

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City" or "Lessor"), and **BRADLEY DONUTS, LLC**, a Colorado limited liability company, whose address is 7268 South Tucson Way, Centennial, Colorado 80112 (the "Lessee").

W I T N E S S E T H:

WHEREAS, the City is the owner of land at the corner of 14th and Champa adjacent to the Colorado Convention Center building in Denver, Colorado, a portion of which is not required for public use and occupancy at present; and

WHEREAS, the City is desirous of leasing this land to Lessee for use as a typical Dunkin Donuts restaurant.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **CONTINGENCIES**: This Lease shall be contingent upon the Lessee's ability to secure all necessary licenses, permits, and approvals it deems necessary to construct and operate its intended use.

2. **LEASED PREMISES**: Subject to the terms of this Lease Agreement (hereinafter referred to as "Lease"), the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City those certain premises (the "Leased Premises") located at the corner of 14th and Champa adjacent to the Colorado Convention Center building in Denver, Colorado, as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein, containing interior space of approximately 1,356 sq ft and adjacent patio space containing approximately [REDACTED] sq ft, which patio space is subject to Lessee obtaining any and all required permits and/or licenses for such use and subject to compliance with said permits and/or licenses. Lessee shall have the exclusive right to use the patio space during the Term (as defined below) of this Lease. The depiction contained on **Exhibit A** may be modified upon the written authorization of the Director of Real Estate (the "Director"), and with prior written notice to Lessee, to correct minor, technical errors.

3. **TERM:** The term of this Lease shall begin on the date that the City delivers the Leased Premises to Lessee by turning over keys and authorizing full access to the Leased Premises pursuant to this fully executed Lease (the "Delivery Date"), and it shall terminate ten (10) years after the Rent Commencement Date (as defined below) (the "Term"). The Term may be extended for up to three (3) five (5) year terms by the Lessee with written confirmation of the extension provided to the City by the Lessee at least 60 days prior to the end of the Term or the previously exercised option term. The term extensions may be exercised, if at all, by the Lessee or any and all successors and related assigns of Lessee to operate substantially the same business as is contemplated in this Lease.

4. **RENT:** Rent shall be paid by Lessee monthly, on the first (1st) day of each calendar month, to SMG at 700 14th Street, Denver, CO 80202, or to another party as otherwise specified by the City to receive Rents on its behalf. Should the City specify another party to receive Rents, Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. No Rent shall be payable between the Delivery Date and the Rent Commencement Date. Beginning on the Rent Commencement Date, as hereinafter defined, the Rent payable monthly by Lessee shall be:

Year 1 months 1-4:	\$ 0.00/month
Year 1 months 5-6:	\$ 1,250.00/month
Year 1 months 7-12:	\$ 2,500.00/month
Year 2 months 1-12:	\$ 2,500.00/month
Year 3-Year 10:	2.5% annual increases over the previous year's rent

Option years rent shall be set, if at all, at the then-current market rate. In the event the Lessee elects to renew the term hereof, it shall pay a monthly rental during the renewal period at a negotiated market rental rate which shall not be lower than the previous year's rent, however, such rate shall not increase by more than 4% per year. In the event the City and Lessee cannot agree upon a rental rate within 30 days after expiration of the Lease Term, the rental rate shall increase by 4% per year.

The "Rent Commencement Date" shall be the later of: (i) one hundred twenty (120) days after the Delivery Date; or (ii) the date Lessee opens for business to the general public. Should the Lessee open for business to the general public on a date occurring during the 120 day period after the

Delivery Date, the Rent Commencement Date shall be the date Lessee opens for business. Upon the occurrence of the Rent Commencement Date, the City shall send a Commencement Letter which shall set forth the date the parties agree upon as the Delivery Date, Rent Commencement Date and expiration date of the initial Term.

5. **USE:** The Leased Premises are to be used and occupied by Lessee, or any and all approved successors and related assigns as allowed in Section 25, solely as a Dunkin Donuts restaurant, unless the Director agrees to another use. The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinances of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors.

6. **“AS IS” CONDITION:** The Leased Premises are accepted by Lessee in an “AS IS, WHERE IS” condition, with all faults and defects. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises. The Leased Premises shall, however, be delivered in a broom clean condition with all electrical, mechanical, and plumbing in good operating order and free of any substances considered hazardous.

7. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pays the rental herein recited and performs all of Lessee's covenants and agreements herein contained. Lessee acknowledges that City permits the use of the Colorado Convention Center, by others pursuant to separate agreements, and agrees that such use is consistent with Lessee's use under this Lease Agreement.

8. **PREMISES/CONSTRUCTION:**

A. By City: Unless otherwise expressly stipulated herein, the City shall not be required to make any improvements to or repairs of any kind or character on the Leased Premises during the term of this Lease, except repairs as are necessary for normal maintenance operations of the Leased Premises, including exterior, foundation, and structural soundness.

The City represents that, to its Director of Real Estate's actual knowledge, as of the date Lessee takes possession of the Leased Premises (i) City's Certificate of Occupancy on the core and shell of Leased Premises is current, and (ii) there are no outstanding, unresolved environmental issues or violations of Applicable Laws against Leased Premises.

On or before the Delivery Date the City shall, at its sole cost and expense, re-landscape adjacent to the Leased Premises in order to provide increased visibility of the Leased Premises (and Tenant's business therein) from the exterior of the building, all as mutually approved by Tenant and Landlord and as roughly depicted in Exhibit A.

B. By Lessee: Lessee shall undertake construction of a typical Dunkin Donuts restaurant within the Leased Premises ("Tenant Improvements") according to the construction plans and specifications submitted to and approved by the Director, in his reasonable discretion. Such work shall be built or made strictly in accordance with the following terms and conditions, and no such work or contracts or subcontracts for the same shall be entered until Lessee has established to the Director's reasonable satisfaction that the following terms and conditions have been fully and appropriately satisfied.

i. Before the commencement of such work, (i) conceptual/schematic, preliminary and final detailed plans (which shall include samples of colors and materials), and specifications shall be filed with and approved by the Director and all governmental departments or authorities having jurisdiction or design review thereover, (ii) all such work shall be done subject to and in accordance with the requirements of law and applicable regulations of all such governmental departments and authorities and, when required, each affected public utility company, and (iii) all work shall be fully coordinated with scheduled City Venues' events and with the construction, remodeling, repair and other work being performed by others at the City Venues.

ii. Before the commencement of such work, Lessee shall obtain, and provide to the City Attorney for approval, payment and performance bonds to the extent required by and in accordance with the laws of the State of Colorado, the City Charter and ordinances of the City and County of Denver.

iii. Lessee shall pay and ensure that its construction contractors and subcontractors pay any and all prevailing wage rates to laborers and workmen, as set forth in sections 20-76 through 20-79 of the Denver Revised Municipal Code (“DRMC”), as the same may be amended or recodified from time to time.

iv. Lessee shall obtain insurance as required by the City’s Office of Risk Management, and provide evidence thereof to the City Attorney, against all liabilities and claims potentially arising out of or related to the work contemplated by this Section 9. The City’s Risk Management Office shall be notified of all such work prior to commencement of the work and, upon receipt of notice thereof, will require appropriate insurance of the Lessee and/or Lessee’s General Contractors. Insurance requirements may include, without limitation, Builders’ Risk and an Installation Floater covering the property and equipment, with the City and County of Denver listed as an Additional Insured, and professional insurance covering all engineering and architectural work. Per Section 23, all subcontractors and subconsultants are required to procure and maintain the same coverage required of the Lessee, as applicable to the scope of work. All coverage related to the subject work shall be kept in full force at all times during the work and warranty period. Evidence of coverage must be submitted to the City Attorney before commencement of such work. Neither the obligation to obtain such insurance nor the obtaining of such insurance shall relieve or lessen Lessee’s indemnification of City, except to the extent of payment under policies of such insurance.

v. Such work shall be performed in compliance with the provisions for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in sections 28-31 through 28-90, DRMC, as the same may be amended or recodified from time to time.

vi. Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same and by contractors satisfactory to the Director. Lessee shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by the Director which is not done in accordance with such plans and specifications as approved by the Director.

vii. The risk of loss or damage to all such required or permitted repairs, alterations, modifications or installations prior to completion thereof shall be upon Lessee and Lessee shall, at its own cost and expense, replace and repair any and all such damage in accordance with the provisions of this Section.

