANT IS ACQUIRING THE PREMISES "AS IS, WHERE IS, WITH ALL FAULTS," AND, TO THE EXTENT ALLOWED BY LAW, TENANT HEREBY WAIVES ANY AND ALL RIGHTS AND PROTECTIONS THAT MIGHT OTHERWISE BE AFFORDED TENANT AT LAW AND MAKES NO REQUIREMENTS OF CITY CONCERNING THE CONDITION OF THE PREMISES OR OF ANY BUILDINGS OR IMPROVEMENTS THEREON. IN THAT REGARD, TENANT ACKNOWLEDGES THAT CITY HAS NOT MADE ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR ASSURANCES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR THE CONDITION THEREOF, INCLUDING (WITHOUT LIMITATION) (a) ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR (b) ANY WARRANTY WITH RESPECT TO ANY PHYSICAL OR ENVIRONMENTAL CONDITION EXISTING ON THE PREMISES OR WITH RESPECT TO THE ZONING ON, THE CONDITION OF, OR SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE THEREOF. TENANT ACKNOWLEDGES THAT TENANT HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF CITY OR ANY AGENT OF CITY, AND TENANT AGREES THAT WITH RESPECT TO THE PREMISES TENANT WILL RELY SOLELY UPON TENANT'S INSPECTIONS THEREOF OR TENANT'S DETERMINATIONS NOT TO INSPECT THE SAME AND TENANT SHALL ACCEPT THE PREMISES IN THEIR "AS IS, WHERE IS" CONDITION AS OF THE DATE OF EXECUTION OF THIS LEASE. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TERMINATION OR EXPIRATION OF THIS LEASE.

12. **Utilities Charges; Licenses.** Commencing with the Effective Date, Tenant shall pay all public utility charges, including water, sewer, electricity, and other utility services on the Premises. City shall provide hookups for all utilities for Tenant and shall be responsible for the payment of the installation of any hookups not existing as of the Effective Date. In the event of any cessation in the provision of any such utilities or services out of the control of City, City shall not be held responsible by Tenant for the failure of such utilities.

13. **Taxes and Assessments.** Tenant agrees to be liable for all Real Estate Charges (as defined below) related to the Premises. "Real Estate Charges" shall include ad valorem taxes, general and special assessments, personal property taxes, any tax or charge for governmental services (such as street maintenance or fire protection) and any tax or charge

which replaces any of such above-described Real Estate Charges, and all costs and expenses directly incurred by Tenant in contesting the validity of, seeking a reduction of or seeking to prevent an increase in, any such Real Estate Charges or assessments and including any interest on assessments if paid in installments; provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, inheritance or general income tax. Tenant shall pay Real Estate Charges for the Premises directly to the taxing authority prior to the date the same are delinquent, and shall provide City with proof of payment within thirty (30) days after the real estate taxes were due. Notwithstanding the foregoing, should City receive a notice of Real Estate Charges due and owing and fail to provide respective notice to Tenant within ten (10) days of receipt, an Event of Default of this Lease shall not occur. Regardless of anything herein to the contrary should Tenant be delinquent at any time in paying the Real Estate Charges when due without penalty or interest, City shall have the right, in addition to all other remedies available in this Lease or at law or in equity, to pay taxes directly to the taxing authority, and thereafter, Tenant shall reimburse City the amount estimated by City for such payment. Tenant shall not contest taxes levied against the Premises without City's prior written consent. The obligation for Real Estate Charges under this Section 13 shall survive the expiration of the Term (as extended) of this Lease.

14. **Insurance.** Tenant shall, at its expense (except as expressly provided below), commencing with the Effective Date, provide and keep in force:

a. Commercial General Liability Insurance containing bodily injury and property damage with single limit coverage of not less than one million (\$1,000,000.00) per occurrence, and two million (\$2,000,000.00) in the aggregate. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.

b. Minimum additional two million (\$2,000,000.00) umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance (the "**Tenant Umbrella Policy**").

c. During any period in which Tenant is conducting construction activities (including installation of equipment) at the Premises, Tenant shall keep, or cause its general contractor, as applicable, to keep, in full force and effect, with regard to the Premises and the Improvements in at least the minimum insurance coverages set forth below: (i) workers' compensation - statutory limits; (ii) employers liability - \$1,000,000.00; (iii) business automobile liability, including non-owned and/or hired vehicles with a limit of \$1,000,000.00; and (iv) commercial general liability, naming City and Tenant as additional insureds, to include premises operations and products/completed operations coverage with limits of \$2,000,000.00 per occurrence. Additionally, Tenant shall keep or require its general contractor to keep in full force and effect a policy of builder's risk insurance covering loss or damage to the Improvements on the Premises for the full replacement value of all such construction, with loss payable to Tenant. Prior to commencing any construction on the Premises, Tenant shall furnish to City appropriate certificates of such insurance, and, if requested by City, copies of such insurance policies.

d. Such policies shall cover the entire Premises. To the extent commercially available in the insurance market at the time, Tenant's liability insurance policies shall

provide by endorsement or otherwise that the insurance company will endeavor to provide at least ten (10) days' notice to City of any cancellation thereof, and Tenant shall deliver evidence of such policies to City if so requested. Tenant shall name City as additional insured. A certificate evidencing such liability insurance in form reasonably acceptable to City shall be furnished to City prior to any entry onto the Premises by Tenant or its agents, employees or contractors and thereafter upon the renewal thereof.

e. Tenant shall have its insurance policies that are procured and maintained pursuant to this Lease issued in such form as to waive any right of subrogation which might otherwise exist in respect to the insurer under such policy, and Tenant shall provide written evidence of such waiver to City on request. All of such policies must provide for payment of loss thereunder to City and Tenant, as to their interests. Moreover, each insurance policy required to be obtained by Tenant under this Lease:

- i. shall be from companies licensed to do business in the state in which the Premises are located having an A.M. Best Rating of "A VII" or better and must be in form and substance reasonably acceptable to City;
- ii. shall name City and Tenant as additional insureds and/or loss payees, as their respective interests may appear, by endorsements, as applicable, reasonably acceptable to City;
- iii. shall provide with respect to any policy required to be carried by Tenant that the policy cannot be canceled as to City except after the insurer gives City thirty (30) days written notice of cancellation;
- iv. shall provide that the policy cannot lapse if it is not renewed for any reason except after the insurer gives City and Tenant thirty (30) days written notice of the non-renewal;
- v. shall provide that no material change in the coverage provided by the policy shall be effective except after the insurer gives City and Tenant thirty (30) days written notice of the change;
- vi. shall state that notice of any claim against City or Tenant shall be deemed to have occurred only when an officer of City or Tenant has received actual notice of, and has actual knowledge of, the claim;
- vii. shall not be subject to invalidation as to City or Tenant by reason of any act or omission of City or Tenant or any of their respective officers, employees or agents;
- viii. shall provide that any losses payable thereunder shall be adjusted with Tenant and City; and
- ix. shall contain a provision to the effect that the policy shall not be invalidated, and shall remain in full force and effect, if any insured waives in writing prior to a loss any or all rights of

recovery against any party for loss occurring to property covered by that policy, and a provision whereby the insurer itself waives any claims by way of subrogation against City. Tenant hereby waives any and all rights of recovery against City to the full extent that indemnification is due under insurance coverage required by this Lease. Tenant shall not procure or maintain in force any insurance policy which might have the effect of reducing or diminishing the amounts payable under any of the policies required by this Lease.

