

## **FIRST AMENDMENT TO GROUND LEASE AGREEMENT**

THIS FIRST AMENDMENT TO GROUND LEASE AGREEMENT (this “**First Amendment**”) is made and entered into effective as of July 13, 2023 (the “**Effective Date**”), by and between the **CITY OF BRYAN**, a Texas home-rule municipal corporation (“**Landlord**”), and **SMBG BRYAN, LLC**, a Texas limited liability company (“**Tenant**”). Landlord and Tenant may each be referred to herein as a “Party” or collectively as the “Parties.”

### **WITNESSETH**

WHEREAS, by that certain Ground Lease Agreement dated November 15, 2022 (the “**Lease**”), Landlord leased to Tenant an approximately 6 acre tract of land, more or less, located in Brazos County, Texas (described more particularly as 5.644 acres in Exhibit A to the Lease), being a portion of Travis Bryan Midtown Park, along with certain improvements (as and when constructed) to be located on, and certain rights, privileges and easements appurtenant to, such land, all as more specifically described in the Lease (the “**Leased Premises**”), upon the terms and conditions set forth in the Lease; and

WHEREAS, due to unforeseen conditions beyond the control of the Parties related to supply chain issues and interest rate volatility some deadlines provided for in the Lease have become impossible or impractical; and

WHEREAS, as planning for the Project has progressed, the Parties have recognized the necessity to refine the description of the Land; and

WHEREAS, Landlord and Tenant desire to amend the Lease to provide for, among other things, the extension of deadlines for Tenant to perform certain obligations, and the Parties are willing to agree to such amendments upon the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to amend, and do hereby amend, the Lease as follows:

1. Section 8.4, Tenant Deadlines, is hereby amended by changing the following subsections as set forth herein:

8.4.1 Project Financing is amended by replacing “May 15, 2023” with “November 1, 2023.”

8.4.2 Approval of Project Plans is amended by replacing “July 15, 2023” with “September 15, 2023.”

8.4.3 Scheduled Project Start Date Milestone is amended by replacing “August 15, 2023” with “November 15, 2023.”

2. Appendix A to Lease Agreement, the Glossary of Defined Terms, is amended to change the definition for “Substantial Completion Deadline” by replacing “September 1, 2024” with “December 31, 2024.”

3. Exhibit A to Lease Agreement is replaced with Exhibit A to this First Amendment to Ground Lease Agreement.

4. Miscellaneous.

a. Amendment to Lease. Tenant and Landlord acknowledge and agree that the Lease has not been amended or modified in any respect prior to this action, and there are no other agreements of any kind currently in force and effect between Landlord and Tenant with respect to the Leased Premises. The term “Lease” shall mean the Lease as so amended, unless the context requires otherwise.

b. Counterparts. This First Amendment may be executed in multiple counterparts, and each counterpart when fully executed and delivered shall constitute an original instrument, and all such multiple counterparts shall constitute but one and the same instrument. This First Amendment may be executed electronically (including clear images of manually executed signatures transmitted by facsimile or email in electronic formats such as “pdf”, “tif” or “jpg”, as well as the affixing of signatures hereto using an electronic signature tool, application or software such as DocuSign and AdobeSign). Each Party hereby waives any defenses to the execution, delivery or enforcement of this First Amendment based on the form of the signature hereto, and hereby agrees that such electronically transmitted, affixed or signed signatures shall be conclusive proof, admissible in judicial proceedings, of each Party’s execution and delivery of this First Amendment.

c. Entire Agreement. The Lease and this First Amendment sets forth all covenants, agreements and understandings between Landlord and Tenant with respect to the subject matter hereof and there are no other covenants, conditions or understandings, either written or oral, between the parties hereto except as set forth in the Lease and this First Amendment.

d. Full Force and Effect. Except as expressly amended hereby, all other items and provisions of the Lease, as amended, remain unchanged and continue to be in full force and effect.

d. Conflicts. The terms of this First Amendment shall control over any conflicts between the terms of the Lease and the terms of this First Amendment.

e. Capitalized Terms. Capitalized terms not defined herein shall have the same meanings attached to such terms under the Lease.

f. Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

g. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas and venue for any dispute shall be Brazos County.

This First Amendment is executed to be effective for all purposes as of the date first written above.

**LANDLORD:**

CITY OF BRYAN, TEXAS



Bobby Gutierrez

Bobby Gutierrez, Mayor

**ATTEST:**

Mary Lynne Stratta

Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

Thomas A. Leeper

Thomas A. Leeper, City Attorney

**TENANT:**

SMBG BRYAN, LLC

Mark Schulman

By: Mark Schulman, Manager