9. **ALLOWANCE FOR TENANT IMPROVEMENTS**: The City shall pay to the Lessee the actual cost of the Tenant Improvements, not to exceed a total of Ten Thousand Dollars (\$10,000.00) (“Tenant Improvement Allowance”). The Tenant Improvement Allowance shall be paid within thirty (30) days after Lessee provides to City paid receipts and lien waivers from all contractors, material men and suppliers providing \$5,000 or more for labor and improvements. In the event that a subcontractor unreasonably delays or refuses to deliver a lien waver, Lessee has the right to bond over the outstanding amount in order to receive the Tenant Improvement Allowance.

10. **SIGNAGE/MARKETING/EXCLUSIVITY**: The Lessee shall be allowed to place maximum allowable signage displaying Lessee's corporate colors and logos, on and about the premises to the extent permitted by the City's ordinances, subject to the Director's approval of such signage, which approval shall not be unreasonably withheld, conditioned or delayed. The City's Colorado Convention Center (the “CCC”) shall provide reasonable effort to “cross market” during conventions and the City and Lessee agree to cooperate in such effort, including interior and directional signage to the Leased Premises within the CCC. The City will provide advertising of the Leased Premises in the CCC at kiosks, media board advertising on the street, and access to websites, including social media and email announcements, as well as in collateral materials produced for visitors to the CCC. Attached to this Lease and incorporated herein is **Exhibit B**, describing the signage and marketing that the City will make available to the Lessee.

11. **OBSTRUCTIONS**: The City shall not cause, to the best of its ability, obstructions

that will impair visibility to the Leased Premises, except those obstructions depicted in Exhibit A.

12. **ENTRY BY CITY:** Lessee shall permit representatives of the City to enter into and upon the Leased Premises after receiving reasonable prior notice from the City to inspect the same, except in the case of emergencies, in which case the City may enter into and upon the Leased Premises without notice, and Lessee shall not be entitled to any abatement or reduction of rent by reason thereof. City shall not cause unreasonable interference in the normal course of Lessee's business and Lessee or an authorized employee or agent shall have the right to accompany the City during its inspections.

13. **CARE AND SURRENDER OF THE LEASED PREMISES:** At the termination of this Lease, Lessee shall deliver the Leased Premises, including the Tenant Improvements performed by Lessee pursuant to paragraph 9, to the City in good condition, ordinary wear and tear excepted. Notwithstanding anything to the contrary contained in this Lease, upon the expiration or earlier termination of this Lease, Lessee shall be permitted to remove any and all equipment, signs and related trade fixtures which Lessee is obligated to remove by Lessee's franchisor, so as to completely de-identify the Leased Premises. Lessee shall remove all of Lessee's movable furniture and other effects at least ten (10) days prior to the end of the Term. All moveable furniture and other effects that are not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all reasonable expenses incurred in connection with removal of such property. Lessee's obligation to observe or perform this covenant shall survive the termination of this Lease. Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the term of this Lease upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises.

14. **UTILITIES, JANITORIAL SERVICE AND MAINTENANCE:**

A. **Lessor's Responsibilities.** Subject to the billing and payment provisions contained in subparagraph 16.B., the City shall provide the following utilities, separately metered, for the Leased Premises, as may be reasonable and necessary for normal intended use of Leased

Premises: water, sewer, and electricity. Further, City shall, at its expense, maintain the building's mechanical systems, including HVAC, and exterior, including snow and ice removal from the public right of way.

B. Lessee's Responsibilities.

i. Lessee shall pay for all water, sewer, gas and electricity, or other utilities or services allocable to the Leased Premises, which the City and Lessee agree will equal the actual cost for such services as metered. Lessee's payment shall be due within 30 days of the date of the City's billing statement. All past due payments shall accrue interest at the rate of 12% per annum until paid. Lessee shall be responsible for arranging for, and paying all deposits, fees and charges associated with (i) telephone and other communication services to the Leased Premises, (ii) janitorial services, and (iii) trash hauling. Lessee shall pay prevailing wages, as set by the City's prevailing wage ordinance (§20-76, DRMC) for janitorial services.

ii. The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services.

iii. The Lessee shall maintain the interior non-structural portions of the Leased Premises, including electrical, plumbing, casualty damage, and make all repairs to interior and storefront windows and doors. Additionally, the Lessee shall maintain any non-structural portions of exterior patio space for which it has obtained and complies with all required permits and/or licenses and is actively in use by Lessee, its employees and customers.