City, shall obtain insurance at the following limits:

- f. Commercial General Liability Insurance containing bodily injury and property damage with single limit coverage of not less than one million (\$1,000,000.00) per occurrence, and two million (\$2,000,000.00) in the aggregate. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.
- g. Such policies shall cover the entire Premises. To the extent commercially available in the insurance market at the time, City's liability insurance policies shall provide by endorsement or otherwise that the insurance company will endeavor to provide at least ten (10) days' notice to Tenant of any cancellation thereof, and City shall deliver evidence of such policies to Tenant if so requested. City shall name Tenant as additional insured. A certificate evidencing such liability insurance in form reasonably acceptable to Tenant shall be furnished to Tenant.
- h. City shall have insurance policies that are procured and maintained pursuant to this Lease issued in such form as to waive any right of subrogation which might otherwise exist in respect to the insurer under such policy, and City shall provide written evidence of such waiver to Tenant on request. All of such policies must provide for payment of loss thereunder to City and Tenant, as to their interests.

15. **Property Insurance.** Tenant shall, at its expense, maintain and keep in force standard fire and extended coverage insurance on any building and improvements located on the Premises. In no event shall the insurance coverage be less than one hundred percent (100%) of the full insurable value, on a current basis. The term "full insurable value" shall mean the actual current replacement cost, excluding land, excavation, foundation, paving and underground facilities. To the extent commercially available in the insurance market at the time, Tenant's property insurance policies shall provide by endorsement or otherwise that the insurance company will endeavor to provide at least fifteen (15) days' notice to City of any cancellation thereof, and Tenant shall deliver evidence of such policies to City if so requested. Tenant shall name City, as additional insured. A certificate evidencing such property insurance in form reasonably acceptable to City shall be furnished to City at any time during the term of the Lease following request.

16. **Indemnity.** Tenant hereby indemnifies and agrees to defend and hold harmless City, City's employees, agents, contractors, subcontractors, and invitees or other tenants against any and all loss, damage, cost, expense, liability or causes of action arising out

of, related to or resulting from the use, occupancy or activities of Tenant, its agents, employees, contractors or invitees in or about the Premises; provided, however, Tenant's indemnity and agreement to defend and hold harmless City as set forth above in this Section 16 does not extend to any matter, cause or thing arising out of, relating to, or resulting from City's own negligence or willful misconduct, or that of City's employees, agents, contractors, subcontractors, and invitees or other tenants.

City hereby indemnifies and agrees to defend and hold harmless Tenant, Tenant's employees, agents, contractors, subcontractors, and invitees against any and all loss, damage, cost, expense, liability or causes of action arising out of, related to or resulting from the negligence or willful misconduct of City's employees, agents, contractors, subcontractors, and invitees or other tenants in regards to any use, occupancy, or activities on the Premises or any other Property owned by City and adjoining the Premises.

17. **Maintenance and Repairs.** Tenant, at its sole cost, shall be responsible for all repairs, replacement, and maintenance of the Premises, including but not limited to the fencing, parking and driveway areas, landscaping, trash removal areas, roof, foundation, and structural integrity of the buildings and improvements on the Land (except for utility hookups and connection), and shall keep the same in good working condition and in a good, clean and litter-free appearance at all times. City shall not be required to maintain or repair any structure on the premises or any improvements located thereon. Tenant, at Tenant's sole cost and expense, will have the right to make alterations, buildings, additions or improvements (collectively "**Alterations**") to the Premises and the buildings thereon (if any), provided that: (a) Tenant must receive City's prior written consent (which such consent shall not be unreasonably withheld) prior to placing new, or moving any existing, improvements on the Premises (including any signage), and no portion of any buildings or improvements may be demolished or removed without the prior written consent of City; and (b) and may be commenced only after Tenant has furnished security reasonably satisfactory to City to assure the prompt completion of the work, free and clear of liens. All initial work on the Premises constituting Improvements and Alterations is set forth on Exhibit D attached hereto and incorporated by reference herewith and City is deemed to have approved these initial Improvements and Alterations by execution of this Lease. All such work must be done in a good and workmanlike manner and in compliance with all applicable laws, codes, ordinances, rules and regulations. Tenant agrees to carry, and to cause Tenant's contractors and subcontractors to carry, such workers' compensation, general liability, personal and property damage insurance as City may reasonably require in connection with such alterations or improvements and of which City notifies Tenant. All Alterations made by Tenant shall be free and clear of all mechanics' and materialmen's liens (provided, that if any such lien is filed, Tenant shall either promptly discharge the same or it may contest the same in good faith so long as Tenant has provided City with a bond in form and amount and issued by a bonding company reasonably acceptable to City. The initial improvements and subsequent improvements, including structural construction shall be deemed "**Improvements.**"

18. **Ownership of Improvements and Alterations.** All Alterations and Improvements, whether temporary or permanent in character, made in or upon the Premises by Tenant during the term of this Lease will be Tenant's property at the end of the Term or the Extended Terms] whichever is later) subject to the following:

- a. Tenant shall have the right, prior to the expiration of this lease to remove all personal property, Improvements, and non-attached fixtures installed by Tenant;

- b. All personal property and removable property of City shall remain on the Premises at the expiration of the Lease; and
- c. Subject to the rights of Section 17 Tenant and agree that Tenant shall be responsible for significant Alterations and Improvements of the Premises of which significant financial contribution will be expected of Tenant. In the event this Lease expires, the terms of Section 50 shall apply regarding extension options.
- d. City recognizes and agrees that all personal property brought onto the Premises is the sole property of Tenant and is not to automatically become the property of the City upon the termination hereof.

19. **Compliance with Laws and Matters of Record.** Tenant, at its expense, shall comply with all matters of record, and applicable laws, orders and regulations of federal, state and municipal authorities with respect to the Premises and/or Tenant's use thereof, including without limitation all applicable environmental laws, and the Americans with Disabilities Act (the "ADA"). Tenant acknowledges and agrees that this Lease is subject to all matters of record, including any presently existing oil, gas, or other mineral exploration agreements and leases relating to the Land. Tenant, at its expense, shall obtain all licenses or permits that may be required for the conduct of its business within the terms of this Lease, or for alterations, improvements, or additions that Tenant may desire to make, and City, when necessary, shall join with Tenant in applying for all such permits or licenses. City shall not agree to or record any declaration, restriction, easement, or other matter of record after the Effective Date that would restrict or materially interfere with Tenant's Permitted Use of the Premises without the consent of Tenant which may be withheld at Tenant's sole discretion.

20. **Signs and Lighting.** Tenant shall have the right to erect signs advertising Tenant's business and building image lighting on the building of the Land, and install such other signs on the Land, including but not limited to directional signs; provided that such signs are in accordance with building and zoning standards and approved by the City, (such consent to not be unreasonably withheld).

21. **Assignment-Subleasing by Tenant.** Tenant may not sublease all or any part of the Premises without City's prior written approval which approval not to be unreasonably withheld or conditioned. However, Tenant may, without the consent of City, may utilize one or more Affiliates ("Affiliate") being defined as an any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Tenant) to carry out the terms and conditions of this Lease. Tenant shall deliver written notice if such an Affiliate does carry out any term or condition of this Lease on behalf of Tenant prior to such Affiliate executing such action. Tenant, in the event of a sale of the full facility, may assign the Lease so long as such assignment is made with a sale of all the Improvements to a third-party purchaser/successor Tenant.

