

RESOLUTION NO. R-40-2021

RESOLUTION CONSENTING TO CERTAIN UNDERTAKINGS OF THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY IN CONNECTION WITH THE OFFICE SPACE LEASE BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY, AS TENANT, AND THE HERBERT, LLC, A NEVADA LIMITED LIABILITY COMPANY AND AMJS BASIN, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TENANTS IN COMMON, COLLECTIVELY AS LANDLORD, FOR THE DEVELOPMENT OF A LAS VEGAS TECHNOLOGY AND INNOVATION EXCHANGE PROGRAM LOCATED AT 801 S. MAIN STREET, LAS VEGAS, NEVADA 89101 (APN 139-34-301-015)

WHEREAS, the City of Las Vegas Redevelopment Agency (the "Agency") adopted on March 5, 1986, that plan of redevelopment entitled, to-wit: the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area pursuant to Ordinance 3218, which Redevelopment Plan has been subsequently amended on February 3, 1988, by Ordinance 3339; April 11, 1992, by Ordinance 3637, on November 4, 1996, by Ordinance 4036, on December 17, 2003, by Ordinance 5652 and on May 17, 2006, by Ordinance 5830, and on December 16, 2015, by Ordinance 6448 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan identifies and designates an area within the corporate boundaries of the City of Las Vegas (the "Redevelopment Area") as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, the Agency is an incorporated entity of the State of Nevada that was created to revitalize the Redevelopment Area by creating new jobs, maintaining existing employment opportunities, eliminating blight, and diversifying the local economy; and

WHEREAS, THE HERBERT, LLC, a Nevada limited liability company and AMJS BASIN, LLC, a Nevada limited liability company, as tenants in common (collectively, "Landlord"), is the owner of the real property and improvements located at 801 S. Main Street, Las Vegas, commonly known as APN 139-34-301-015 (the "Property"); and

29 WHEREAS, the Agency is considering entering into that lease agreement for
30 office space in the Property attached hereto as Exhibit A (the "Lease"); and

31 WHEREAS, the Governing Body of the Agency has determined that the Lease,
32 which provides for the leasing of office space in the Property for the development of a Las Vegas
33 Technology and Innovation Exchange to host third party companies in order to develop and
34 showcase the technology of such companies in a living lab setting with the goal of encouraging
35 and attracting new businesses to the Redevelopment Area, increasing local business revenues
36 through increased human activity and job creation in the Redevelopment Area 1 ("RDA 1") with
37 the further goal to catalyze the absorption of existing office space through the incubation and
38 placement of new businesses in the RDA 1 where there are high office vacancy rates, is in
39 compliance with and in furtherance of the goals and objectives of the Redevelopment Plan; and

40 WHEREAS, the City Council of the City of Las Vegas has considered the
41 undertakings of the Agency in connection with the Lease, which provides for the payment of
42 monthly rental and related operating expenses as more fully set forth in the Lease.
43

44 NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the
45 City of Las Vegas hereby finds and determines that the Lease is of benefit to the Redevelopment
46 Area or the immediate neighborhood in which the Redevelopment Area is located; and
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RESOLVED FURTHER, that the City Council of the City of Las Vegas hereby
consents to the undertakings of the Agency in connection with the Lease for the Property.

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1 THE FOREGOING RESOLUTION was passed, adopted and approved this 6th day of
2 October, 2021.

3 CITY OF LAS VEGAS

4 By Carolyn Goodman
5 CAROLYN G. GOODMAN, Mayor

6 ATTEST:

7 LuAnn D. Holmes
8 LuAnn D. Holmes, MMC, City Clerk

9
10 APPROVED AS TO FORM:

11 M. [Signature] 9-15-21
12 Counsel Date

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27 RESOLUTION NO. R-40-2021

RDA/CC Meeting / /2021
RDA Item# 57 & CC Item# 58

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EXHIBIT A

OFFICE LEASE

See Attached

OFFICE LEASE

THIS OFFICE LEASE (the "Lease") is entered into this ____ day of _____, 2021 (the "Effective Date") by and between THE HERBERT, LLC, a Nevada limited liability company and AMJS BASIN, LLC, a Nevada limited liability company, as Tenants in Common (the "Landlord") and the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, an agency organized under the laws of the State of Nevada (the "Tenant").