15. **INDEMNITY**: The Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, subtenants, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where

such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee need not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense (with legal counsel reasonably acceptable to the City and Lessee). Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. The Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

16. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft or fire (unless such loss or damage is caused by the City, its employees, contractors or assigns), Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. If the Leased Premises, through no fault or neglect of Lessee, its agents, its employees, invitees, or visitors shall be partially destroyed by fire or other casualty so as to render the Leased Premises untenable, and the City elects to repair the same, the rent herein shall abate from the date of the occurrence until such time as the Leased Premises are made tenantable by City. In the event such repairs cannot be made within 90 days, Lessee may elect to terminate this Lease. In the event of the total destruction of the Leased Premises without fault or neglect of the Lessee, its agents, employees, invitees, or visitors, or if from any cause the Leased Premises shall be so damaged that the City shall decide not to rebuild (which decision City may make in its sole discretion but will not be unreasonably delayed), then all rent owed up to the time of such destruction or termination shall be paid by Lessee and this Lease shall cease and come to an end.

17. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the

actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision.

Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

18. **HOLDING OVER:** If after the expiration of the Term and any extensions of the Term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a rent equivalent to 125% of the then current monthly installment of rent due hereunder, payable in advance on the first day of each calendar month thereafter. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

19. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have any one or more of the following described remedies, in addition to all of the rights and remedies provided at law or in equity:

(a) The City may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including reasonable attorneys' fees; (ii) the unpaid rent earned at the time of termination, plus interest thereon at the rate of twelve percent (12%) per annum from the due date; (iii) the balance of the rent for the remainder of the term less any rents the City receives for the Leased Premises for said period; (iv) damages for the wrongful withholding of the Leased Premises by Lessee; (v) unpaid taxes or assessments and (vi) any other sum of money in damages owed by Lessee to City as a result of its use and occupancy of the Leased Premises. The City may retake possession of the Leased Premises, including the Tenant Improvements, and shall have the right, but not the obligation, without being deemed to have accepted a surrender thereof, and without terminating this Lease, to relet same for the remainder of the then current term provided for herein; and if the rent received through such reletting does not at least equal the rent provided for herein, Lessee shall pay and satisfy any deficiency between the amount of the rent so provided for and that received through reletting; and, in addition thereto, Lessee shall pay all reasonable out-of-pocket expenses of Lessor incurred in connection with any such reletting.

(b) Before exercising any remedy or right herein or in law or equity, the City shall supply written notice of such default to the Lessee and provide thirty (30) days from the date of such notice to cure the noted default.

20. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

21. **LESSEE'S INSURANCE.**

(1) **General Conditions:** Lessee agrees to secure, at or before the time of execution of

this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Lessee shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Lessee. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. The Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(2) **Proof of Insurance:** Lessee shall provide a copy of this Agreement to its insurance agent or broker. Lessee may not commence services or work relating to the Agreement prior to placement of coverage. Lessee certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Lessee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies

and endorsements.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Lessee and sublessee's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages, Lessee's insurer shall waive subrogation rights against the City.

(5) **Sublessees and Subconsultants:** All sublessees and subconsultants (including independent Lessees, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such sublessees as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such sublessees and subconsultants maintain the required coverages. Lessee agrees to provide proof of insurance for all such sublessees and subconsultants upon request by the City.

(6) **Workers' Compensation/Employer's Liability Insurance:** Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Lessee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Lessee executes this Agreement.

(7) **Commercial General Liability:** Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(8) **Business Automobile Liability:** Lessee shall maintain Business Automobile

Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

(9) **Property Insurance:** Lessee shall maintain All-Risk/Special Cause of Loss Form Property Insurance on a replacement cost basis including coverage for Lessee's tenant improvements, betterments, and contents. If the Leased Premises is located in a flood or quake zone (including land subsidence), flood, or quake insurance shall be provided separately or in the property policy. Coverage shall include business interruption, including rental value, leasehold interest and extra expense. The City and County of Denver shall be named Loss Payee as its interest may appear.

(10) **Additional Provisions:**

- (a) For Commercial General Liability, the policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are in excess of policy limits;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Lessee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Lessee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

22. **VENUE, GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal

action relating to this Agreement shall lie in the State District Court in and for the City and County of Denver, Colorado.

23. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The Lessee shall not assign or transfer its rights under this Lease, or sublet the Leased Premises without first obtaining the written consent of the Director, whose consent will not be unreasonably withheld. Lessee may assign its rights under this Lease to a related entity (including, without limitation, Lessee's franchisor and any franchisee of Lessee's franchisor) without further written approval of the City. The City shall supply written notice to the Lessee should a default occur, regardless of whether the Lessee has sublet or assigned this Lease pursuant to this Lease.

24. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS:** The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

25. **EXAMINATION OF RECORDS:** The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease and upon reasonable prior notice to Lessee, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease. Any such examination shall occur at Lessee's administrative offices.

26. **AMENDMENT:** No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease; however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, shall not be construed as a waiver or

relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

27. **SEVERABILITY**: If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

28. **BINDING EFFECT**: This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto, subject to assignment or sublease in accordance with paragraph 25 above.

29. **THIRD PARTIES**: This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

30. **FORCE MAJEURE**: Neither party shall be liable to the other, nor shall either party have any right to terminate this Lease Agreement, abate any payments or obligations or assert a claim against the other due to the other party's failure to perform any of its obligations under this Lease Agreement, if the failure is due to reasons beyond the non-performing party's reasonable control, including but not limited to strikes or other labor difficulties, inability to obtain necessary government permits or approvals due to delay on the part of a governmental entity, unavailability of materials, war, riot, civil insurrection, accidents, acts of God or governmental preemption in connection with a national emergency.

31. **NOTICES**: All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City: Director of Real Estate
201 W. Colfax Ave., Dept. 1010
Denver, CO 80204

To Lessee: **BRADLEY DONUTS, LLC**
7268 South Tucson Way
Centennial, Colorado 80112
Attn: Bradley Calkins, Jr.

Either party hereto may designate in writing from time to time the address of substitute or

supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

32. **ENTIRE AGREEMENT**: The parties acknowledge and agree that the provisions contained herein and Exhibits hereto constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

33. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any performance hereunder constitute or be construed to be a waiver by any party of or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

34. **NO PERSONAL LIABILITY**: No elected official, director, officer, agent or employee of the City, nor any director, officer, manager, member, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

35. **CONFLICT OF INTEREST BY CITY OFFICER**: Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

36. **BROKER**: Dennis McLin is acting as a transaction broker in this transaction. A one-time fee will be paid by City to Dennis McLin dba McLin Commercial of \$15,000.

37. **APPROPRIATION**: All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

38. **AUTHORITY TO EXECUTE**: Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

39. **PARAGRAPH HEADINGS**: The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

40. **CITY'S EXECUTION OF AGREEMENT**: This Lease is expressly subject to, and shall not be or become effective or binding on the City until approval by its City Council and full execution by all signatories set forth below.

41. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: Lessee consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

42. **FRANCHISOR ADDENDUM**: City acknowledges that Lessee's franchisor requires the execution of the Option to Assume Lease which is attached hereto as **Exhibit D** and incorporated herein by reference (the "Franchisor Lease Rider") by City and Lessee concurrent with their execution of this Lease as a condition to franchisor approving Lessee's right to operate a franchised restaurant on the Leased Premises. City's Director of Real Estate, on behalf of the City, and Lessee shall execute the Franchisor Lease Rider concurrent with their execution of this Lease and Lessee shall deliver a copy of the Franchisor Lease Rider to its franchisor for execution. In the event of any conflict between the terms of this Lease and the terms of the Franchisor Lease Rider, the terms of the Franchisor Lease Rider shall control. The Franchisor Lease Rider shall be deemed to be a part of this Lease and shall be incorporated herein as if fully set forth in this Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number: 201626309-00

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



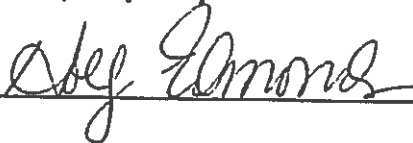
Contract Control Number: 201626309-00

By: 

Name: BRADLEY CAULKINS JR
(please print)

Title: MANAGER
(please print)

ATTEST: [if required]

By: 

Name: Holly Edmonds
(please print)

Title: ENVIRONMENTAL MANAGER
(please print)

.....