22. **Assignment by City.** City shall not have the right to assign this Lease, collaterally or otherwise, without Tenant's consent which such consent cannot be unreasonably withheld. No assignment by City shall alter the rights of Tenant hereunder, and all of the recitals, terms, covenants, and conditions of this Lease shall remain in full force and effect upon the assignment. Upon any assignment by City, such City assignee shall assume the obligations of City respectively pursuant to the terms of this Lease, and City shall remain fully liable for obligations of City respectively up to the date of said assignment, unless otherwise assumed in writing by City's assignee. Upon any

assignment by City, Tenant shall be entitled to continue making Base Rent payments to City unless and until or its assignee actually delivers to Tenant a written notice (including a copy of the signed assignment document) directing rental payments to thereafter be made to the assignee.

23. **Holdover.** Any holdover by Tenant after any termination of this Lease shall automatically create a month-to-month tenancy at the then-current Base Rent plus fifty percent (50%) of such amount and otherwise subject to all other applicable conditions provisions and obligations of this Lease, provided, however, such month-to-month tenancy may be terminated by a Party upon at least thirty (30) days' prior written notice from the end of any such month to the other Party. This section shall not constitute granting Tenant any option to extend the Lease Term. **IN ADDITION TO THE FOREGOING, TENANT SHALL BE AND REMAIN LIABLE TO CITY FOR, AND SHALL PROTECT CITY FROM AND INDEMNIFY AND DEFEND CITY AGAINST, ALL LOSSES AND DAMAGES, INCLUDING ANY CLAIMS MADE BY ANY SUCCEEDING TENANT, RESULTING FROM SUCH FAILURE OF TENANT TO VACATE, AND ANY CONSEQUENTIAL DAMAGES THAT CITY SUFFERS FROM THE HOLDOVER.** The provisions of this Section 23 will survive the expiration or termination of the Term or Extended Terms.

24. **Condemnation.**

a. If the whole of the Premises shall be taken or condemned under the right of eminent domain, then this Lease shall automatically terminate. If less than the whole of the Premises shall be taken or condemned but the part taken or condemned constitutes, in Tenant's sole, reasonable judgment, such a substantial part of the Premises so that the remaining part of the Premises shall be insufficient for the economic and feasible operation of Tenant's Permitted Use or such other use as Tenant is then engaged in from the Premises in accordance with this Lease, then Tenant shall have the right to terminate this Lease. A termination due to any of the following reasons is deemed to be reasonable: (a) the taking of any part of the buildings, (b) Tenant's inability to continue its Permitted Use on the Land because the condemnation rendered the Land non-compliant with applicable laws and no variance was available for continued operations, or (c) the taking in question renders continued use of the Land (or Tenant's then-current use in accordance with this Lease) unsafe due to the close proximity of the new right-of-way to the building on the Land. If this Lease is terminated pursuant to this Section 24, whether automatically or at Tenant's election, then (i) such termination shall be effective as of the date possession is lawfully acquired by the condemning authority, (ii) from and after such effective date of termination, (x) this Lease shall be of no further force or effect and the Parties hereto shall have no further obligations hereunder (except for any obligations expressly surviving such termination), and (y) the obligation to pay Base Rent hereunder shall cease, and (iii) City shall receive all awards or payments that are attributable to the portion of the Land and/or Premises that are taken or condemned subject to the provisions of Section 24.

b. City shall notify Tenant within ten (10) days of any notification from any governmental entity regarding the proposed taking or condemnation of any or all of the Premises. In addition, City shall copy Tenant on any subsequent correspondence regarding same, including the condemning authority's appraisal.

25. **Damage or Destruction of Premises.** In the event the whole or any part of the Improvements on the Land (including Tenant's equipment and fixtures) shall be damaged or destroyed by fire, flood, windstorm, strikes, riots, civil commotions, acts of God, or other

casualty, Tenant shall restore same to their condition just prior to said loss without unreasonable delay. Any insurance proceeds received by Tenant or City, pursuant to the provisions of this Lease, shall be disbursed to such Party during the restoration period to pay for the cost of said restoration applicable to Tenant. Any insurance proceeds over and above the cost of restoration shall be paid to and be the property of Tenant upon completion of restoration. If the insurance proceeds are insufficient to pay for the cost of restoration, Tenant shall, at its expense, pay the difference as to all. City and Tenant may mutually agree in writing not to restore the Improvements. In the event any such damage mentioned in the first sentence of this Section 25 is in excess of fifty percent (50%) of the total replacement cost of the Improvements, and occurs during the final twenty-four (24) months of the Term (or the Extended Terms), Tenant shall, at its sole election, rebuild the damaged buildings and other improvements to their condition immediately preceding the loss or damage, or receive and retain the insurance proceeds relating to the damage to the Improvements, and continue to pay Base Rent and perform all other obligations under this Lease other than rebuilding the Improvements. If Tenant is required to rebuild as provided herein, then Tenant will proceed with reasonable diligence to obtain an adjustment of the insurance proceeds, apply for and obtain permits and approvals necessary for such rebuild and thereafter complete the rebuilding of the Improvements.

26. **Notices.** All notices and other communications that may be or are required to be given or made by any Party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date (i) delivered in person; (ii) transmitted via facsimile (transmission confirmed); (iii) deposited in the United States mail, registered or certified, return receipt requested; or (iv) deposited with Federal Express (or other similar national overnight delivery service) postage or charges prepaid. All notices required or permitted by any provision of this Lease shall be directed as follows, or at such other addresses as specified by notice delivered in accordance herewith:

TO CITY:

The City of Keller, Texas
Attn: City Manager
1100 Bear Creek Parkway
P.O. Box 770
Keller, Texas 76244
Tel: (817) 743-4001

WITH A COPY TO

Mr. L. Stanton Lowry, Esq.
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062
Tel: (972) 650-7100

TO TENANT:

ME Development LLC
Attn: Esteban Mariel
400 N. Ervay St. #130305

Dallas, Texas 75313
Tel: (214) 683-1952

WITH A COPY TO VELA WOOD:

Vela Wood
Attn: Gregory Smith
5307 W. Mockingbird Ln., Suite 800
Dallas, Texas 75206
gsmith@velawood.com

or to such other place as such Party shall subsequently notify the other in writing.

27. **Quiet Enjoyment.** City shall assure Tenant of quiet enjoyment and possession of the Premises against anyone claiming by, through, or under them, so long as Tenant performs all of its obligations under this Lease. Notwithstanding the foregoing, City will have the right, at all reasonable times during the Term (as extended), to enter the Premises for the purpose of inspecting the Premises, making repairs, or displaying the Premises to prospective purchasers, lenders and tenants, so long as; the exercise of such right does not unreasonably interfere with Tenant's occupancy and use of the Premises. City additionally will have the right to place and display upon the Premises "To Let" or "For Sale" signs within one-hundred eighty (180) days from the end of the Term or the Extended Term.

28. **Commissions.** Each of the Parties represents and warrants that they have dealt with no broker in the negotiation and consummation of this Lease. City agrees to indemnify and to hold harmless Tenant from any and all claims for real estate commissions arising through City's actions, and Tenant agrees to indemnify and to hold harmless City for all such claims arising through Tenant's actions. The Parties' respective indemnification and hold harmless obligations of City and Tenant contained in this Section 28 shall survive any expiration or earlier termination of this Lease.

