

GROUND LEASE

THIS GROUND LEASE (this “Ground Lease”), dated as of _____, 2023 (the “Effective Date”), is by and between the CITY OF UTQIAGVIK, an Alaska Municipal Corporation (the “City”), and CHATARABAL SAICHOL d/b/a B&C JAVA (“Tenant”). The City and Tenant are individually a “Party,” and collectively the “Parties.”

BACKGROUND

A. The City owns real property located at Townsite Barrow Plat 87-8, Block 16C, Lot 10, Utqiagvik, Alaska (the “Property”), portions of which it leases to other tenants.

B. Tenant is the owner of a wood frame insulated building, approximately 8 feet by 12 feet wide, which sits on pilings on the Property (the “Building”) and all equipment included inside of the Building (the “Equipment”) for the purposes of operating a food business and drive-through coffee shop in the Building (the “Business”).

C. Tenant desires to renew its lease with the City for the approximately 96 square feet of Property necessary for the operation of the Building and its Business as depicted with the blue square in Exhibit A (the “Leased Premises”).

D. The City has agreed to lease the Leased Premises to Tenant on the following terms:

ARTICLE 1 PREMISES; WARRANTIES

1.1 Premises. Subject to and upon the terms, conditions, covenants, and undertakings set forth in this Ground Lease, the City hereby leases to Tenant, and Tenant hereby leases from the City, the Leased Premises. The Leased Premises are leased to Tenant in its present condition without representation or warranty by the City regarding the existing state of title, any state of facts that an accurate survey or physical inspection of the Leased Premises might show, or any restrictions, rules, ordinances, regulations, statutes or any other laws now in effect or hereafter adopted by any governmental authority having jurisdiction, now or hereafter in effect. Tenant acknowledges that it is authorized to occupy the surface of the Leased Premises, which is part of a subdivided lot and is not authorized to occupy any other space within the Property unless the City changes the Leased Premises pursuant to this Section 1.1. The City may grant others rights to occupy the Property, including, but not limited to, other food and beverage or other vendors and the subsurface estate of the Leased Premises. The portions of the Property not occupied by the Tenant or other tenants of the City is reserved by ingress and egress by customers of Tenant or other tenants of the City. The City reserves the right to reduce the space available for ingress and egress at the date of this Ground Lease by authorizing any current tenant or future tenant to occupy part of the Property.

Subject to the terms of this Ground Lease, Tenant shall have the right to occupy and use the Building on the Leased Premises. Notwithstanding anything in this Ground Lease to the contrary, the Building upon the Leased Premises shall be and remain the property of Tenant during the Term unless Tenant is in default with respect to payment of Rent (as defined in Section 2.2), fines, penalties, fees and any other amounts due and owing to the City under this Ground Lease,

or has otherwise failed to perform any of its duties and obligations provided for in the Ground Lease, the City may terminate this Ground Lease. Upon termination, the Tenant will move the Building off the Leased Premises. If the Tenant does not move the Building within 10 days of termination, the City may take possession and ownership of the Building and take any one or more of the actions provided for in Article 7 of this Ground Lease.

The City reserves the right to change the location of the Leased Premises to another location within the Property within 30 days of providing written notice to Tenant. At Tenant's cost, Tenant shall move the Building and the Business to the new location designated by the City within 30 days of receipt of the notice described in the previous sentence.

1.2 Tenant's Warranties. Tenant hereby covenants and warrants to the City that all of the following are true, correct, and complete on the Effective Date and shall be true, correct, and complete throughout the Term:

1.2.1 Tenant has authority to enter into, execute, and deliver this Ground Lease, and has duly authorized the execution and delivery of this Ground Lease; and

1.2.2 Tenant represents that Tenant has had a full opportunity to inspect the Leased Premises and has determined that the Leased Premises are suitable for the intended use and accepts the Leased Premises **"AS IS" and "WHERE IS" with all faults.** Tenant's taking possession of the Leased Premises constitutes Tenant's acknowledgment that the Leased Premises are in good condition and that the City makes no representation or warranty regarding the condition of the Leased Premises nor any use that may be made thereof.

The failure of any representation or warranty by the Tenant in this Ground Lease to be true when deemed given hereunder shall constitute a default by Tenant.