EXHIBIT
A

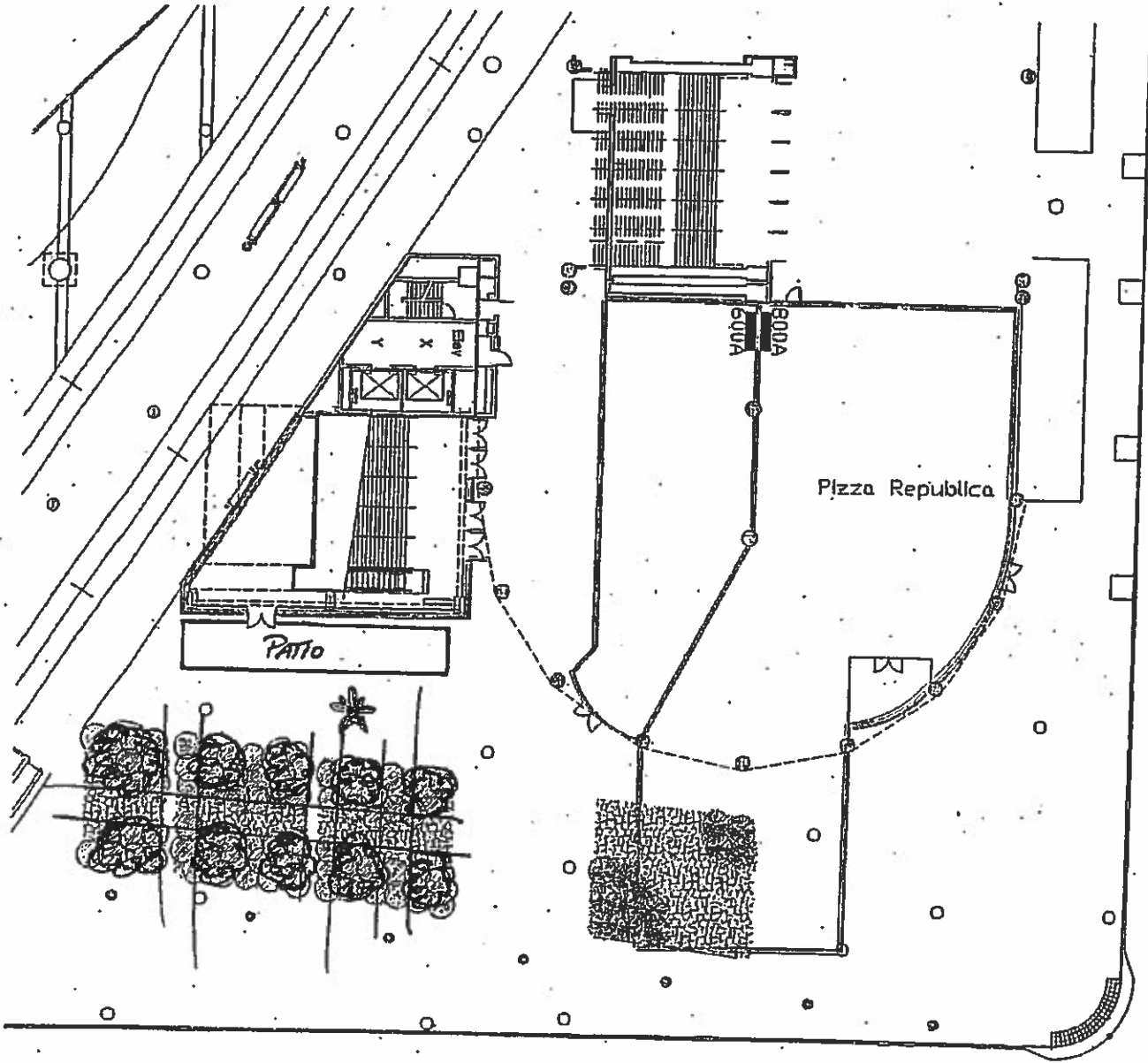


EXHIBIT B

MARKETING BENEFITS

Media
Colorado Convention Center Digital Marquee (estimated half schedule - every 6 minutes - on seven signs all year)
Full-schedule advertisement on thirty five (35) digital information kiosks located throughout the Convention Center
Presence on www.denverconvention.com - inclusion on a page dedicated to other amenities
Presence on www.wellsfargotheatre.com - a page dedicated to nearby restaurants with available offers
Home page rotating banner ad on www.artscplx.com
Dedicated Grand Opening Announcement to CCC list of 40,000 local e-mail addresses
Promotions through the Convention Center's Facebook, Twitter and other Social Networking Sites
SIGNAGE
Permanent indoor directional signage (estimated 6 signs total - locations TBD)
Two (2) free-standing backlit kiosks located on the main interior spine of the Colorado Convention Center
Opportunity to install ad signs inside the parking garage (size and location TBD; printing and installation not included)
COLLATERAL MATERIALS
Ad/ coupon inclusion in electronic Exhibitor Kit (sent to 42,000 e-mail addresses)
Map inclusion in 4,000 brochures annually printed by Visit Denver
Coupon on the back of parking stubs at the Colorado Convention Center garage