29. **Tenant's Default or Bankruptcy.** Each of the following occurrences will constitute a default by Tenant (each a "**Tenant Default**") under this Lease: (i) Tenant shall fail to pay any installment of Base Rent within ten (10) days after such payment is due; (ii) failure or default is made in the performance of any of the other covenants (other than payment of Base Rent), agreements, conditions or undertakings herein contained to be kept, observed and performed by Tenant and such failure or default continues for a period of thirty (30) days after City delivers written notice thereof to Tenant; (iii) Tenant shall be adjudicated bankrupt, or have a receiver be appointed for Tenant or Tenant should cease to develop, operate, or act on the Premises under the Permitted Use for a period of more than (6) months (the initial building of the Improvements notwithstanding); or (iv) Tenant shall make an assignment of its leasehold estate for the benefit of creditors (any such assignment shall be ineffective and null and void). Upon the occurrence of any Tenant Default, City may, at its option and without further notice to Tenant and without judicial process, in addition to all other remedies given hereunder or by law or equity, do any one or more of the following: (1) terminate this Lease, in which event Tenant must immediately surrender possession of the Premises; (2) enter upon and take possession of the Premises and expel or remove Tenant therefrom, with or without having terminated this Lease; (3) change or rekey all locks to entrances to the Premises, and City will have no obligation to give Tenant a new key to the Premises until such Tenant Default is cured. In the event of any such default and the expiration of all applicable cure periods, City shall be entitled to recover

from Tenant, in addition to rent, all other damages sustained on account of the breach of this Lease, and the reasonable costs, expenses and attorney fees incurred in enforcing the terms and provisions hereof and in re-entering and recovering possession of the Premises. Further, at the election of City, upon any Tenant Default that is not cured within the applicable period, City shall have the right to declare this Lease terminated and canceled, without any further rights or obligations on the part of City or Tenant (other than the obligation for rent and other charges due and owing through the date of termination), so that City may relet the Property without any right on the part of Tenant to any credit or payment resulting from any reletting of the Premises.

City may, but shall not be obligated to, upon the expiration of all applicable cure periods without cure by Tenant, cure any default by Tenant that does not involve entry into the building (specifically including, but not by way of limitation, Tenant's failure to obtain insurance, make repairs if required by applicable law or to secure or make safe the Premises, or satisfy lien claims) and whenever City so elects, all reasonable costs and expenses paid by City in curing such default, including without limitation, reasonable attorneys' fees, shall be payable to City as additional rent due on demand. A waiver by City of a breach or default by Tenant under the terms and conditions of this Lease shall not be construed to be a waiver of any subsequent breach or default nor of any other term or condition of this Lease, and the failure of City to assert any breach or to declare a default by Tenant shall not be construed to constitute a waiver thereof so long as such breach or default continues unremedied.

City hereby agrees that to the extent required by applicable law, City shall mitigate its damages resulting from Tenant's default of this Lease; provided, however, City's inability to do so shall not be deemed to relieve Tenant of its obligations under this Lease except as provided by applicable law.

30. **Tenant Removal of Property.** Upon termination of this Lease, City shall not thereafter use on the Premises any trademark, trade name, service mark, sign structure or form of advertising indicative of Tenant's trade names, trademarks, logos, symbols, or image (collectively the "**Protected Property**"). Tenant, at its option and expense, may make, or cause to be made, changes in signs and building appearance (appearance change does not contemplate structural change), including the removal or change of distinctive signs and colors which in the opinion of the owner of the Protected Property are indicative of ME Development LLC or its affiliates. Tenant must make said changes within sixty (60) days after the termination of this Lease.

Tenant shall remove any of Tenant's equipment, trade fixtures, furniture, personal property, and signs that may be located on the Premises within thirty (30) days after the termination of this Lease and shall leave the Premises in a clean and safe condition; provided, however, Tenant shall not remove equipment that is an integral part of the structure, such as HVAC, lighting fixtures, electric switch boxes, plumbing, restroom fixtures, and the like.

31. **Right to Mortgage.** Tenant shall not mortgage, encumber, pledge or assign as security its right, title and interest in this Lease and the Land. Tenant may not place or permit to be placed any lien, mortgage or other encumbrance upon any interest of City in the Premises or any part thereof. Notwithstanding anything to the contrary, Tenant, may place encumbrances on the Improvements subject to the terms of this Lease to provide financing for such Improvements.

32. **City Work.** None. The Premises are being leased "As Is", "Where Is" and "With All Faults"; and City makes no warranty of any kind, express or implied, with respect to the Premises

except as expressly provided in this Lease.

33. **Force Majeure.** If the performance of any duty or obligation under this Lease is prevented, restricted, delayed or interfered with by reason of labor disputes, pandemic, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communications failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to in this Section 33, which are beyond the reasonable control of a Party, then such Party shall be excused from such performance to the extent of and during the period of such prevention, restriction, delay or interference; provided, however, the total amount of days for any such performance excusal shall not exceed one hundred and eighty (180) days in total. A Party excused from performance pursuant to this Section 33 shall exercise all reasonable efforts to continue to perform its obligations hereunder and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform except that nothing herein shall obligate a Party to settle a strike or other labor dispute when it does not wish to do so. The foregoing provision shall not be applicable to monetary obligations.

34. **Indemnification**

a. **Tenant General Indemnity.** TENANT HEREBY AGREES TO INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS CITY AND CITY'S EMPLOYEES, INVITEES, SUBCONTRACTORS AND AGENTS (HEREINAFTER THE "CITY GROUP") FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, CLAIMS, DEMANDS, DAMAGES, PENALTIES, FINES, LOSSES, SUITS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY MEMBER OF CITY GROUP BY REASON OF (A) CITY'S OWNERSHIP OF THE PREMISES OR ANY INTEREST THEREIN, (B) ANY ACCIDENT, OCCURRENCE, INJURY TO OR DEATH OF PERSONS (INCLUDING WORKMEN) OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING ON OR ABOUT THE PREMISES (OR ANY PART THEREOF) OR THE ADJOINING SIDEWALKS, CURBS, PARKING LOTS, OR THE ADJOINING STREETS OR WAYS UNLESS CAUSED BY, IN WHOLE OR IN PART THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY MEMBER OF CITY GROUP, (C) ANY USE, NON-USE OR CONDITION OF THE PREMISES (OR ANY PART THEREOF) OR THE ADJOINING SIDEWALKS, PARKING LOTS, OR THE ADJOINING STREETS OR WAYS UNLESS CAUSED BY, IN WHOLE OR IN PART THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY MEMBER OF CITY GROUP, AND (D) ANY FAILURE ON THE PART OF TENANT TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS LEASE, AND TENANT WILL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S AGENTS FROM AND AGAINST ALL THE LIABILITIES, OBLIGATIONS, CLAIMS AND OTHER EXPENSES AS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE. In case any action, suit or proceeding is brought against City by reason of any such occurrence, Tenant, upon City's request, will at Tenant's sole cost and expense defend such action, suit or proceeding, or cause the same to be defended by counsel designated by Tenant and approved by City in advance in writing. The obligations of Tenant under this Section 34 arising by reason of any such occurrence taking place during the Term (as extended) of this Lease will survive any expiration or termination of this Lease.

