

October 22, 2020

Item No. 4.8.

Lease Assumption for College Station Tourism Division

Sponsor: Natalie Ruiz, Director of Economic Development

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a ratification of the assignment, assumption and amendment of a lease agreement in the amount of \$257,234.59 for the property at 614 Holleman Drive East by and among Brazos Valley Convention and Visitors Bureau, the City of College Station and TRD Wind Wolf Pen, LLC.

Relationship to Strategic Goals:

- Good Governance
- Diverse & Growing Economy

Recommendation(s): Staff recommend Council approve the agreement.

Summary: This assumption is necessary in order to dissolve Experience Bryan College Station (EBCS) and complete the transition of moving destination marketing and tourism promotion within the City of College Station. The City will assume the existing lease at 614 Holleman Dr. East, Suite 1100, through the duration of the term ending March 31, 2023.

Budget & Financial Summary: Funds are budgeted and available in the Hotel Tax Fund.

Reviewed & Approved by Legal: No

Attachments:

1. 200930 EXECUTION Assignment of Lease for City of College Station WPC TWF

**ASSIGNMENT, ASSUMPTION AND AMENDMENT OF
LEASE AGREEMENT
THE LOFTS AT WOLF PEN CREEK CENTER**

This **ASSIGNMENT, ASSUMPTION AND AMENDMENT OF LEASE AGREEMENT** (this “Assignment”) to be effective as of _____, 2020 (the “Effective Date”), by and among **BRAZOS VALLEY CONVENTION AND VISITORS BUREAU** (Assignor), **CITY OF COLLEGE STATION**, a Texas Home Rule Municipal Corporation (“Assignee”), and **TRDWIND WOLF PEN, LLC**, a Delaware limited liability company (“Landlord”).

WITNESSETH:

WHEREAS, College Station Ventures, LLC, the predecessor-in-interest to Landlord, and Assignor, as tenant, entered into that certain Lease Agreement dated on or about February 1, 2017 (the “Lease”; capitalized terms used herein that are not defined herein shall have the meaning assigned to them in the Lease), pursuant to which Landlord leased to Assignor the premises containing approximately 6,939 square feet of gross floor area and located at 614 Holleman Drive East, College Station, Texas 77840, as more particularly described in the Lease (the “Premises”);

WHEREAS, Assignor now desires to assign all of its right, title and interest as the tenant under the Lease to Assignee and Assignee desires to accept such assignment and assume all of Assignors obligations under the Lease, subject to Landlord’s agreement to modify certain terms and conditions of the Lease;

WHEREAS, Landlord has agreed to amend the terms of the Lease so as to enable Assignee to complete assumption of the Lease; and

WHEREAS, Assignor and Assignee have requested that Landlord consent to such assignment and assumption and Landlord has agreed to do so in accordance with the terms and provisions of this Assignment.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment, Assumption and Release.** Assignor hereby transfers and assigns all of its right, title and interest in, to and under the Lease as tenant to Assignee. Assignee hereby accepts such assignment and assumes and agrees to pay and perform all of Assignor’s obligations as tenant arising or accruing under the Lease from and after the Effective Date. As of the Effective Date, Landlord releases Assignor from all obligations accruing under the Lease after the Effective Date, provided, however, Assignor shall not be released, and such release shall be of no force or effect, unless and until Landlord receives the amounts described in Section 7 below.
2. **Amendment of Lease.** From and after the Effective Date, Tenant’s obligations under the Lease to indemnify, defend and/or hold harmless Landlord, shall be limited to the extent allowed by law.
3. **No Default and Release.** Assignor and Assignee acknowledge and agree that Landlord is not in default of any of its covenants, duties or obligations under the Lease, nor has Landlord taken any action or failed to take any action which, with or without notice and/or passage of time, would be a default under the Lease. Assignor and Assignee acknowledge and agree that Landlord has fully and properly performed all of Landlord’s covenants, duties and obligations under the Lease as of

the Effective Date. Assignor and Assignee confirm that they have no defenses or setoffs with respect to its obligations under or pursuant to the Lease. Assignor and Assignee fully release, acquit and forever discharge Landlord from any and all liabilities, claims, damages, costs, expenses and causes of action which they had, have or may have against Landlord arising under the Lease or otherwise related to the Premises to the extent they arose prior to the Effective Date, provided, however, Landlord, Assignor and Assignee acknowledge that roof leaks exists at the Premises and that Landlord has undertaken repair of such leaks and Landlord's obligation to repair such leaks and the damages consisting of stained roof tiles and window coverings caused thereby, is not released pursuant to this Paragraph 3.

4. **Notices.** All notices to be delivered to Landlord or Assignee under the Lease or otherwise with respect to the Premises shall be delivered to the following address:

TRDWIND WOLF PEN, LLC
233 Shakespeare Glade
Glenbrook, Nevada 89413

CITY OF COLLEGE STATION
ATTN: City Manager
P.O. Box 9960
College Station, Texas 77842

5. **Binding Effect.** This Assignment will bind and inure to the benefit of the parties hereto and their respective successors and assigns, provided that nothing herein will be deemed to permit Assignee to further assign the Lease or to sublet the Premises without complying with the provisions of Section 10.1 of the Lease entitled "Assignment and Subletting by Tenant".
6. **Representations.** Each of the parties to this Assignment represents and warrants to the other that they are fully competent and duly authorized to execute this Assignment. Assignor and Assignee represent to Landlord that they have dealt with no broker in connection with assignment of the Lease or this Assignment. Assignor and Assignee shall (to the extent allowed by law) defend, indemnify, and hold Landlord harmless from and against any and all liability, loss, damage, expense, claim, action, demand, suit, or obligation arising out of or relating to a claim for a brokerage commission or fee in connection with this Assignment by a party claiming by, through, or under Assignor or Assignee. This Section shall survive the expiration or sooner termination of the Lease.
7. **Transfer Fee.** This Assignment is conditioned upon receipt by Landlord of a transfer fee from Assignor in the amount of **\$2,000.00** by certified check in accordance with Section 10.1 of the Lease.
8. **Miscellaneous.** In the event of any conflict between the terms of this Assignment and the Lease then the terms of this Assignment shall control. Except as expressly modified by this Assignment, all the remaining terms and conditions of the Lease shall remain unchanged and continue unabated in full force and effect in accordance with its original terms. The parties hereto agree that no oral understandings, statements, promises, or inducements contrary to or inconsistent with the terms of the Lease as amended by this Assignment exist. This Assignment may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. All executed counterparts of this Assignment shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement. Assignee hereby stipulates, agrees and acknowledges, for the specific reliance of Landlord, that the Lease and this Assignment are

authorized by statute and/or the Texas Constitution for Assignee to enter into for goods and services as a proprietary function, and Assignee hereby waives sovereign immunity for the purpose of adjudicating a claim for breach of contract subject to the terms and conditions of Texas law.

[Signature Page Follows]

This Assignment, Assumption and Amendment of Lease Agreement is executed and delivered by the parties to be effective as of the date first written above.

ASSIGNOR:

BRAZOS VALLEY CONVENTION AND VISITORS BUREAU

By: _____
Name: _____
Title: _____

ASSIGNEE:

CITY OF COLLEGE STATION,
a Texas Home Rule Municipal Corporation

By: _____
Name: _____
Title: _____

LANDLORD:

TRDWIND WOLF PEN, LLC,
a Delaware limited liability company

By: TRDwind Bayou Park, LLC,
a Texas limited liability company,
its Sole Manager

By: _____
James Rastello, President