SECTION 1

BASIC LEASE PROVISIONS

1.1. **Definitions.** The following capitalized terms shall have the following meanings:

- Project:** The office development commonly referred to as "The Herbert" and depicted on Exhibit "A" attached hereto, consisting of the Building, the Common Areas, and all other improvements located thereon, including the Premises.
- Building:** The structure located in the Project containing the Premises. The Building contains approximately 9,069 square feet of rentable "Floor Area" (as herein after defined).
- Premises:** That certain portion of the Building identified as Suites 110, 120, 130, and 210, plus the roof deck located on the second floor of the Building, containing approximately 7,005 square feet of rentable Floor Area, as depicted on Exhibit "B" attached hereto and incorporated herein by reference.
- Tenant's Name
And Address:** City of Las Vegas Redevelopment Agency, an agency organized under the laws of the State of Nevada
495 S. Main Street, 6th Floor
Economic and Urban Development Department
Las Vegas, NV 89101
Attn: Ryan Smith, Acting Director
- With a copy to:
- Office of the City Attorney
495 S. Main Street, 6th Floor
Las Vegas, NV 89101
Attn: John Ridilla, Deputy City Attorney
- Tenant's Trade
Name:** International Innovation Center

Julie

**Landlord's Name
and Address:**

The Herbert, LLC, a Nevada limited liability company and AMJS
Basin, LLC, a Nevada limited liability company, as Tenants in
Common
685 White Drive, Suite 100
Las Vegas, NV 89119

**Commencement
Date:**

The date Landlord delivers exclusive possession of the Premises to
Tenant with Landlord's Work Substantially Complete as set forth in
Exhibit "C", attached hereto and incorporated herein by reference.
Landlord and Tenant agree to memorialize in writing the
Commencement Date.

**Rent Commencement
Date:**

The Rent Commencement Date shall be the first day of the month
following sixty (60) days after the Lease Commencement Date.

Lease Term:

Five (5) years plus the remainder of the first fractional month in
which the Rent Commencement Date occurs, plus, if exercised, two
(2) additional five (5) year option terms to renew (the "Option
Periods").

Lease Year:

"Lease Year" is defined as that period of time commencing on the
Commencement Date and ending on the last day of twelve full
calendar months thereafter and each twelve full calendar month
period thereafter.

Minimum Base Rent:

Table of Rents

Minimum Base Rent Period	Monthly Minimum Base Rent
Rent Commencement Date through expiration of the 12 th full calendar month	\$2.95 sq/ft, \$20,664.75/month
Months 13-24	\$3.04 sq/ft, \$21,295.20/month
Months 25-36	\$3.13 sq/ft, \$21,925.65/month
Months 37-48	\$3.22 sq/ft, \$22,556.10/month
Months 49-60	\$3.32sq/ft, 23,256.60/month

The Minimum Base Rent shall be fully abated during the first sixty
(60) days after the Commencement Date.

Prepaid Rent:

Tenant shall pay the amount equal to the first month's Minimum
Base Rent on or before the Effective Date.

Common Area Expenses: The estimate of Tenant's Proportionate Share of the first year's Common Area Expenses, including Taxes and Insurance, is fifty-five cents (\$0.55) per square foot of Floor Area per month. The Common Area Expenses shall be paid by Tenant to Landlord commencing on the Commencement Date. The first year's estimate is only an estimate and Landlord shall have the right to amend the estimate at any time during the first year of the Lease Term, provided, however, that in no event shall the first Lease Year's Common Area Expenses exceed fifty-seven cents (\$0.57) per square foot of Floor Area per month.

Permitted Use: The operation of International Innovation Center and any ancillary general office uses relating thereto, and for no other purpose. Tenant shall conduct business under the Trade Name only, without Landlord's prior written consent.

Tenant's Broker: None

Landlord's Broker: Andrea Santanna, the Dapper Companies, representing Landlord only.

Tenant's Proportionate Share: 77.24%.

Appliances: The dishwasher and refrigerator in each suite.

1.2. **Exhibits.** The following documents are attached hereto and made a part hereof:

- ☐ Exhibit A: Site Plan of Property and Building
- ☐ Exhibit B: Floor Plan of the Premises
- ☐ Exhibit C: Landlord Work
- ☐ Exhibit D: Disclosure of Principals

SECTION 2

PREMISES

2.1. **Lease of Premises.** In consideration of the performance by Tenant of its obligations as set forth herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term. Further, Landlord hereby grants to Tenant, and Tenant's employees, agents, contractors and invitees, a non-exclusive license to use the Common Areas in common with other tenants during the Term, subject to the exclusive control and management thereof at all times by Landlord, and otherwise in accordance with the terms of this Lease.