b. City General Indemnity. CITY HEREBY AGREES TO INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS TENANT AND TENANT'S EMPLOYEES, INVITEES, SUBCONTRACTORS AND AGENTS (HEREINAFTER THE "TENANT GROUP") FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, CLAIMS, DEMANDS, DAMAGES, PENALTIES, FINES, LOSSES, SUITS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY MEMBER OF TENANT GROUP BY REASON OF CITY'S NEGLIGENCE AND/OR WILLFUL MISCONDUCT IN REGARDS TO TENANT'S OCCUPATION AND USE OF THE PREMISES AND FULLY FOR ANY ACT BY ANY MEMBER OF CITY GROUP OCCURRING OFF PREMISES UNLESS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY MEMBER OF TENANT GROUP, AND CITY WILL INDEMNIFY, DEFEND AND HOLD HARMLESS TENANT AND TENANT'S AGENTS FROM AND AGAINST ALL THE LIABILITIES, OBLIGATIONS, CLAIMS AND OTHER EXPENSES AS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE. In case any action, suit or proceeding is brought against Tenant by reason of any such occurrence, City, upon Tenant's request, will at City's sole cost and expense defend such action, suit or proceeding, or cause the same to be defended by counsel designated by City and approved by Tenant in advance in writing. The obligations of City under this Section 34) arising by reason of any such occurrence taking place during the Term (as may be extended) of this Lease will survive any expiration or termination of this Lease.

c. Waiver of Liabilities; Waiver of Subrogation. So long as it is permissible to do so under the laws and regulations governing the writing of insurance within the state in which the Premises are located, and anything herein to the contrary notwithstanding, all insurance carried by Tenant or City will provide for a waiver of rights of subrogation against City or Tenant respectively on the part of the insurance carrier. Unless the waiver is contemplated by this sentence are not obtainable for the reasons described in this Section 34(c), Tenant and City waive any and all rights of recovery, claims, actions or causes of action against the other and any officer, director, owner, partner, employee, agent, contractor, vendor, property manager or broker of the other, for any loss or damage to property or any injuries to or death of any person which is covered or would have been covered under the insurance policies required under this Lease. The foregoing release will not apply to losses or damages in excess of actual or required policy limits (whichever is greater) nor to any deductible (up to a maximum of \$10,000.00) applicable under any policy obtained covering the Premises. Anything herein to the contrary notwithstanding, the Parties hereto hereby release and waive all claims, rights of recovery and causes of action that the other Party may now or hereafter have against the other Party or any of the other Party's partners, directors, officers, 15 employees or agents for any loss or damage that may occur to the Premises or any of the contents of any of the foregoing by reason of fire or other casualty, or any other cause that could have been insured against under the terms of (i) any standard fire and extended coverage insurance policies required under the terms of this Lease; or (ii) any other loss covered by insurance required to be maintained under the terms of this Lease; provided, however, that this waiver shall be ineffective against any insurer to the extent that such waiver (i) is prohibited by the laws and insurance regulations of the State of Texas; or (ii) would invalidate any insurance coverage of City or Tenant. The waivers set forth in this Section 34(c) will be in addition to, and not in substitution for, any other waivers, indemnities, or exclusions of liability set forth in this Lease.

35. **Subordination, Non-Disturbance, and Attornment Agreement.** Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter placed upon the Premises and to any renewals and extensions thereof, so long as such lien holder agrees not to disturb Tenant's use and possession of the Premises unless Tenant is in default of this Lease beyond all applicable cure periods and provides a written agreement to that effect. For each lien and each security interest existing of record on the date of execution of the Lease, City shall deliver to Tenant a Subordination, Attornment and Non-disturbance Agreement ("SNDA") executed by such lienholder in form mutually agreeable to City and Tenant. Tenant agrees that any mortgagee shall have the right at any time to subordinate its mortgage, deed of trust or other lien to this Lease; provided, however, notwithstanding that this Lease may be (or made to be) superior to a mortgage, deed of trust or other lien, the mortgagee shall not be liable for prepaid rentals, security deposits and claims accruing during City's ownership; further provided that the provisions of a mortgage, deed of trust or other lien relative to the rights of the mortgagee with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by City) and provisions relative to proceeds arising from insurance payable by reason of damage to or destruction of the Premises shall be prior and superior to any contrary provisions contained in this instrument with respect to the payment or usage thereof. City shall not have any mortgage, deed of trust or other lien hereafter placed upon the Premises without the express written consent of Tenant and any subsequent mortgages, deeds of trust or liens must include provision providing that the lien holder agrees not to disturb Tenant's use and possession of the Premises unless Tenant is in default of this Lease beyond all applicable cure periods, and Tenant agrees upon demand to execute such further instruments subordinating this Lease on those terms as City may request within thirty (30) days of request therefor, so long as they are executed by the lien holder.

36. **Hazardous Materials.** The term "Hazardous Material" means any substance, material or waste that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local or state governmental authority or the United States Government. The term Hazardous Material includes, without limitation, any material or substance that is, (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," or "hazardous material", by any local or state law; (ii) oil and petroleum products and their by-products; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control Act; (v) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act; or (vi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act or any other applicable federal law. Tenant shall, at Tenant's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Materials or other laws regarding human health or the environment ("**Environmental Laws**"). Tenant agrees that Tenant will not bring onto the Premises any Hazardous Materials and it will not permit any employee, agent, officer, invitee, guest or any other person occupying the Premises, or any portion thereof, to bring any Hazardous Materials onto the Premises or any portion thereof. **TENANT HEREBY INDEMNIFIES CITY OF, FROM AND AGAINST ANY AND ALL LOSS, COST, DAMAGE OR EXPENSE ARISING FROM THE INTRODUCTION OF ANY HAZARDOUS MATERIALS ONTO THE PREMISES BY TENANT, OR ANY EMPLOYEE, AGENT, OFFICER, DIRECTOR, INVITEE OR GUEST OF TENANT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THIS INDEMNITY SPECIFICALLY COVERS COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OR MONITORING OF SITE CONDITIONS, ANY CLEAN-UP, CONTAINMENT, REMEDIAL OR RESTORATION WORK REQUIRED OR PERFORMED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION OR PERFORMED BY ANY NON-GOVERNMENTAL ENTITY OR**

PERSON BECAUSE OF THE PRESENCE, SUSPECTED PRESENCE, RELEASE OR SUSPECTED RELEASE OF ANY HAZARDOUS MATERIALS IN OR INTO THE AIR, SOIL, GROUNDWATER OR SURFACE WATER AT, ABOUT, UNDER OR WITHIN THE PREMISES (OR ANY PART THEREOF) AS A RESULT OF THE ACTIONS OF TENANT OR ITS EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, INVITEES AND GUESTS.

37. **Entirety-Execution-Succession.** This Lease merges and supersedes all prior negotiations, representations, and agreements, and constitutes the entire contract between City and Tenant concerning the leasing of the Premises and the consideration therefor. This Lease and all options herein shall bind and inure to the benefit of the heirs, administrators, executors, successors (including bona fide purchasers of the Land under any bankruptcy sale or other sale) and assigns of City and Tenant. If more than one person or entity executes this instrument as City, his, her, their, or its duties and liabilities under this Lease shall be joint and several.

38. **Governing Law and Venue.** The laws of the State of Texas shall govern this Lease, and all obligations of the Parties to this Lease are fully performable in Tarrant County, Texas.

39. **Severability; Construction of Lease.** If any provision of this Lease shall, for any reason, be held to violate any applicable law, and so much of this Lease is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Lease, which shall remain in full force and effect. If any provision of this Lease or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances will not be affected thereby and will be enforced to the greatest extent permitted by law. The Parties have negotiated this Lease, have had an opportunity to be advised with respect to the provisions contained herein and have had the right to approve each and every provision hereof. Therefore, this Lease will not be construed against any of the Parties as a result of the preparation of this Lease by or on behalf of such party

40. **No Waiver, Etc., By City.** No failure by City or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by City of full or partial Rent during the continuance of any such breach, will constitute a waiver of any such breach or of any such term. No waiver by City of any breach will affect or alter this Lease, which will continue in full force and effect, nor will any such waiver affect or alter the rights of City with respect to any other then existing or subsequent breach hereunder. No foreclosure, sale or other proceeding under any mortgage with respect to the Premises will discharge or otherwise affect the obligations of Tenant hereunder. In no event will any purported waiver by City be effective unless set forth in writing duly executed by City.