ARTICLE 2 TERM, RENT, HOLDOVER

2.1 Term. The term of this Ground Lease (the "Term") commences on the Effective Date and will continue for a period ending 2 years thereafter, unless extended or earlier terminated pursuant to the provisions hereof. Tenant shall have the right to extend the Term for one additional 2 year term (collectively, part of the "Term") if it provides the City with written notice no less than 90 days before expiration of the Term. If Tenant remains in possession of the Leased Premises after expiration of the Term, such possession shall be a violation of this Ground Lease and the City may exercise any rights available to it at law, at equity, or in this Ground Lease. While remaining in possession, Tenant shall be treated as a holdover tenant and will be deemed to have offered to continue as a month-to-month tenant. The City shall have the right to exercise any available rights at law. Tenant's Rent during any holdover month shall be two times the amount of monthly Rent in the immediately preceding month.

2.2 Rent. Commencing on the first day of each month beginning on the Effective Date and continuing on the first day of each succeeding month thereafter during the Term, Tenant shall

pay the City a rent payment of \$850 in advance for the month (“Rent”). Should Tenant exercise the option for one additional 2-year term, Rent shall increase by 3% to \$875 per month.

2.3 Additional Costs. Tenant shall be responsible for payment of all costs, taxes, expenses, and obligations of whatever character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen and of every kind or nature whatsoever, relating to the Leased Premises and the use and occupancy thereof (whether covered by insurance or not), including, without limitation, (i) utilities, (ii) insurance costs, (iii) maintenance, repair and replacement costs, and (iv) any and all costs to comply with requirements in connection with Tenant’s use or occupancy of the Leased Premises during the Term.

2.4 Late Fees. Any Rent owing from Tenant to the City is payable in full without setoff or deduction whatsoever. Any amounts owing from Tenant to the City that are not paid when due will be charged a \$10 fine per day from the date due until paid.

2.5 Payment Method. All payments due hereunder shall be paid by Tenant to the City at the address set forth in Article 9 or to such other place as the City may notify Tenant in writing.

2.6 Security Deposit. Tenant shall, upon execution of this Ground Lease, deposit with the City the sum of \$850 (equal to one month’s Rent) as security for the full and faithful performance of all the terms and conditions of this Ground Lease. Such sum shall be returned to Tenant without interest after the termination of this Ground Lease provided Tenant has carried out all the terms and conditions of this Ground Lease. If Tenant is in default under this Ground Lease, the City may use some or all of the security deposit to cure the default and collection costs, and still look to Tenant for any deficiency.

ARTICLE 3 MAINTENANCE

3.1 Maintenance. During the Term, Tenant, at its sole cost and expense, shall keep and maintain the Leased Premises in good and safe condition and repair, including any and all snow and ice removal, shoveling, and plowing required, and shall make all repairs and replacements necessary to keep the Leased Premises in such condition, ordinary wear and tear excepted. The City shall have no duty to perform snow and ice removal, or any other maintenance or repair on the Leased Premises, but may, without waiving or releasing Tenant, cure Tenant’s breach of any of its obligations under this Section 3.1. Tenant agrees to pay the City all of the City’s reasonable out of pocket expenses incurred in connection with curing Tenant’s breach.

ARTICLE 4 USE OF LEASED PREMISES

4.1 Use of Leased Premises. The Leased Premises shall be used solely for the purpose of operating the Business. Tenant shall not use or permit the use of the Leased Premises for any other purpose. Furthermore, Tenant shall comply with all applicable laws. Tenant will construct all improvements in a workmanlike manner. Tenant is not authorized to use any part of the Property or the Leased Premises for storage of materials outside of Buildings.

4.2 Impact on Insurance. Tenant shall not use or permit the Leased Premises, or any part thereof, to be used for any purpose or purposes other than the purpose provided for in Section 4.1. No use will be made or permitted to be made of the Property, or acts done, that will cause a cancellation of any insurance policy covering the Property, or any part thereof. Tenant shall not sell or permit to be kept, used, or sold, in, on, or about the Leased Premises, any article that may be prohibited by the insurance policies required to be maintained by Tenant or the City. Tenant shall, at its sole cost and expense, comply with all requirements of any insurance organization or company for the maintenance of insurance, as herein provided, covering the Leased Premises or the Property.

4.3 Signage. Tenant, at its sole cost and expense, shall be permitted to place signage (“Signage”), on, in, and around the Leased Premises, subject to review and approval by the City, which may not be unreasonably withheld. Tenant shall be solely responsible for all permitting, installation, maintenance, and removal of Tenant’s Signage.