2.2. **Condition of Premises.** Tenant hereby acknowledges having had the opportunity to inspect the Premises and, except as otherwise expressly indicated herein in Exhibit "C" ("Landlord Work"), Tenant accepts the Premises in their "As-Is" and "Where-Is" condition, with no representations or warranties by Landlord whatsoever. Tenant hereby acknowledges that neither Landlord, Landlord's Broker, nor any of Landlord's agents, employees or representatives have made any representations or warranties regarding the suitability or fitness of the Premises for the Tenant's Permitted Use thereof, or whether the Permitted Use of the Premises is permissible under any applicable laws, ordinances, rules or regulations.

Landlord will provide the Premises in a turnkey build-out condition ready to be occupied by Tenant with all required approvals and utility connections for the occupancy of the Premises and will provide prior to the Commencement Date a certificate of occupancy permitting the occupancy of the Premises. Landlord and Tenant acknowledge and agree that Suites 110, 120 and 130 located on the first floor of the Building are, as of the Effective Date, in final turnkey build-out condition, with all improvements, including, but not limited to, all furniture, fixtures, equipment, appliances, and all mechanical, electrical and plumbing, systems are in new and operating condition. No further improvements shall be required to said Suites 110, 120 and 130 by Landlord or Tenant and are being delivered in "As-Is" and "Where-Is" condition, with Certificates of Occupancy in place. The only tenant improvements to the Premises to be completed by Landlord shall be the installation and construction in Suite 210 of four (4) 9' by 14' offices, to be either, in Landlord's discretion, traditional studs and sheet rock construction or modular offices, similar to the DIRT systems, as more specifically set forth in Exhibit "C" and as depicted on Exhibit "C-1", attached hereto and incorporated herein by reference in final turnkey build-out condition, with all improvements, including, but not limited to, all fixtures, equipment, appliances, and all mechanical, electrical and plumbing, systems in new and operating condition. Landlord agrees that any expenses related to the installation of the Landlord Work shall not be included in Common Area Expenses. Tenant shall provide Tenant's furniture and equipment necessary for Tenant to conduct its business operations at the Premises at sole cost of Tenant. Landlord and Tenant shall complete a walk-through of the Premises prior to delivery to Tenant and prepare a punch-list of work to be completed by Landlord and a schedule for its completion.

Except as otherwise provided herein, if Landlord fails to deliver possession of the Suite 210 of the Premises to Tenant with Landlord's Work Substantially Complete in accordance with Exhibit "C" on or before ninety (90) days after the Effective Date, Tenant shall have the right to terminate this Lease upon ten (10) days prior written notice to Landlord. Upon such termination, this Lease shall be of no force and effect and Tenant and Landlord shall have no liability hereunder. Except as specifically set forth Exhibit "C", Tenant hereby acknowledges and agrees that Landlord is not making any additional improvements to the Premises. Landlord agrees to provide ten (10) days written notice to Tenant as to the date of delivery of the Premises and the anticipated Commencement Date. Landlord shall permit Tenant to have early access to the Premises in order to permit Tenant to commence moving into the Premises so long as Tenant does not interfere with Landlord's completion of the Landlord Work. In addition, Tenant shall have the option to have early access to Suite 110, 120 and 130 and occupy said Suites prior to the Substantial Completion of Suite 210, on terms and conditions mutually agreed to by Landlord and Tenant in their commercially reasonable discretion. In the event Tenant elects to accept delivery and possession of any of the first floor Suites prior to the Substantial Completion of Landlord's Work on Suite 210, the Minimum Base Rent and the Common Area Expenses shall be prorated based on the ratio

of the Floor Area square footage of the Suites occupied early by Tenant to the total Floor Area square footage of the Premises. For example, if Tenant accepts early occupancy of all three first floor Suites, with a total Floor Area of 3,350 square feet, the Minimum Base Rent will equal 3,350 square feet multiplied by \$2.95 per square foot, equaling \$9,882.50. The Common Area Expenses would be similarly adjusted and prorated based on the ratio of the Floor Area of the Suites early occupied by Tenant to the Floor Area of the entire Building. The Lease Commencement Date shall commence on the early occupancy date and Minimum Base Rent sixty (60) day abatement period will also commence on the early occupancy date. Suite 210 shall be delivered to and accepted by Tenant upon the Substantial Completion of Landlord's Work as set forth in this Section 2.2, or in the event Tenant does not elect to have the four (4) offices constructed by Landlord, on the Commencement Date. The full Minimum Base Rent and Common Area Expenses set forth in Section 1.1 shall be due and payable upon delivery of possession of Suite 210 to Tenant.