41. **Exhibits.** The Exhibits that are referenced in, and attached to, this Lease are incorporated in, and made a part of, this Lease for all purposes.

Exhibit A	Description of Land
Exhibit B	Form of Tenant Estoppel Certificate
Exhibit C	Rules, Regulations, and Exclusive Uses affecting the Premises
Exhibit D	Initial Site Plan, Drawings, and Design for Improvements and Alterations
Exhibit E	Requested Materials for Due Diligence
Exhibit F	Easements

42. **Attorney's Fees.** If a Party hereto shall be required to employ an attorney to enforce or defend the rights of such Party hereunder, the prevailing Party in a final non-appealable adjudication shall be entitled to recover its reasonable attorney's fees and costs.

43. **Dates.** If any deadline set forth herein falls on a Saturday, Sunday or federal holiday, the deadline shall be extended to the next business day.

44. **Captions.** The captions in this Lease are used for convenience only, and they in no way define, limit or prescribe the scope or intent of this Lease or any provisions thereof.

45. **Modification; No Recording.** This Lease may not be modified except by a written agreement signed by both of the Parties. Neither this Lease nor any memorandum of this Lease may be recorded or filed for record in any public records without the separate express written consent of the Parties.

46. **Relationship of The Parties.** Nothing contained herein shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture or any relationship between the Parties hereto other than that of City and Tenant.

47. **Special Provisions.**

a. **Estoppel Certificates.** Tenant agrees that at any time and from time to time within thirty (30) days after Tenant's receipt of a written request therefor from City, but in no event more often than three times during any twelve-month period, Tenant shall execute and deliver to City an estoppel certificate in the form attached hereto as Exhibit B.

48. **No Merger of Title.** There will be no merger of the leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) the fee estate in the Premises or any interest in such fee estate. No such merger shall occur unless and until all persons (including any mortgage), having any interest in (i) the leasehold estate created by this Lease, and (ii) the fee estate in the Premises, join in a written instrument effecting such merger and shall duly record the same.

49. **Termination.** Tenant's right to occupancy shall terminate or may be terminated as follows:

- a. At the end of the Term of this Agreement, or any other term by Tenant or City;
- b. At any time, Tenant shall be in default on or in breach of any provision of this Agreement (or the other documents incorporated herein and made a part hereof by reference) upon written notice of such breach or default given by City in accordance with Chapter 94 of the Texas Property Code;
- c. In accordance with the terms and provisions hereof relating to eminent domain or change in land use; or
- d. At such other time as may be agreed to by the parties hereto in writing.

When Tenant's right of occupancy is terminated, Tenant shall pay all rental or other sums due or owed to City and shall peacefully surrender possession of the Premises and remove all Tenant's property pursuant to this Agreement and failure to do so shall be deemed a breach of this Agreement.

50. Option for Extension.

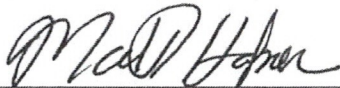
- a. The Term shall be extended for an additional ten (10) year term by the delivery of written notice of extension from Tenant to City, prior to ONE HUNDRED AND TWENTY DAYS (120) prior to the expiration of the Term. The Rent for each lease year during the extension shall be \$34,000.00. This extension right shall only apply once.
- b. After the initial extension, any additional extension shall require that Tenant and City enter into good faith negotiations to extend the term of this Lease for additional terms of not less than ten (10) years. Both Parties shall use best efforts to come to a reasonable agreement for the extension of this Lease.

[The remainder of this page intentionally left blank; signature page immediately follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this written consent as of the date first written above.

CITY:

The City of Keller, Texas,
A Texas municipal corporation

By: 
Name: MARK R. HAFNER
Title: CITY MANAGER

ME Development LLC,
a Texas limited liability company

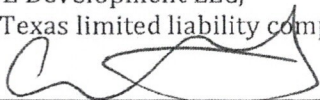
By: 
Name: ESTEBAN MARIZ
Title: PRINCIPAL

Exhibit A

Legal Description

7.813 acres; Lot 1 Block 2

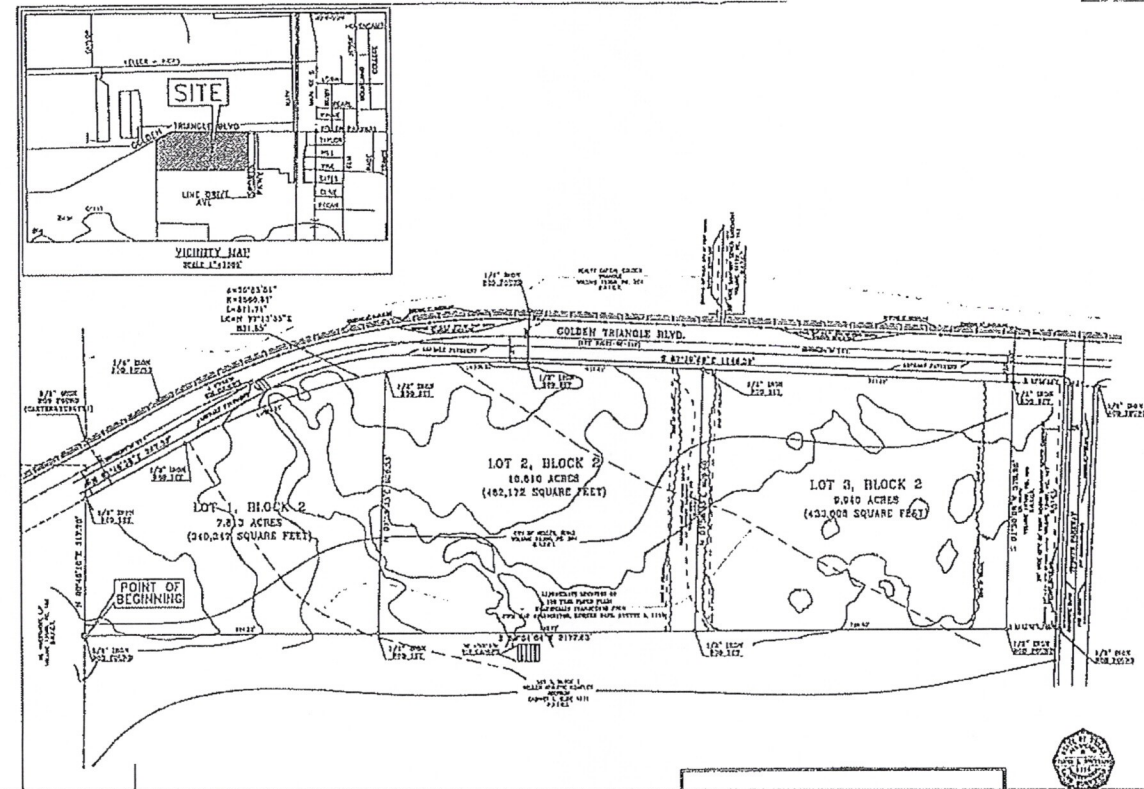


EXHIBIT B

Form of Estoppel Certificate

FORM OF TENANT ESTOPPEL CERTIFICATE

THIS TENANT ESTOPPEL CERTIFICATE ("**Certificate**") is made by ME Development LLC, a Texas limited liability company, having an address at 1224 S. Cesar Chavez Boulevard Dallas, Texas 75201 ("**Tenant**"), in favor of [**LENDER or PURCHASER**], a ____ ("**Lender**" ****OR**** "**Purchaser**").