4.4 Protection of the City’s Title. Tenant shall not suffer or permit the Leased Premises to be used by the public or any other person or entity in any manner that might reasonably impair the City’s title to the Property or any portion thereof.

4.5 Entry by the City. Tenant will permit the City, and the agents and employees of the City, to enter into and upon the Leased Premises at all reasonable times for the purpose of inspecting the Leased Premises and the Building; provided that the City and its agents and employees shall give prior notice to Tenant that they desire to inspect the interior of the Leased Premises and Building and shall use reasonable efforts not to disrupt Tenant’s operations in the Building; provided, further, that no such prior notice shall be required in connection with any emergency on the Property.

ARTICLE 5 INSURANCE; DAMAGE OR DESTRUCTION

5. INSURANCE.

5.1 Workers’ Compensation. Tenant shall ensure that, with respect to all personnel performing work on the Leased Premises, Tenant maintains in effect at all times during the Term of this Ground Lease, coverage or insurance in accordance with the applicable State of Alaska laws relating to workers’ compensation and employer’s liability insurance. Tenant shall ensure that any contractors or subcontractors engaged to perform work on the Leased Premises maintain workers’ compensation coverage to the extent required by law.

5.2 Liability Insurance. During the Term, and during any holdover thereafter, whether or not holdover is authorized by the City, Tenant shall keep in full force and effect a policy or policies of comprehensive general liability insurance which includes bodily injury, property damage, and personal injury, acceptable to the City with respect to the Leased Premises and the Business operated by Tenant in which the limits for each shall be not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. Each policy of comprehensive general liability insurance shall:

A. Provide that the liability of the insurer thereunder shall be primary and not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for the City, Tenant, or any person claiming by, through, or under any of them;

B. Provide that such policy requires 30 days' prior notice to the City of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be canceled, whether or not requested by Tenant, unless Tenant first gives not less than 30 days' prior written notice thereof to the City;

C. Contain a waiver by the insurer, if available, of any right of subrogation to proceed against the City or against any person claiming by, through, or under the City; and

D. Name the City and its respective employees, officers, and agents as additional insureds in each of the Tenant's policies, except for workers' compensation insurance.

5.3 Proof of Insurance. Tenant shall deliver to the City certificates of insurance on or before the Effective Date of this Ground Lease or at such other date as agreed to in writing by the City. Additionally, Tenant shall deliver to the City copies of the policy or policies of insurance, certificates of insurance, or copies of endorsements as reasonably requested by the City from time to time, no less than annually.

5.4 Damage or Destruction. As soon as possible after any event of fire or other casualty to the Leased Premises, Tenant shall commence, and thereafter diligently and continuously pursue to completion, the repair of such damage and the restoration of the Leased Premises to its condition immediately prior to such damage.

5.1 Hazardous Material. During the Term, Tenant shall comply with all statutes, ordinances, rules, orders, regulations, and requirements of the federal, state, and municipal governments, and all departments thereof, relevant or related to the presence, storage, use, maintenance, and removal of toxic, hazardous, or contaminated substances (collectively, "Hazardous Material") in, on, or about the Leased Premises, which presence, storage, use, maintenance, or removal is caused or permitted by Tenant. Tenant agrees to defend, indemnify, release, and forever hold harmless the City, its agents, successors, employees, elected officials, and assigns, as their interest may appear, from all claims, losses, damages, expenses, and costs, including, but not limited to, reasonable actual attorneys' fees and clean-up costs, directly or indirectly arising from or attributable to Tenant's use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Material in, on, under, or about the Leased Premises. In case any action or proceeding is brought against the City with respect to the foregoing, Tenant shall upon notice from the City defend such action or proceeding by counsel satisfactory to the City.