EXHIBIT D

Franchisor Lease Rider

Option to Assume Lease (PC # _____)

1. If _____ ("Tenant") defaults under the Lease dated _____ ("Lease") by and between _____ ("Landlord") and _____ Tenant for the premises located at _____

_____ ("Premises"), or if Dunkin' Donuts Franchising LLC or Baskin-Robbins Franchising LLC ("Franchisor") terminates Tenant's franchise agreement covering the Premises, Landlord and Tenant acknowledge and agree that Franchisor will have the option to assume the Lease pursuant to the terms of this Option which supplements and forms a part of the Lease.

2. Landlord agrees to give Franchisor written notice specifying all default(s) of Tenant under the Lease. Franchisor agrees to give written notice to Landlord if Franchisor terminates Tenant's franchise agreement and, in such notice, will request that Landlord provide Franchisor with a copy of the Lease and specify any of Tenant's defaults thereunder. All notices will be by nationally recognized overnight courier (with tracking capability).

3. Franchisor may, within 30 days from receipt of notice from Landlord that Tenant has defaulted under the Lease and failed to cure such default(s) as required or permitted by the terms of the Lease, or sending of notice to Landlord that Franchisor has terminated Tenant's franchise agreement covering the Premises, notify Landlord of Franchisor's decision to assume the Lease. If Franchisor exercises its right to assume the Lease by sending Landlord the required notice, immediately upon Franchisor's receipt of possession of the Premises, Franchisor will cure all of Tenant's monetary defaults under the Lease, begin curing all of Tenant's non-monetary defaults under the Lease, and execute an agreement pursuant to which Franchisor agrees to assume all of Tenant's rights and obligations under the Lease, subject to (i) Franchisor's right, without the need to obtain Landlord's consent, to sublet the Premises or assign the Lease to an approved franchisee of Franchisor provided Franchisor remains liable for the payment of rent and the performance of Tenant's duties under the Lease; (ii) Franchisor not being subject to any provision of the Lease that requires Tenant to continuously operate a business in the Premises during any period that the Premises is closed for remodeling or while Franchisor is seeking to obtain and train a new franchisee, provided however, that such period of closure will not exceed 90 days in each instance and provided further that Franchisor continues to pay rent during such period of closure pursuant to the terms of the Lease; and (iii) Franchisor's right, if it subleases the Premises to a franchisee as provided above, to retain all consideration payable under such sublease.

4. If Franchisor exercises its right to assume the Lease, Tenant agrees to assign all of its right, title and interest in the Lease to Franchisor and, if Tenant does not do so within ten (10) days of Franchisor's written notice, Tenant appoints Franchisor as its agent to execute all documents that may be necessary for Franchisor to take assignment of the Lease. Notwithstanding anything to the contrary contained herein, Tenant shall remain liable to Landlord for all of its obligations under the Lease and to

Franchisor for all amounts that Franchisor pays to Landlord to cure Tenant's defaults under the Lease, including interest, reasonable collection costs and de-identification costs (the parties acknowledging that Franchisor may enter the Premises without being guilty of trespass or tort to de-identify the Premises). Franchisor may assign this Option and its rights hereunder to any affiliate, subsidiary or parent of Franchisor. This Option may be signed in any number of counterparts by facsimile or otherwise, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. A facsimile signature may be used for any purpose in lieu of an original signature.

This Option is dated _____, 20____.

LANDLORD

By: _____
Its: _____

Address _____

Phone _____

TENANT

By: _____
Its: _____

By: _____
, Individually

By: _____
, Individually

By: _____
, Individually

FRANCHISOR

By: _____
Its: _____

130 Royall Street
Canton, Massachusetts 02021
Attention: Legal Department