2.3. **Innovation Center.** Landlord acknowledges that the Premises will be used to host third party companies in order to showcase the technology of such companies in a living lab setting ("Users"). Users will have the opportunity to work on their proof of concepts with City of Las Vegas ("City") staff and utilize this platform to commercialize and test their products. Users will have a finite amount of time within the Premises that they are allowed to showcase their technology and operate their proof of concepts. There will be space to host small educational gatherings as well as occasional mixers. In addition, the city will regularly host groups who are interested in what the City is doing from a smart city perspective and to review the City's technology. Landlord approves such use. Landlord further acknowledges that: (i) in connection therewith, Tenant will be entering into agreements with the Users for the use of the Premises ("User Agreements") and (iii) Tenant will be charging the Users under the User Agreements fees and other consideration for the use of the Premises. Notwithstanding anything to the contrary contained herein, including, without limitation Section 14, Landlord hereby approves Tenant entering into the User Agreements and permitting the use of the Premises by the Users and agrees that any amounts charged to the Users shall belong to Tenant. Landlord further agrees that prior consent of Landlord is not required to the Tenant's entering into any User Agreement.

SECTION 3

RENT

3.1. **Payment of Rent.** Tenant hereby covenants to pay the Minimum Base Rent and the Common Area Expenses to Landlord, on the first (1st) day of each calendar month during the Term, in cash, check or immediately available funds, at Landlord's address as provided in Section 1.1, without set-off, deduction, counterclaim, abatement or reduction whatsoever. The Minimum Base Rent and Common Area Expenses shall hereinafter be referred to collectively as the "Rent". Payments of Rent with respect to any partial month shall be prorated on a daily basis based on a thirty (30) day month. All checks for the Minimum Base Rent, Common Area Expenses and any other amounts due and payable to Landlord shall be made payable to The Herbert, LLC.

3.2. **Prepaid Rent.** On the Effective Date, Tenant shall pay to Landlord an amount equal to first full month's Minimum Base Rent and Common Area Expenses.

3.3. Payment of Common Area Expenses. In addition to Tenant's payment of Minimum Base Rent, Tenant shall pay "Tenant's Proportionate Share of Common Area Expenses", as set forth in Section 7.3 herein below. Tenant's Proportionate Share of Common Area Expenses: (i) shall be estimated by Landlord as of the Effective Date, and at the beginning of each Lease Year thereafter, and (ii) shall be paid by Tenant monthly based on Landlord's estimate. On or before the Effective Date, Landlord shall deliver to Tenant a "Common Area Expense Budget" setting forth in detail the budget for the first Lease Year's Common Area Expenses, including the Common Area Expenses that will be allocated to Tenant based on the Cost Pools (as hereinafter defined) and included in Tenant's Proportionate Share of the Common Area Expenses, subject to the cap set forth above for the first Lease Year. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall submit to Tenant a statement (the "Common Area Expense Reconciliation Statement") setting forth the actual amounts due from Tenant with respect to such period. If the amount Tenant has paid is less than the amount due based on the Common Area Expense Reconciliation Statement, Tenant shall pay Landlord such deficiency within thirty (30) days after submission of such statement to Tenant. If the amount paid by Tenant is greater than the amount actually due, the excess may be retained by Landlord and credited and applied by Landlord to the next due installment(s) of Tenant's Proportionate Share of Common Area Expenses, or, with respect to the final Lease Year (but provided Tenant is not in default), Landlord will refund such excess to Tenant. Landlord agrees that any annual increase in Tenant's Proportionate Share of "Controllable Common Area Expenses" (as herein after defined) shall be limited to one hundred four percent (104%) increase over the immediately prior Lease Year.

Within forty-five (45) days after receipt of a Common Area Expense Reconciliation Statement by Tenant, if Tenant disputes the amount of Tenant's Proportionate Share of Common Area Expenses set forth in the Common Area Expense Reconciliation Statement, Tenant may, after reasonable notice to Landlord and at reasonable times subject to Landlord's reasonable scheduling requirements, inspect Landlord's records at Landlord's offices; provided that Tenant is not then in default under this Lease and Tenant has paid all amounts required to be paid under the applicable Statement; and further provided that such inspection must be completed within thirty (30) business days after Landlord's records are made available to Tenant. If, within ten (10) days after such inspection, Tenant notifies Landlord in writing that Tenant still disputes such Tenant's Proportionate Share of Common Area Expenses included in the statement, then a certification as to the proper amount shall be made, at Tenant's expense, by an independent certified public accountant selected by Landlord, which certification shall be final and conclusive; provided, however, if the actual amount of Tenant's Proportionate Share of Common Area Expenses applicable to the Project during that Expense Year, as determined by such certification, is determined to have been overstated by more than five percent (5%), then Landlord shall pay the costs associated with such certification. Tenant's failure (i) to take exception to any Statement within forty-five (45) days after Tenant's receipt of such Statement or (ii) to timely complete its inspection of Landlord's records or (iii) to timely notify Landlord of any remaining dispute after such inspection shall be deemed to be Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Statement, which Statement shall be considered final and binding. Tenant may not inspect Landlord's records pursuant to this Section 3.3 more than two (2) times during the Lease Term.