ARTICLE 6 INDEMNIFICATION

6.1 Indemnification. Tenant shall defend, indemnify, and hold the City, its elected and appointed officials, officers, employees, agents, trustees, administrators, sureties, insurers,

attorneys, successors and predecessors in interest, assigns and receivers, and each of them, past, present and future, harmless from and against any and all claims arising from (1) Tenant's use of the Leased Premises, or from the conduct of Tenant's Business, or from any activity, work or things done, permitted or suffered by Tenant in or about the Leased Premises or elsewhere; (2) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Ground Lease; (3) any act or omission of Tenant, or any of Tenant's agents, contractors, customers, employees, or any person claiming by, through or under Tenant, in, on, or about the Leased Premises or in connection with this Ground Lease; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon. Tenant shall further indemnify and hold the City harmless from and against all costs, reasonable actual attorneys' fees, expenses, and liabilities incurred in the defense of any proceeding brought against the City by reason of any such claim. Tenant, upon notice from the City, shall defend any of the above-described claims at Tenant's expense by counsel reasonably satisfactory to the City. Tenant, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons, in, upon, or about the Leased Premises, arising from any cause and Tenant hereby waives all claims in respect thereof against the City.

6.2 The City shall not be responsible nor liable for any defect or change of condition in the Leased Premises or the Property, or any damage thereto, whether to any person or property, due to any cause whatsoever, including, but not limited to, damage done by flood, tsunami, wind, snow, erosion, earthquake, fire, utility outage or variation, or acts of Tenant or any other party.

6.3 The provisions of this Article 6 shall survive the expiration of this Ground Lease.

ARTICLE 7 DEFAULT; REMEDIES

7.1 Definition. Tenant's failure to pay Rent, fines, penalties, fees and any other amounts due and owing to the City within 30 days after the City provides written notice to Tenant of such failure, or Tenant's failure to observe or perform any of the obligations of Tenant provided herein within 30 days after the City provides written notice to Tenant of such failure, will be an "Event of Default."

7.2 Remedies of the City. If an Event of Default occurs, the City may thereafter take any one or more of the following actions:

7.2.1 Terminate this Ground Lease in accordance with any laws governing such termination, and require Tenant to immediately surrender the Leased Premises to the City, including the Building if any unpaid Rent is owed to the City;

7.2.2 Enter and take possession of the Leased Premises and the Building, in accordance with any laws governing such repossession, and remove Tenant, with or without having terminated this Ground Lease, or re-let the Leased Premises;

7.2.3 Take such action as may be necessary to cure such default and charge the reasonable cost (including reasonable actual attorneys' fees) of cure to Tenant; or

7.2.4 Exercise any other remedy available to the City at law or in equity.

7.3 Default by the City. The City shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within 30 days after receipt of written notice by Tenant to the City specifying the nature of such default; provided, however, that if the nature of the City's obligation is such that more than 30 days are required for its performance, then the City shall not be deemed to be in default if it shall commence its performance within such 30 day period and thereafter shall diligently prosecute the same to completion. If the City default occurs, Tenant may thereafter pursue any other remedy to which Tenant is entitled at law or in equity.

ARTICLE 8 DUTIES UPON TERMINATION OR EXPIRATION

8.1 Surrender of Leased Premises. Upon expiration or early termination of this Ground Lease, Tenant shall surrender to the City the possession of the Leased Premises. Tenant shall leave the Leased Premises in a clean and leasable condition, which shall include removal of all personal property, trash, vehicles, and the Building. If Tenant fails to surrender the Leased Premises at expiration or termination, Tenant shall defend and indemnify the City from all liability and expense resulting from the delay or failure to surrender, including, but not limited to claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender. In the event of failure or refusal of Tenant to surrender possession of the Leased Premises, the City shall have the right to reenter the Leased Premises and remove therefrom Tenant or any entity in possession and to obtain damages from Tenant.

8.2 Abandonment of Tenant's Building, or any Personal Property. The Building and all personal property that Tenant leaves on the Leased Premises shall, on the 10th day following expiration or termination, be conclusively deemed abandoned. Abandoned property shall, at the election of the City, become the property of the City or be disposed of by the City as it sees fit.

8.3 Liability for Cleanup Expenses. In addition to Tenant's other obligations and liabilities under the Ground Lease, Tenant shall be liable for all costs and expenses incurred by the City to remove or destroy the Building or any personal property required to be removed under Section 8.1; or to dispose of the Building or any personal property abandoned under Section 8.2; and, if Tenant fails to leave the Leased Premises and surrendered property in clean and leasable condition, to put the Leased Premises in that condition.

ARTICLE 9 MISCELLANEOUS

9.1 Notices. All notices provided for in this Ground Lease must be in writing and delivered at the following addresses, or any substitute addresses of which either Party notifies the other, by personal delivery, or United States certified or registered mail, postage prepaid and return receipt requested.