1. Tenant and City entered into that certain Ground Lease Agreement dated [**Oct. 17, 2023**] (the "**Lease**"), in connection with a recreational, arena, and training facility for sports and athletics, including volleyball, basketball, cheer academy, as well as the sport of Futsal as well as the sale of concessions including food and beverage and merchandise, as more particularly described in the Lease (the "**Leased Premises**").

2. As of the date of this Certificate, the Lease has not been amended or modified and is in full force and effect. [****OR**** As of the date of this Certificate, the Lease is in full force and effect and has not been amended or modified, except pursuant to: _____]

3. As of the date of this Certificate, to the best of Tenant's knowledge and belief, neither City nor Tenant is in default in any respect under the terms of the Lease. Tenant has not given City any notice of termination under the Lease or made any claim against City alleging default under the Lease.

4. The commencement date of the term of the Lease was [**Oct. 17, 2023**], and the term of the Lease will expire on last day of the fiftieth (50th) year after the Effective Date, unless sooner terminated as provided in the Lease.

5. **Rent.** Commencing on [**April**], 202^y²⁰²³, Tenant shall pay to City the following fixed minimum rent during the Term ("**Base Rent**") as follows:

- (a) Lease Year 1 through Lease Year 9: \$15,000.00
- (b) Lease Year 10 through Lease Year 19: \$19,000.00
- (c) Lease Year 20 through Lease Year 29: \$23,000.00
- (d) Lease Year 30 through Lease Year 39: \$27,000.00
- (e) Lease Year 40 through Lease Year 50: \$31,000.00

The minimum rent shall be per lease year for each lease year commencing with the 1st lease year and continuing thereafter through the expiration or early termination of this lease, which amount shall be payable in equally quarterly payments payable on or before the first day of each calendar quarter (January 1, April 1, July 1, October 1) of each lease year (any partial quarter either from the Effective Date of the Lease or the final partial quarter shall be prorated). No yearly base or minimum rent has been paid in advance of the due date set forth in the Lease. As of the date of this Certificate and to the best of Tenant's knowledge and belief, there are presently no offsets, defenses, counterclaims or credits against the rentals due under the

Lease except as may otherwise be expressly provided by the terms of the Lease.

6. Pursuant to the Lease, Tenant is required to pay the taxes due on the Leased Premises and is required to maintain insurance for the Leased Premises.

7. Tenant has not made a security deposit.

8. Tenant has not assigned the Lease or any rights therein to any non-affiliate third party, and has not and is not subletting the Leased Premises.

9. The undersigned is a duly appointed officer of the Tenant, is the incumbent in the office indicated, and is duly authorized to execute this Certificate on behalf of Tenant.

10. This Certificate shall inure to the benefit of [Lender ****OR**** Purchaser] and City and their respective successors and assigns, and shall be binding upon Tenant and Tenant's legal representatives, successors, and assigns.

11. Notices to the Tenant relating to the Lease or the Leased Premises shall be addressed to the addresses set forth in Section 26 of the Lease.

The statements contained herein are not affirmative representations, warranties, covenants or waivers, but shall act solely to estop Tenant from asserting any claim or defense against [Lender ****OR**** Purchaser] if and when any of such parties succeed to City's interest under the Lease, to the extent such claim or assertion is based upon facts now known to Tenant which are contrary to those contained herein, and provided that the party in question has acted in reasonable reliance upon such statements without knowledge of facts to the contrary. This Certificate shall not be deemed to amend or modify the Lease in any way.

All capitalized terms used herein and not otherwise expressly defined shall have the meanings ascribed to them in the Lease.

This Certificate shall not be effective, and neither [Lender][Purchaser] nor City shall have any right to rely on the statements contained herein, until such time as this Certificate is fully executed by Tenant.

[signature page follows]

EXECUTED as of the date first written above.

TENANT:

ME Development LLC,
a Texas limited liability company

By: _____

Name:

Title:

EXHIBIT C

Rules, Regulations and Exclusive Uses

1. Consuming drugs on the Premises is prohibited. Drunkenness and/or being under the influence of drugs is prohibited.
2. Operating any firearm on the Premises is prohibited.
3. No person under the age of 16 may drive or operate any vehicle. Any person driving or operating any vehicle must have a valid driver's license.
4. Fireworks are prohibited on the Premises.
5. Tenant and any employees, staff and customers of Tenant shall have full and general parking access to all current City parking facilities subject to the terms of, and as limited by, the Lease.
6. Yearly meetings between City and Tenant will be scheduled to discuss use of the Premises and any ongoing Improvements and Alterations.
7. Tenant will have sole control over concession sales and the permitting thereof (including income from such sales) on the Premises subject to the terms of the Lease.

EXHIBIT D

Initial Site Plan, Drawings, and Design for Improvements and Alterations

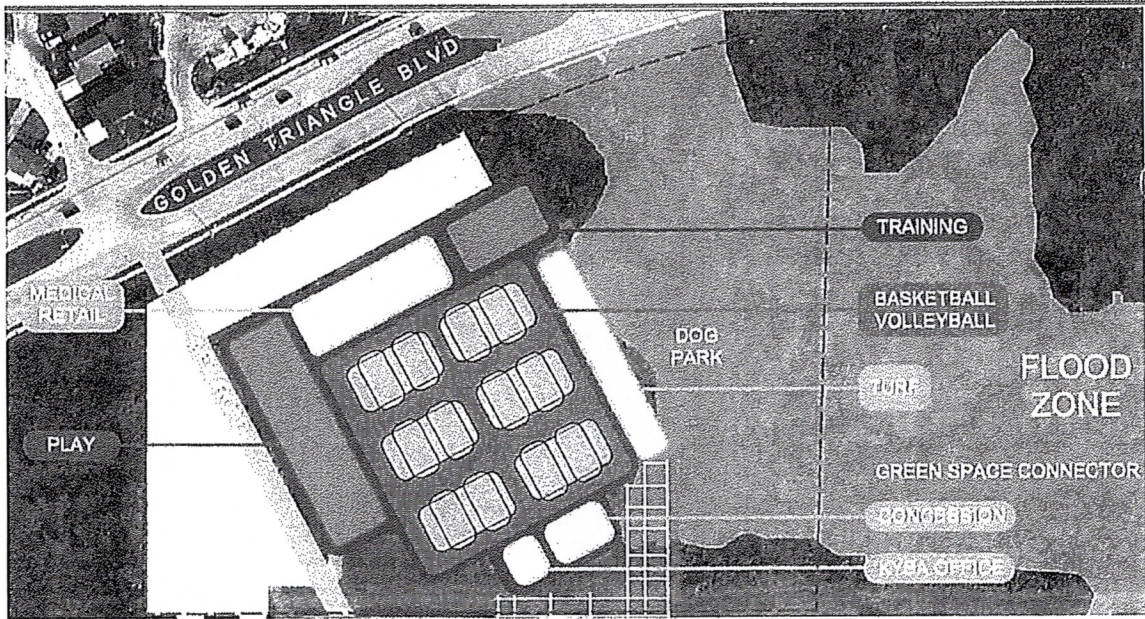


EXHIBIT E

Requested Materials for Due Diligence Investigation

All Service Contracts, maintenance, management, commercial/residential leases, and/or other contracts relating to the ownership and operation of the Land and Premises.