3.4. **Option Period Rent.** Tenant shall have and is hereby granted an option to extend the initial Term of the Lease for two (2) additional five (5) year period(s) (the "Option Periods") to begin immediately upon the expiration of the initial Term (without the necessity of executing a new lease therefor) and to run successively thereafter and upon the same terms, provisions and conditions as contained in this Lease, except for the Rent provisions hereinafter set forth, and except there shall be no additional options to extend; provided, however, Tenant's right to exercise any option to extend hereunder shall, at the time of each and every exercise of such option, be subject to each of the following conditions: (i) that Tenant is not in default in the performance of any of Tenant's obligations under the Lease; (ii) Tenant has provided Landlord with the required prior written notice set forth herein below; and (iii) Tenant is open and continuously operating its business in the Premises.

Notice of exercise of any option to extend shall be in writing to Landlord and shall be given not more than eighteen (18) months nor less than six (6) months prior to the expiration of the initial Term or the immediately preceding Option Period, as the case may be. This Option to Extend shall be personal to the original Tenant identified in Section 1 of this Lease and shall not be exercisable by any assignee of said original Tenant.

The Minimum Base Rent payable by Tenant during the first year of the first Option Period shall be equal to one hundred three percent (103%) of the Minimum Base Rent payable during the last month of the initial five (5) year Lease Term, and shall continue to increase on the first day of every Lease Year of the first Option Period by 3%. The Minimum Base Rent payable by Tenant during the first year of the Second Option Period, if applicable, shall be equal to one hundred three percent (103%) of the Minimum Base Rent payable during the last month of the first Option Period, and shall continue to increase on the first day of every Lease Year of the second Option Period by 3%.

3.5. **Late Charges.** In the event any installment of Rent is past due by more than (5) business days, a late charge of ten percent (10%) of the delinquent amount may be charged by Landlord

3.6. **Net Lease.** Tenant hereby acknowledges and agrees that this Lease is intended to be a completely net lease to Landlord. Except as otherwise provided herein, Landlord shall not be responsible for any Common Area Expenses (as defined herein) or Taxes (as defined herein).

SECTION 4

USE OF PREMISES

4.1. **Permitted Use and Business Name.** Tenant shall use the Premises for the Permitted Use and for no other purpose, and otherwise in compliance with all applicable laws, and any Rules and Regulations instituted by Landlord with respect to the Project.

4.2. **Tenant's Conduct at the Premises.** Tenant shall carry on its business at the Premises in compliance with all laws, and the Rules and Regulations and shall not cause, permit or suffer to be done or exist upon the Premises anything which shall result in a danger or hazard. Tenant shall be prohibited from conducting any use, or making any modification, which would in any manner (i) violate any certificate and occupancy, or similar governmental approval applicable

to the Project; (ii) cause structural injury to all or any part of the Building or to any improvements in the Project; (iii) lead to an increase in insurance premiums at the Project; or (iv) constitute a public or private nuisance.

4.3. **Signage.** Tenant may not install any signage at the Premises or at the Project without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any signage installed by Tenant shall comply with applicable laws, and any Rules and regulations governing the Project. Although a formalized sign criteria was not created for the Project, Landlord encourages Tenant to design signage that is consistent and harmonious with the existing signage in the Project. Landlord requires that all Building signage be halo or back lit channel letters similar to the other tenant's signage in the Project. In addition, Tenant shall be required to provide blade signs for each Suite comprising the Premises in accordance with the blade signs currently existing in the Project. Tenant shall be solely responsible for the cost and expense of the design, manufacturing, installation and maintenance of all of Tenant's Building Signs, and solely responsible for the design, installation and maintenance of Tenant's logo and/or other identifying information to be located on the blade signs.

SECTION 5

UTILITIES

Landlord shall be responsible for bringing all utilities for Tenant's Permitted Use to the Premises. