

C. This Agreement shall automatically renew for an additional five (5) year term (“*Renewal*”), unless the Party wishing to terminate the relationship between the Parties gives notice, in writing, delivered to the other Party, not less than one hundred-eighty (180) days before the end of the Term. Upon notice of termination, all accounts payable and management fees must be brought current.

2. MANAGEMENT AND ADMINISTRATIVE SERVICES

A. EPMC agrees to provide the following management and administrative services to the City in connection with the operation of the Theaters (“*Management Services*”):

- i. Film Buyer
 - Negotiate contracts with film distributors for the Theaters
 - Select and define film programs
 - Pay for film rentals from Theaters operating funds
- ii. Concessions / Restaurant Operations
 - Negotiate vendor contracts for the Theaters
 - Define and monitor pricing/sales/product line/inventory
 - Pay for concessions with Theaters Operating Funds
 - Provide policy, procedures, guidelines and supervision
 - Maintain and supervise all sales of beer, wine, and other alcoholic beverages served at the Theaters in accordance with this Agreement
 - Hire and supervise all concession/restaurant and bar employees
- iii. Box Office Operations
 - Define and monitor ticket sales/pricing and group programs
 - Implement and manage online and self-serve ticketing programs
 - Provide policy, procedures, guidelines, and supervision
- iv. Projection Booth Operations
 - Define and monitor film presentation standards
 - Provide policy, procedures, guidelines, and supervision
- v. Facility Equipment Selection
 - Select and approve equipment and software for all departments
 - Provide routine maintenance schedule and service contracts
- vi. Facility Maintenance and Utilities
 - Negotiate and oversee janitorial contract
 - Define and monitor building maintenance schedules for HVAC, refrigeration, lighting, system controls
 - Provide inspection reports
 - Create utility accounts and pay fees for services

- vii. Marketing/Advertising
 - Define, monitor and implement ticket and concession sales programs
 - Sell on-screen and in-house advertising opportunities (excluding naming rights for the Facilities or any portion of them, which are retained by City)
 - Sell group conferencing, party room and auditorium rentals
 - Implement inside/outside marketing programs/billboards, TV, radio, newspaper, local sponsorship opportunities, film company ad campaigns
 - Promote and market the Facilities; collaborate with City and Destination Bryan (or other entities selected by City) as the destination marketing entity for City

- viii. Corporate Accounting
 - Account for ticket, concessions, and other sales
 - Pay and settle accounts payable from Theaters Operating Funds
 - Manage cash flow in view of seasonality
 - Purchase Supplies for use in the management, operation, and maintenance of the Facilities, except to the extent such Supplies are provided for by contract with a third party; maintain records for all Supplies purchased by EPMC; Supplies shall be delivered to and stored at the Facilities and shall remain the property of City and shall be used only in connection with the Facilities
 - Comply with the City's procurement policy, as may be amended during the Term, and all Applicable Laws regarding the procurement of goods and services in conjunction with the operation of the Facilities
 - Implement commercially reasonable cash handling and internal control as provided in Schulman's Movie Bowl Grille Operations Manual and EPMC's cash control policy in effect June 1, 2021

- ix. Information Technology Management
 - Provide information systems and security systems
 - Maintain and replace component parts as necessary
 - Program and maintain POS systems/ticketing kiosks/digital displays/web conferencing
 - Provide policy, procedures, guidelines, and supervision in a manner consistent with City policies for cybersecurity, websites and social media, where applicable

- x. General Management
 - Maintain a consistently positive customer feedback and experience
 - Implement and supervise management meetings
 - Provide strategic direction to Theaters' ownership
 - Manage the Facilities in accordance with Schulman's Movie Bowl Grille Operations Manual in effect June 1, 2021.

- xi. Employees
 - Timely pay all payroll expenses from Theaters operating funds

- Provide employee incentive benefits program from Theaters operating funds
- Prepare quarterly tax reports

xii. Financial Reporting

- Provide monthly financial reports to City (Attention: City Manager) by the thirtieth day following the end of month
- Provide annual financial reports to City (Attention: City Manager) within ninetieth day following the end of EPMC's fiscal year
- Provide annual Operating Budget, including a monthly detailed line item operating budget containing good faith estimates of all Operating Expenses and Capital Expenditures (Attention: City Manager)
- Comply with City's Internal Control and Cash Handling Policies, or comparable EPMC policies as approved by the City Manager
- Provide six year pro forma statement included hereto as **Exhibit "A"**, and provide updated six year pro forma statement by May 1 of each succeeding year to cover the remaining years of the six (6) year term

xiii. General Services

- Provide any additional services required to operate the Theaters

xiv. Other Entertainment

- Operate other entertainment options such as pool tables, axe throwing, drive in screens, concerts, live music, etc.

xv. Insurance

- EPMC will maintain insurance as required below

xvi. Taxes

- EPMC will be responsible for the payment of ad valorem property taxes and applicable sales taxes for the Theaters

B. EPMC's Management Services and other actions shall not interfere with the portion of the third floor of the Queen Theatre identified in **Exhibit "B"**, ("Queen Lease Space"), which is the subject of an existing lease agreement expiring September 30, 2021 between City and Destination Bryan, Inc. ("City Lease"). The management and administration of the City Lease shall be the sole responsibility of City.