All written warranties and guaranties.

Any existing leases covering the property granting the right to explore the property for oil, gas, or other minerals.

The real estate property tax statements for the Premises for the previous two (2) calendar years and the current calendar year-to-date, and copies of any notice of change in assessed value for the Premises, as well as information regarding the progress of any ongoing real estate property tax protests concerning the Premises.

Copies of all utility bills for the Premises for the current billing cycle period and for the past three (3) months and copies of utility service agreements currently in effect at the Premises.

Copies of any written notice of any uncured violations received by City from any federal, state or local government authority or agency related to the Premises during the past four (4) years.

Copies of any Site Plans concerning the Premises.

Any survey of the Premises.

Any prior inspections performed on the Premises.

All documents referencing any maintenance agreements, easements, liens, lis pendens, covenants and/or restrictions that impact the Premises.

A listing of all insurance claims concerning the Premises for the prior five (5) years and for 2023 year-to-date.

Copies of insurance policies and certificates for all fire, hazard, liability and other insurance policies maintained by the City and Rec for the Premises.

Any pest and termite inspections, assessments, reports or studies concerning the Premises.

Any environmental assessments or studies concerning the Premises.

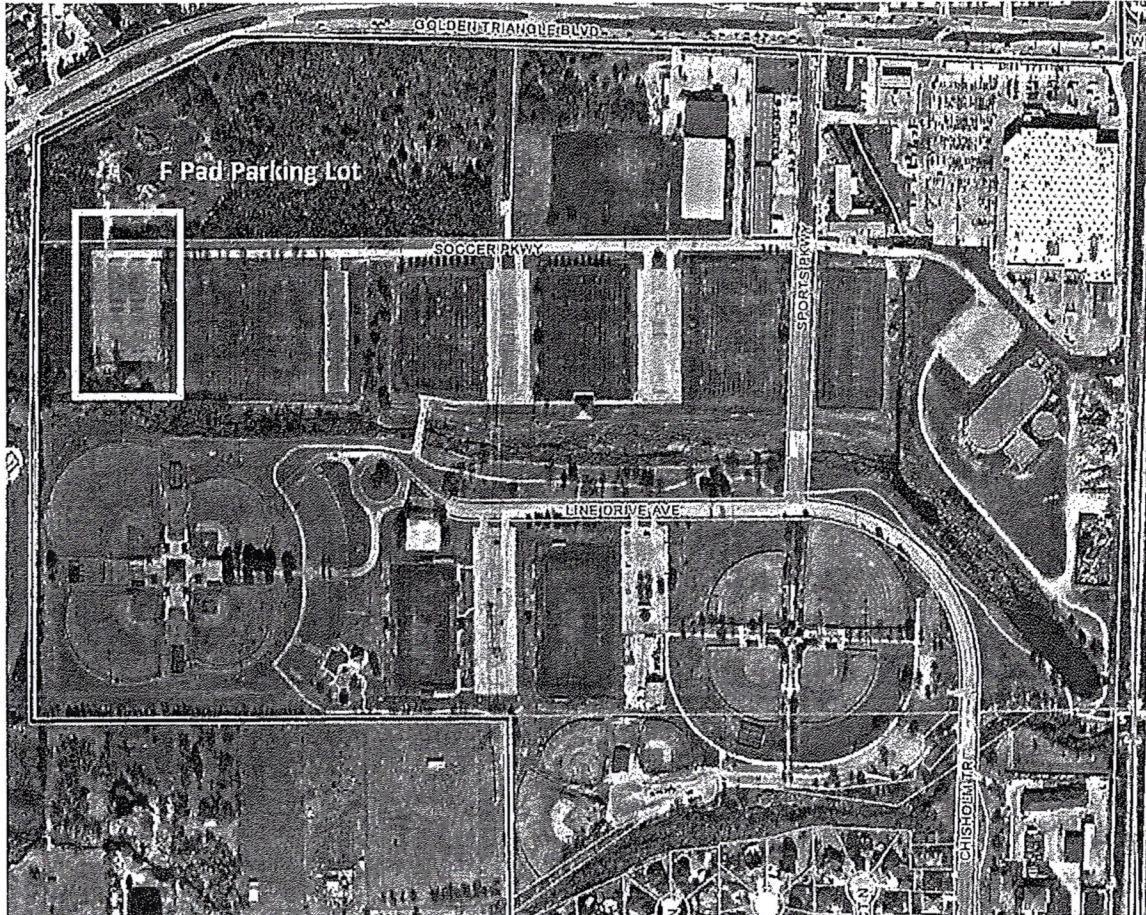
Any engineering or other reports in City's possession and/or control or which City is aware of relating to the condition of the Premises.

Any soil reports or geotechnical reports in City's possession and/or control regarding the Premises.

A list of all capital expenditures incurred during the previous two (2) calendar years and during the current calendar year-to-date, together with the budget for any contemplated capital expenditures in the future.

EXHIBIT F

Easements



The City will allow shared parking with the tenant in the existing F Pad Parking Lot owned by the City. Details will be worked out after the Due Diligence Investigation.

RESOLUTION NO. 4716

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT, PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, SPECIFICALLY APPROVING A GROUND LEASE AGREEMENT; WITH ME DEVELOPMENT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID DOCUMENTS ON BEHALF OF THE CITY OF KELLER, TEXAS.

WHEREAS, on November 9, 2001, the City of Keller purchased approximately 7.813 acres of property north of and adjacent to the Keller Sports Park for the future development of sports or recreational facilities or certain (approved) retail uses, not only to enhance sports/recreational venues, but also to stimulate private development and investment yielding increased taxable values and retail sales tax; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

WHEREAS, the City wishes to provide certain economic incentives to the Grantee and to assist in the development of Property; and

WHEREAS, the City has concluded and hereby finds that the Agreement attached hereto as Exhibit "A", clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, the Policy; and further, it is in the best interest of the City; and

WHEREAS, the Grantee understands and agrees that: (a) in granting renewing or extending any economic incentives, the City is relying upon Grantee's representations, warranties, and agreements, as set forth and provided for in the Agreement; (b) renewing or extending of any economic incentive by the City at all times shall be subject to the City's sole judgment and discretion; and (c) any such economic incentive shall be and shall remain subject to the following terms and conditions of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS:

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.


Section 2: THAT, the City Council of the City of Keller, Texas, hereby approves a Chapter 380 Economic Development Program Agreement, pursuant to Chapter 380 of the Texas Local Government Code, specifically approving a Ground Lease Agreement, attached hereto as Exhibit "A", with ME Development LLC.; and further authorizes the City Manager to execute said documents on behalf of the City of Keller, Texas.

AND IT IS SO RESOLVED.

Passed by a vote of 7 to 0 on this the 17th day of October, 2023.



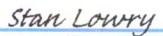
CITY OF KELLER, TEXAS

BY: 
Armin Mizani (Oct 18, 2023 23:07 CDT)
Armin Mizani, Mayor

ATTEST:


Kelly Ballard (Oct 18, 2023 11:12 CDT)
Kelly Ballard, City Secretary

Approved as to Form and Legality:


Stan Lowry (Oct 18, 2023 11:17 CDT)
L. Stanton Lowry, City Attorney