

**COMMERCIAL LEASE AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND
DARRYL R. ALEXANDER
D/B/A
MEMPHIS BEST BBQ**

THIS COMMERCIAL LEASE AGREEMENT (this “Lease” or this “Agreement”) is entered into as of September 30, 2019 between the City of Tolleson, an Arizona municipal corporation (“Landlord”), and Darryl R. Alexander, a sole proprietor, d/b/a Memphis Best BBQ (“Tenant”).

RECITALS

A. Landlord is the owner of land and improvements thereon commonly known and numbered as 9353 West Van Buren Street, Tolleson, Arizona 85353, consisting of approximately 1,184 rentable square feet (the “Leased Premises”).

B. Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord upon the mutual covenants and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Term of Agreement. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for a term beginning September 30, 2019 and ending September 29, 2024 (the “Term”). The Term shall be at the rental amount set forth in Section 2 herein. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Initial Term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no claim against Landlord for any such delay.

2. Rental Amount.

a. Tenant shall pay to Landlord during the Term annual rental of \$9,000.00 plus applicable taxes, payable in installments of \$750.00 per month. Each installment payment shall be payable in advance no later than the first day of each calendar month during the Initial Term to Landlord at 9555 West Van Buren Street, Tolleson, Arizona 85353, or at such other place designated by written notice from Landlord. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

b. Rent shall be abated during the first six months of the term.

3. Security Deposit. Tenant shall provide a security deposit of \$750.00 no later than the commencement date of the Lease.

4. Use. Tenant shall use the Leased Premises only for the purpose of operating a(n) restaurant and bar. Tenant agrees that the Leased Premises shall not be used for any illegal purpose or unauthorized use. Tenant shall not bring or permit to be brought or kept in or on the Leased Premises or elsewhere on the Leased Premises any hazardous, toxic, flammable, combustible or explosive fluid, material, chemical or substance, including without limitation any item defined as hazardous pursuant to applicable federal and state environmental laws, except as consistent with the use defined herein.

5. Utilities. Except where otherwise agreed, Tenant shall pay all charges for water, sewer, gas, electricity, telephone, janitorial, and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord.

6. Repairs. Tenant agrees to take possession of the Premises in as-is, where-is condition, and Landlord makes no representation or warranty as to the condition thereof. During the Term of this Lease, Tenant shall, at Tenant's expense, make all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

7. Alterations and Improvements; Signage. Tenant shall not following make additions, improvements, or replacements of or to all or any part of the Leased Premises, except with the prior written consent of Landlord. All such approved improvements shall be performed by a contractor licensed and bonded by the Arizona Registrar of Contractors. All construction plans and drawings shall be approved by Landlord prior to any work being performed.

Prior to the commencement of the Lease, Landlord shall prepare and paint the interior walls of the building and shall be responsible for no other remediation or repairs. Within one year following the commencement of the Lease, Landlord agrees to place a block wall to the rear of the property and on the east side of the building.

Tenant shall be permitted to install exterior building signage at Tenant's own expense. Signage is subject to approval by Landlord and/or the appropriate local municipality and must conform with all applicable local ordinances and regulations.

8. Sublease and Assignment. Tenant shall not sublease or assign, in whole or in part, any portion of the Leased Premises without Landlord's consent, which consent shall not be unreasonably withheld.

9. Property Taxes. Landlord shall pay all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises.

10. Entry. Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

11. Indemnification. To the fullest extent permitted by law, Tenant shall indemnify and hold harmless Landlord and its agents, representatives, officers, officials, and employees shall (Landlord and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Tenant, its officers, employees, agents, or any tier of subcontractor in connection with this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

A. Tenant shall maintain "occurrence" form comprehensive general liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Landlord and its agents, representatives, officers, officials, and employees shall be cited as an Additional Insured.

B. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises. If the Leased Premises or any other part of the Leased Premises is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees, subcontractors, or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

13. Damage and Destruction. Subject to Section 11 herein, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of Landlord. Tenant shall be relieved from paying rent and other charges during any time that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such

periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant.

14. Default. If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

15. Surrender of Leased Premises. Tenant shall, at the expiration or other termination of this Lease, remove all of Tenant's goods and effects from the leased premises, including, if applicable, all signs and lettering affixed or painted by the Tenant, either inside or outside the Leased Premises. Tenant shall deliver to the Landlord the Leased Premises and all keys, locks thereto, and other fixtures connected therewith, and all alterations and additions made to or upon the Leased Premises, in good condition. In the event of the Tenant's failure to remove any of Tenant's property from the premises, Landlord is hereby authorized, without liability to Tenant for loss or damage thereto, and at the sole risk of Tenant, to remove and store any of the property at Tenant's expense, to retain same under Landlord's control, or to sell at public or private sale, without notice, any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

16. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Landlord: City of Tolleson
9555 West Van Buren Street
Tolleson, Arizona 85353
Attn: Jason Earp, Economic Development Director

With copy to: Pierce Coleman PLLC
7730 East Greenway, Suite 105
Scottsdale, Arizona 85260
Attn: Justin S. Pierce, City Attorney

If to Tenant: Darryl R. Alexander
9353 West Van Buren Street
Tolleson, Arizona 85353

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

18. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of Landlord and Tenant.

19. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

20. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

21. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

22. Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by Landlord of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of Landlord to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or Landlord's acceptance of and payment for services, shall not release Tenant from any responsibilities or

obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of Landlord to insist upon the strict performance of this Agreement.

23. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

24. Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. Landlord may cancel this Agreement without penalty or further obligations by Landlord or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Landlord or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a contractor to any other party of this Agreement with respect to the subject matter of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Landlord”

CITY OF TOLLESON, an Arizona
municipal corporation

Reyes Medrano, Jr., City Manager

ATTEST:

APPROVED AS TO FORM:

Crystal Zamora, City Clerk

Justin S. Pierce, City Attorney

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2019,
by Reyes Medrano, Jr., the City Manager of the CITY OF TOLLESON, an Arizona municipal
corporation, on behalf of the City of Tolleson.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