C. It is understood that any costs or expenses for the Management services described in Section A ("Management Expenses") are payable out of an operating account to be funded by the City ("Operating Fund"). The City will open this operating account and EPMC shall be an authorized signer. All revenue will be deposited into this account by EPMC and all Management Expenses will be paid from this account. EPMC will maintain a minimum balance of \$50,000.00. It is a breach of this Agreement for the balance to fall below that amount for a period of longer than five (5) days. If EPMC uses, or expects to use the reserve, they will notify the City and may request a cash infusion of

no more than \$25,000 and no more frequently than once per quarter. The City will deposit \$65,000.00 into this account and EPMC will deposit \$35,000.00 into this account for start-up costs, for a total of \$100,000.00. In the event this number needs to be increased, EPMC will notify the City and the additional amount will be mutually agreed upon and split between the Parties.

D. EPMC agrees to work diligently to have both Theaters open for operation within one hundred twenty (120) days from the Effective Date, barring unforeseen construction, supply, or approval delays. While EPMC has discretion to manage the schedule of operations for the Theaters, the Theaters will not be closed for a period of longer than seven (7) calendar days, excluding weather days, without permission from the City Manager, which permission shall not be unreasonably withheld.

3. ALCOHOLIC BEVERAGE OPERATIONS

A. Alcoholic Beverage Sales. EPMC shall manage the sale of alcohol beverages at the Facilities. Such management services will include, without limitation:

- i. Day-to-day supervision and direction for the Alcoholic Beverage Operations;
- ii. Serving beverages, both alcoholic and non-alcoholic, to customers in accordance with the Texas Alcoholic Beverage license/permit, and Applicable Law;
- iii. Maintaining all records and financial information required by the Texas Alcoholic Beverage Commission (hereinafter called "Commission"), and submitting same to the Commission pursuant to its requests; and
- iv. Negotiating and executing service contracts required in the ordinary course of business.

B. Food Service. Alcoholic beverages may be offered to the public at Events, only during hours in which food offerings are also available.

C. Notification License Not in Effect. In the event, at any time during the Term of this Agreement, EPMC is notified the liquor license or permit are not in effect at the Facilities, EPMC, its agents and employees will immediately discontinue the sale and service of all beer, wine or liquor beverages until such time as a valid TABC license or permit is reactivated or obtained.

D. Commission-certified Seller Training Required. All persons involved in the service, dispensing, or delivery of alcoholic beverages in the operation shall hold a currently-effective certificate issued by the Commission evidencing his/her successful completion of a Commission-certified Seller Training Program in accordance with the provisions of Section 106.14 of the Alcoholic Beverage Code ("Code") and the rules of the Commission promulgated thereunder.

E. New Employee Training. EPMC agrees that (a) any new employees who do not hold such a currently-effective certificate on the date of employment shall successfully complete a Commission-certified Seller Training Program within thirty (30) days of such date, and (b) it will comply with all other applicable provisions of the Code to insure that CITY, as the TABC Licensed Permittee, is at all times in full compliance with the requirements of the Code and the Commission's rules to obtain the benefits afforded under Section 106.14 of the Code, as same may be amended from time to time.

F. Prohibited Sales. EPMC and its employees shall not sell alcohol to minors or intoxicated persons.

G. Maintenance of Inventories. EPMC shall provide to City upon the Opening Date an opening inventory of alcoholic beverages. Costs of alcoholic beverages used on a monthly basis shall be determined by adding purchases made during each Accounting Period, as defined below, to the opening inventory for that Accounting Period and then subtracting the value of ending inventory for that Accounting Period. Inventory on hand upon termination of this Agreement shall be delivered to CITY as the TABC licensed permittee.

H. Monthly Inventory and Reports. EPMC shall conduct a monthly physical inventory and provide ending inventory balances to CITY within five (5) days of completion of the inventory. CITY will be given sufficient notice of each upcoming inventory and may have a city representative present at each inventory. Each monthly inventory shall fully report spills and/or breakage of alcoholic beverages, and sufficient documentation of the spills and/or breakage shall be appended to each monthly inventory. An inventory will be conducted by EPMC at initial set up and at the end of each alcohol related Event. An inventory report shall be submitted to CITY on a monthly basis.