To the City: City of Utqiagvik
 Attn: Mayor
 PO Box 629
 Utqiagvik, AK 99723

with a copy to (which does not constitute notice):

Dorsey & Whitney LLP
Attn: Bonnie J. Paskvan
1031 W. 4th Avenue, Suite 600
Anchorage, Alaska 99501

To Tenant: B&C Java
Attn: Chatarabal Saichol
PO Box 1526
Utqiagvik, AK 99723

9.2 Captions. The Article, Section, and subsection headings in this Ground Lease are only for convenience. They are not a part of this Ground Lease and must not be considered in interpreting this Ground Lease.

9.3 Entire Agreement; Modification. This Ground Lease constitutes the complete, final, and exclusive agreement between the Parties and it supersedes any prior oral or written agreements between the Parties. All prior understandings, terms, or conditions of the Parties are deemed merged into this Ground Lease. This Ground Lease may be not be modified or amended unless agreed to in a writing signed by authorized representatives of the Parties.

9.4 Parties Bound. The covenants and conditions herein contained will apply to and bind the successors and assigns of the Parties hereto.

9.5 Governing Law. The provisions of this Ground Lease and all questions arising concerning this Ground Lease shall be determined and resolved in accordance with the laws of the State of Alaska, without regard to conflicts of law principles. Jurisdiction and venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be convened in the trial courts of the State of Alaska, Second Judicial District, Utqiagvik, Alaska.

9.6 Date for Performance. Any time period provided for in this Ground Lease that expires on a Saturday, Sunday, or holiday will automatically be extended until 5:00 pm on the next regularly scheduled business day.

9.7 Severability. If a court of proper jurisdiction finds any provision of this Ground Lease to be illegal or unenforceable, that provision is affected only to the extent of the invalidity. The remainder of that provision and all remaining provisions of this Ground Lease will continue in full force and effect.

9.8 Counterparts. This Ground Lease may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, when taken together, will constitute the same instrument. Signatures on this Ground Lease that are transmitted by email, facsimile, or other electronic means are valid for all purposes.

9.9 No Assignment or Subleasing. Notwithstanding anything herein contained to the contrary, Tenant shall not sublease the Leased Premises or assign this Ground Lease without the prior written consent of the City, which may be conditioned on a payment of a percentage of the fair market value of the subleased parcel. For the purposes of this Ground Lease, any change in control of 50% or more of the ownership interest in the Tenant, or any parent entity of the Tenant, shall constitute an assignment.

9.10 Mitigation. With respect to any defaults by a Party under this Ground Lease, both Parties shall use commercially reasonable efforts to mitigate any damages caused thereby.

9.11 Time of the Essence. Every provision in this Ground Lease, which imposes an obligation upon a Party or invests a right in a Party, shall be deemed to be a covenant in favor of the other Party, and the time of observance and performance by the Party of each such covenant shall be of the essence.

9.12 No Recording. The Parties agree that neither this Ground Lease, nor any memorandum thereof, shall be recorded.

9.13 Attorneys' Fees. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Ground Lease on the part of the Parties, the substantially prevailing Party in such litigation shall be entitled to recover any and all costs associated with such litigation, including reasonable actual attorneys' fees and costs.

9.14 Waiver. No delay or omission by either Party hereto to exercise any right or power accruing upon any noncompliance or default by the other Party with respect to any of the terms hereof shall impair any such right or power or be construed to be a waiver thereof. Subject to the provisions of this Section 9.14, every such right and power may be exercised at any time during the continuance of such default. It is further agreed that a waiver by either of the Parties hereto of any of the covenants and agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenants or agreements herein contained.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Ground Lease to be duly executed as of the Effective Date.

THE CITY:

CITY OF UTQIAGVIK

By: _____
Name: Asisaun Toovak
Title: Mayor

TENANT:

B&C Java

By: _____
Name: Chatarabal Saichol
Title: Sole Owner

Exhibit A
Drawing of Leased Premises



NSB Maps



NSB Maps is a service of the National Surveying and Mapping Board (NSMB). The NSMB is a non-profit organization that provides a variety of services to the public, including the creation and maintenance of maps and geographic information systems (GIS). The NSMB is also responsible for the regulation of the surveying and mapping professions in the United States.

Printer: 4/4/2023