4. ACCOUNTING AND DISTRIBUTIONS

A. It is understood and agreed by the Parties to this Agreement that the services performed by EPMC do not include auditing the books of the Theaters' operation and that an independent certified public accountant will be retained by EPMC, with the approval of the City, to provide an annual audit of the books, to prepare the annual tax returns, and perform any other necessary accounting and/or tax service. The expense of the accountant firm will be an expense of Theaters paid from Operating Funds.

B. EPMC will have the accountant make monthly reports of income and expenses to the City Manager and his or her designee. Income and expense shall be allocated to Queen Theater or Palace Theater; income and expense not solely attributable to Queen Theater or Palace Theater shall be allocated on a systematic and rational basis. The accountant must also be made available, upon request and with reasonable notice, to appear before City Council to discuss the Theaters' finances. The Accountant will prepare an annual report to be provided to the City within sixty (60) days following the

expiration of each year of this Agreement, including but not limited to a statement of profits or losses.

C. At the end of each year of the Agreement, EPMC will reimburse the City a lump sum portion of the aggregate Management Fees previously paid, not to exceed \$300,000.00, provided that there are sufficient Operating Funds available in the Operating Account while still leaving enough to continue paying upcoming Management Expenses. Once the aggregate Management Fees paid under this Agreement have been reimbursed to the City, the parties shall get a lump sum of sixty percent (60%) for the City and forty percent (40%) for EPMC. At the end of the first term, if there have not been sufficient funds to reimburse the Management Fee each year, the deficit will be brought current from the Operating Account, should sufficient funds exist in the Operating Account.

5. EMPLOYEES

A. It is understood and agreed that the employees of the Theaters will be employees of EPMC and will be paid from the Theaters Operating Funds along with any incentive or benefit programs delivered to the employees.

B. EPMC is an independent contractor and therefore has discretion over hiring practices, provided however all EPMC employees or subcontractors utilized in fulfillment of this Agreement shall be qualified, with appropriate skills and certifications, for the positions to which they are appointed. EPMC will abide by state and federal laws regarding employment, but City will not be providing oversight of such compliance.

6. INSURANCE

A. EPMC will obtain and maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this Agreement. EPMC must deliver a certificate of insurance to the City showing the required coverage and amounts within ten (10) days of obtaining the policy and each subsequent renewal. Policy must be obtained within ten (10) days of execution of this Agreement and maintained throughout the term. EPMC's coverage will be primary in the event of a loss regardless of the application of any other insurance or self-insurance. Policy limits may be satisfied by a combination of primary and umbrella or excess liability policies. EPMC will endorse the City as an additional insured unless such policies provide coverage on a pure "True Follow Form" basis. EPMC may maintain reasonable and customary deductibles, but any such deductibles may be charged as a Management Expense. Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-VI or better by AM Best Insurance Rating.

B. EPMC must provide at least thirty (30) days written notice of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew coverage. No coverage may be deleted without written notification of individual

exclusions and acceptance of same by the City. EPMC shall provide evidence of revised certificates providing equal and like coverage within ten (10) days.

- C. EPMC will maintain the following coverages and terms:
- i. Commercial General Liability coverage with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate on a standards ISO occurrence form, or equivalent, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.
 - ii. Worker's Compensation Insurance for statutory limits and Employers Liability Insurance with limits not less than \$500,000 each accident for bodily injury by accident or each employee for injury by disease.
 - iii. Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. EPMC shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
 - iv. If liquor is served/sold at the Facility during the Term of this Agreement or any Extension of the Term, EPMC shall maintain liquor liability coverage with limits of liability of not less than \$5,000,000 per occurrence. Liquor includes beer or wine. City shall be listed as an additional insured for bodily injury and property damage arising from the acts or omissions of EPMC or its employees, representatives, agents, or subEPMCs in the performance of this Agreement.

D. Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. EPMC agrees to endorse the City and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

E. EPMC may maintain reasonable and customary deductibles, subject to approval by the City. EPMC shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

F. If EPMC's insurance does not afford coverage on behalf of any Subcontractor(s) hired by EPMC, the Subcontractor(s) shall maintain insurance coverage equal to that required of EPMC. It is the responsibility of EPMC to assure compliance

with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

G. Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-VI or better by AM Best Insurance Rating.

H. A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within ten (10) business days by EPMC's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City.

Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request, EPMC shall furnish the City with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to the City at the following address:

City of Bryan
Attn: Risk Management Department
P.O. Box 1000
Bryan, TX 77805
Emailed to: riskmanagementweb@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of EPMC's obligation to maintain such insurance.

I. EPMC must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, EPMC shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to EPMC until coverage is reinstated.

J. If EPMC fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to EPMC until coverage is reinstated or to terminate the Contract.

K. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by EPMC, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by EPMC under the Contract.

7. CAPITAL IMPROVEMENTS AND MAINTENANCE

A. It is understood and agreed that EPMC shall be responsible for up-front costs for capital improvements, as agreed upon below. EPMC will make these capital improvements so the Theaters have up-to-date equipment, which functions properly to ensure reasonable attendance and sales. While it is expected these costs will be between \$200,000 and \$250,000, any capital expenditures incurred by EPMC for the capital improvements agreed upon below shall be at EPMC's expense. Except as provided in subsection B, no material alterations to the Facilities shall be made without prior written consent of the City Manager. Any future capital expenditures, not listed below, if approved, in writing, by City in advance, will be separately paid for by the City, in accordance with state and local public bidding rules. EPMC shall submit a request to City Manager in writing (which may be delivered electronically via email). For items costing under \$100,000, the City Manager shall approve, deny, or request additional information regarding the requested capital expenditure within two (2) weeks of delivery of the request by EPMC, and otherwise, if the amount is over \$100,000, the time period extends to two (2) months.

B. It is understood and agreed that EPMC shall solicit, manage, and pay for the capital improvements to the Theaters listed below ("Manager Improvements"). EPMC's purpose in making the Manager Improvements is to enhance the food and beverage operations at the Facilities, update the Theatre Equipment to improve customer experience, and expand the service scope, quality and efficiency of operations with the goal of increasing sales and gross profits upon which EPMC's deferred incentive compensation is based. These improvements will be completed within one hundred twenty (120) days from the Effective Date. These capital improvements will include:

- i. For the Queen Theater at 110 S. Main St.:
 - Replace existing screen with wall-to-wall retractable screen system
 - Upgrade projection and sound systems
 - Install prep kitchen with food provided from The Palace kitchen
 - Remove existing seats and replace with new seats
 - Upgrade concession and bar services and equipment
- ii. For the Palace Theater at 105 S. Main St.:
 - Provide food and beverage unit
 - Install and build projection booth
 - Install wall-to-wall retractable screen
 - Improve projection and sound systems
 - Remove existing seats
 - Level auditorium seating into two levels
 - Replace canopy with waterproof/resistant cover

C. It is further understood that, during the term of this Agreement, EPMC shall be responsible for all maintenance and repairs so the Theaters have up-to-date equipment, which functions properly to ensure reasonable attendance and sales. Such

costs shall be a Management Expense, except in the case of repairs or replacements to fixtures or improvements in excess of \$25,000.00. Such repairs or replacements shall be a capital cost borne by the City, and must be approved, in writing, by City in advance. The City will respond to any request within two (2) weeks for requests involving less than \$100,000 and within two (2) month for requests over that amount, except in the case of an emergency, in which case the City Manager will respond within five (5) days regardless of cost.

D. The City retains ownership of all property, equipment, inventory, and fixtures purchased and used for the Theaters. During the course of the repairs and upgrades listed above, the removal of projection equipment, seats, and any other improvements with retained value, EPMC shall make such items available to the City for storage and sale as surplus. EPMC and/or its contractors will use commercially reasonable efforts to avoid damaging such items during the course of removal. EPMC will provide the City with five (5) business days' notice of such removal and City will remove such items from the premises within two (2) business days after they have been separated from the real property.

E. This Agreement does not constitute a lease, and the right of possession of the Facilities shall at all times remain with City. City and its authorized personnel shall have the right to enter the Facilities at any time, with reasonable notice and for any official purpose; however, City will use reasonable efforts to avoid interfering with EPMC's performance of its obligations under this Agreement, whenever City personnel are at the Facilities. EPMC shall have no property interest in or to the Facilities and no estate in or to the Facilities, other than the limited license set forth above.

8. SIGNAGE AND HISTORICAL MARKERS

A. EPMC is authorized to market and brand the Theaters as it chooses, exercising its own judgment as to signage and advertising at the Theaters. However, EPMC will not remove any existing historical markers, plaques, or signs without written permission of the City.

B. EPMC acknowledges that it will abide by City regulations regarding certificates of appropriateness from the City Historic Landmark Commission before making any changes to the exterior appearance of the Theaters.

9. MANAGEMENT FEE & TRAVEL FEES

A. The Parties do hereby agree that commencing on the Effective Date, City will pay EPMC a monthly management fee upon invoice on or before the 10th day of each month ("*Management Fee*") of \$25,000.00 per month for the first term. During the second term, if applicable, the Management Fee and/or profit share will be renegotiated. Any profit share will be disbursed at the end of each year, once Management Fees have been reimbursed.

B. Reasonable expenses for travel prior to Opening Date by EPMC related to the Theaters and this Agreement will be paid for by EPMC as part of start-up costs. Pursuant to City policies reimbursable travel expenses are limited to mileage, lodging, and meals (excluding alcohol).

10. TERMINATION RIGHTS

A. In the event that EPMC is in default in providing the services required under this Agreement, City shall provide EPMC with ninety (90) days' written notice and an opportunity to cure such event of default. If the default is not cured within ninety (90) days, then this Agreement may be terminated by the City delivering to EPMC, in writing, notice of termination to EPMC. Upon termination, EPMC shall immediately deliver the Theaters to the City.

B. Within the first year of this Agreement, the parties may not terminate this Agreement except for an event of default that is a material breach of this Agreement.

C. After the expiration of the first year, the City has the right to terminate in the event the City Council fails to appropriate funds for this Agreement. Similarly, after the expiration of the first year, EPMC has the right to terminate this Agreement if EPMC does not have land under contract for purchase or under a ground lease for the creation of a large-scale entertainment facility at an as yet to be determined location within the City limits. It is understood by the parties that EPMC intends the Theaters operate in conjunction with such an entertainment facility and it is necessary for such a facility to be developed in order for this Agreement to be profitable for both parties.

D. Commencing in the second full Operating Year of this Agreement, should the combined Gross Revenues of the Facilities fall below 60% of the estimated amount of combined Gross Revenues as shown in EPMC's pro-forma financial statements (**Exhibit "A"**) for four (4) consecutive months during the period commencing October 1 through April 1, during any Operating Year, City may terminate this Agreement by giving EPMC sixty (60) days' advance written notice.

E. Upon termination, all rights, obligations, property (intellectual, real, and personal) associated with the Theaters shall be transferred to the City. EPMC will provide possession of the Theaters to City, along with any books, papers, account information, passwords, and/or keys associated with same. Any and all funds in the Operating Account and the Reserve Account shall become City funds and any right of EPMC to access the account shall be terminated.

F. If Agreement terminates before the end of the sixth year, for any reason other than a default, fraud, misappropriation, or gross negligence, the amount of EPMC's Management Improvements contribution shall be amortized over the period of six (6) years on a straight-line, non-cash, non-interest bearing basis, commencing on the date in which construction and installation of all Management Improvements is complete. In the event of the expiration or early termination of this Agreement for any reason, the City

shall pay, or cause any successor management company to pay, to EPMC unconditionally and without set-off the unamortized amount of the EPMC's Improvements existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to EPMC no later than thirty (30) days following the effective date of such expiration or termination. This provision shall survive the expiration or early termination of this Agreement.

11. NOTICES

A. Any notices required under this Agreement shall be delivered to either Party via U.S. first class mail, signature confirmation and return receipt requested, overnight delivery with signature confirmation, or email, return and read receipt requested as follows:

To: EPMC, LLC
Attn: Mark Schulman
4565 Lakeshore Drive
Waco, Texas 76710
(254) 262-4400
mschulman@moviebowlgrille.com
lthorne@moviebowlgrille.com

To: City of Bryan
Attn: Deputy City Manager
PO Box 1000
Bryan, Texas 77805
(979) 209-5100
jdunn@bryantx.gov

B. At all times, EPMC shall provide the City Manager with the names and current telephone numbers (business, cell phone, and home number, if applicable) of the General Manager, and any other management-level employees, who can be called by the City Manager or his/her representatives at any time that a critical situation occurs during hours when EPMC's normal work force is not present. Such employee will have full power and authority to take all actions on behalf of EPMC required to address the emergency or said critical situation.

12. ASSIGNMENT

A. EPMC may not assign this Agreement without the prior written consent of City.

B. Engagement of third party contractors to perform services contemplated under this Agreement shall not be considered an assignment.

13. REPRESENTATIONS, WARRANTIES, & INDEMNIFICATION

A. Representations & Warranties

- i. EPMC represents and warrants that (1) it is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas; (2) it has all of the necessary power to execute, deliver, and perform this Agreement; (3) the execution, delivery, and performance by it for this Agreement have been duly and validly authorized by all necessary action; (4) this Agreement constitutes the legal, valid, and binding obligations of EPMC, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally; and (5) the Services to be provided by EPMC under this Agreement will be performed on a best efforts basis and in a timely and professional manner by qualified personnel, will conform to the best standards observed in the industry for similar services, and will be in compliance with all applicable laws, rules, regulations, or orders.
- ii. City represents and warrants that (1) it is a home-rule municipal corporation, validly existing, and in good standing under the laws of the State of Texas; (2) it has all of the necessary power to execute, deliver, and perform this Agreement; (3) the execution, delivery, and performance by it for this Agreement have been duly and validly authorized by all necessary action; (4) this Agreement constitutes the legal, valid, and binding obligations of City, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally.

B. Indemnification

- i. EPMC will defend, indemnify, and hold harmless City, and its representative officers, directors, managers, members, shareholders, partners, agents, employees, trustees, trusts, successors, and assigns from and against any and all third party Claims and Losses arising or alleged to arise from EPMC's breach of its representations, warranties, covenants, and agreements made under this Agreement.
- ii. The Indemnitee will give the Indemnitor written notice of any Claim of which defense is sought. However, failure to provide such notice will not relieve the Indemnitor from its liability or obligations under this Agreement, except to the extent the Indemnitor is materially prejudiced as a direct result of such failure. The Indemnitee will cooperate with the Indemnitor at the Indemnitor's expense in connection with the defense and/or settlement of the Claim. The Indemnitor may not settle any

indemnified Claim in a manner that adversely affects the Indemnitee without its prior written consent, which will not be unreasonably withheld or delayed. Further, the Indemnitee may participate in the defense of the Claim through counsel of its own choosing at its own cost and expense.

- iii. If the Indemnitor fails to promptly assume the defense and employ counsel reasonably satisfactory to Indemnitee, or the Indemnitee has been advised by counsel that there exists actual or potential conflicting interests between the Indemnitor or the Indemnitor's counsel and the Indemnitee, the Indemnitee may employ separate counsel, in addition to local counsel, to represent or defend the Indemnitee in such action or proceeding, and the Indemnitor agrees to pay the fees and disbursements of such separate counsel as incurred.
- iv. The Indemnitor's obligations under this section are in addition to any rights and remedies that any Indemnitee may have at law, in equity, or otherwise.

C. **Limitation of Damages.** Except for liabilities arising under the above section, neither party nor its affiliates will be liable to the other party for consequential, special, indirect, incidental, punitive, or exemplary damages, costs, expenses or losses, or lost profits under this Agreement. The provisions of this paragraph will apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort, or otherwise.

D. **Incident Reports.** EPMC shall notify City as soon as practical of all incidents, accidents, property damage, or destruction, which give rise, or may give rise, to a claim for damages relating to the ownership, operation, and/or maintenance of the Facilities, and shall submit within twenty-four hours to the City Manager an incident report describing any damage or destruction to the Facilities, and any injuries or deaths at a Facility, and including all relevant information. An incident log will be maintained at the Facility by EPMC. EPMC shall cooperate fully with the City Manager in the investigation of any accidental injury or death occurring at the Facility, and shall provide all reports requested by the City Manager.

14. MISCELLANEOUS

A. **Entirety of the Agreement.** The terms and provisions set forth in this Agreement, as well as any documents which may be referenced herein or attached hereto, constitute the entire agreement and understanding between the Parties.

B. **Amendment.** This Agreement may not be changed, modified or amended in any respect, unless such change, modification or amendment is in writing and executed by the Parties hereto.

C. Compliance with Laws. EPMC shall keep itself fully informed of and in compliance with all present and future local, state and federal laws, rules and regulations in any manner affecting the performance of this Agreement, the Facilities or the services described herein, including but not limited to all rules and regulations regarding the storage and preparation of food and beverages ("Applicable Laws"), and shall give all notices required by law. EPMC shall not permit any of its officers, employees, agents, servants, EPMCs or permittees to violate any Applicable Laws. EPMC shall be liable for all violations of any Applicable Laws by EPMC or by any of its officers, employees, agents, servants, EPMCs or permittees. EPMC shall defend, indemnify and hold CITY, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure of EPMC to comply with this Section.

D. Required Permits. EPMC shall arrange for and maintain in force all licenses, permits, certificates, approvals, franchises, and other authorizations in the name of EPMC required to perform and provide its Services to City under this Agreement, including but not limited to any permits or licenses from the Health Department or other permits or licenses required for the storage, preparation and sale of food and beverages, and excluding alcoholic beverage licenses and permits required by the Texas Alcoholic Beverage Commission for on-premises sale of alcoholic beverages at the Facilities, which shall be held in the name of the City.

E. Choice of Law. This Agreement has been executed, delivered, and accepted in Texas, and shall be deemed to have been made in Texas, and the rights and liabilities of the Parties hereto, whether in contract or tort, shall be interpreted and determined in accordance with the internal laws (as opposed to conflicts of law provisions) of the State of Texas. Any dispute in connection with this Agreement shall be resolved in Brazos County, Texas, whether said resolution is by mediation, arbitration or a court of law.

F. Construction of Agreement. The Parties acknowledge that this Agreement was the product of mutual negotiation and for purposes of construing this Agreement, no individual Party shall be deemed to have drafted the Agreement. This Agreement is for the sole benefit of the Parties hereto and is not for the benefit, and should not be relied upon, by any third party.

G. Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal. The Parties agree that all terms and provisions of this agreement are contractual in nature and not merely recitals.

H. Attorneys' Fees and Cost. Unless otherwise provided in this Agreement, or as agreed to in a settlement agreement, the Parties agree that if a dispute arises under this Agreement, each party will be responsible for their own attorneys' fees.

I. Understanding and Review of Agreement. The Parties acknowledge that they have fully read, understand and unconditionally execute this Agreement after having had complete opportunity for consultation with an attorney, and acknowledge that this Agreement is final and binding upon the Parties hereto, regardless of the adequacy of the consideration.

J. Captions. The headings and captions of this Agreement are inserted for reference convenience and do not define, limit, or describe the scope or intent of this Agreement or any particular section, paragraph, or provision of this Agreement. Unless otherwise expressly provided, the words “include(s),” “included,” or “including” do not limit the preceding words or terms. Pronouns will refer to the masculine, feminine, neuter, singular, or plural as the context will require.

K. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

L. No Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

M. Force Majeure. (i) Each Party agrees to excuse the failure of the other Party to perform its obligations under this Agreement to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Contract, but only if and to the extent the event or circumstance is not within the control of the Party seeking to have its performance obligation excused and which the Party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics and pandemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a Party's cost but not its ability to perform. (ii) The Party invoking Force Majeure shall give timely and adequate Notice to the other Party, initially by e-mail or orally but followed promptly by written Notice, and shall use due diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. (iii) In the event a Party's performance of an obligation under this Agreement is delayed due to a Force Majeure event, then the time for completion of the Party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not last more than one hundred eighty (180) days. If an event of Force Majeure affecting

a Party's ability to perform continues for more than one hundred eighty (180) days, the other Party shall have the right to terminate this Contract upon ten (10) days advance written notice to the non-performing Party.

N. Government Code provisions. EPMC hereby verifies that it complies with the following requirements: (1) Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited, a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153. (2) Pursuant to Texas Government Code 2271.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification the company that it: (i) does not boycott Israel, and (ii) will not boycott Israel during the term of the contract. (3) Section 2252.908 of the Texas Government Code requires that for certain types of contracts, a contractor must fill out a conflict of interest form ("Disclosure of Interested Parties") at the time it submits its signed contract to CITY. For further information please go to the Texas Ethics Commission website via the following link. https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. (4) EPMC certifies that it does not and will not knowingly employ undocumented workers in accordance with Chapter 2264 of the Texas Government Code, as amended.

O. Basic Safeguarding of EPMC Information Systems. (1) EPMC shall apply basic safeguarding requirements and procedures to protect EPMC's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). (2) EPMC shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

Executed on this the ___ day of _____, 2021, to be effective on July 5, 2021.

EPMC, LLC,
A Texas limited liability company

By: Mark Schulman
Mark Schulman, Manager

DATE: 6/23/2021

CITY OF BRYAN, TEXAS
A home rule municipal corporation

By: _____
Andrew Nelson, Mayor

DATE: _____

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

_____, City Attorney

EXHIBIT B
QUEEN LEASE WITH DESTINATION BRYAN AGREEMENT

STATE OF TEXAS §

COUNTY OF BRAZOS §

QUEEN THEATER OFFICE SPACE LEASE
DESTINATION BRYAN

This Lease Agreement (“Lease”) is entered into on this 10th day of February, 2021 by and between the City of Bryan, Texas (“City”) a home-rule municipal corporation and Destination Bryan (“Tenant”) a 501(c)(6) corporation.

WHEREAS, the City recently acquired the property at 110 S. Main Street, commonly known as the Queen Theater, which houses offices that Tenant intends to use for its activities, namely the promotion of the restaurant, hotel, and tourism industry within Bryan, Texas; and

WHEREAS, the Tenant is currently occupying space within the Queen theater under a short term Lease agreement that expires on February 26, 2021, and desires to enter a new Lease agreement with the City, which requires approval of the City Council; and

WHEREAS, the parties are entering into this lease to allow Tenant to continue operating in the Queen office space through the end of 2021 Fiscal Year.

NOW THEREFORE IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Premises. The City hereby leases to Tenant approximately 1,600 square feet of office space located on the third floor of the Queen Theater, as well as the non-exclusive right to common areas including stairwell, lobby, storage areas, and bathrooms (“Leased Premises”).
2. Rent. The consideration for this Lease is Tenant’s commitment to continue to coordinate with the City in the promotion of the restaurant, hotel, and tourism industry within the City limits.
3. Term. The term of this Lease is from the date of execution until September 30, 2021, but may be terminated sooner by agreement of the parties. In the event that the parties enter into a new lease, this Lease shall terminate without further action by the parties. The City reserves the right to terminate this Lease at any point by giving thirty (30) days’ written notice.
4. Use. The Leased Premises may be used for the operations of Tenant promoting the restaurant, hotel, and tourism industry, and any incidental functions related to Tenant’s operations.
5. Termination. In the event that this Lease is terminated, and the parties have not entered into a new lease, Tenant shall surrender the Leased Premises in the same condition as the date of commencement, less ordinary wear and tear. Surrender shall include handing over

all keys, access cards, and any other security codes/devices. If Tenant remains in possession of the Leased Premises after termination of the Lease, the City may change the locks, security codes, and/or interrupt utilities within the City's sole discretion. Any personal property remaining on the Leased Premises after the termination of the Lease shall be considered abandoned.

6. Acceptance. Tenant has had an opportunity to inspect the Leased Premises and City shall have no obligation to make any repairs, alterations or additions at Leased Premises as a condition of entering into this Lease. However, City agrees to repair, replace and maintain the roof, foundation, and structural soundness of the exterior walls, doors, corridors, windows, parking surfaces, heating, ventilation and air conditioning systems and other mechanical and building systems serving the premises. City agrees to enter into and maintain throughout the Term of the lease, a regularly scheduled preventative maintenance/service contract for servicing all hot water, heating and air conditioning systems and equipment within the Premises by a qualified HVAC contractor perform this work. A certificate evidencing such contract must be provided to the Tenant, and be effective within, thirty (30) calendar days occupancy of the Leased Premises. In the event that Tenant learns of an issue that requires action by the City, and Tenant provides written notice of such issue to the City, such issue shall be addressed promptly, but in any event within thirty (30) days. If repair or maintenance cannot be completed within thirty (30) days, City must provide written notice to Tenant along with an estimate time for completion. In the event of any condition that poses a threat to health and safety, or otherwise renders the Leased Premises at least partially unusable, Tenant may elect to terminate this Lease.
7. Tenant will make no structural alterations or additions to the Leased Premises without the prior written consent of City. Tenant shall be liable to City for the cost to restore the Leased Premises to the condition which existed upon City's tender in the event of any unauthorized demolition or construction at the Leased Premises.
8. Tenant shall be responsible for utilities. Tenant may not add locks or change locks without City's permission, which shall not be unreasonably withheld. Tenant may be provided locks to the Leased Premises.
9. Tenant will keep the Leased Premises in a clean and orderly condition and remove garbage, trash, and other waste there from. Tenant will not display any sign at the Leased Premises without written permission of the City, except when such sign is not visible from the public right of way or common areas and/or if the sign is required by law. Tenant shall not engage in or permit any practice which emits odors or noises outside the Leased Premises, in a manner offensive to the reasonable person. Tenant shall be responsible for any pest or rodent issues resulting from failure to maintain any part of the Leased Premises in a clean and orderly fashion.
10. City makes no warranties express or implied with regards to the Leased Premises merchantability, or suitability for a particular purpose beyond those expressly stated in this Lease. Tenant shall be responsible for ensuring that the Leased Premises are sufficient for

Tenant's needs. Tenant shall be responsible for obtaining insurance for any personal property belonging to Tenant on the Leased Premises.

11. TENANT HEREBY INDEMNIFIES, RELEASES, WAIVES, AND HOLDS HARMLESS THE CITY, AS WELL AS ITS OFFICERS, EMPLOYEES, OFFICIALS, OR REPRESENTATIVES, FROM ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, OR DEMANDS WHATSOEVER FOR ANY FINES, FEES, DAMAGES, OR CHARGES OF ANY KIND, INCLUDING ATTORNEY'S FEES AND COURT COSTS, IN ANY WAY RELATED TO TENANTS OCCUPANCY OR USE OF THE LEASED PREMISES OR IN ANY WAY ARISING OUT OF OR RELATING TO THIS LEASE, EXCEPT INsofar AS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, EMPLOYEES, OFFICIALS, OR REPRESENTATIVES.
12. Failure of any party, at any time, to enforce a provision of this Lease, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Lease, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Lease shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
13. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. Each party to this Lease has had an opportunity to review the terms contained herein with counsel and therefore neither party shall be deemed to be the author and any ambiguities contained herein shall not be construed more or less favorably between the parties by reason of authorship or origin of language.
14. If any provision of this Lease is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective while this Lease is in effect, such provision shall be automatically deleted from this Lease and the legality, validity, and enforceability of the remaining provisions of this Lease shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Lease a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
15. This Lease shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Lease shall be in a court of appropriate jurisdiction in Brazos County, Texas.
16. This Lease constitutes the sole and only Lease of the Parties hereto respecting the subject matter covered by this Lease, and supersedes any prior understandings or written or oral agreements between the parties. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date

hereof and duly executed by the parties hereto. The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Executed to be effective as of the date above written, when signed by all parties.

CITY OF BRYAN, TEXAS

DESTINATION BRYAN

Andrew Nelson

Andrew Nelson, Mayor

John Friebele

John Friebele, Executive Director

ATTEST

Mary L. Stratta

Mary Lynne Stratta, City Secretary



APPROVED AS TO FORM

Janis Hampton

Janis K. Hampton, City Attorney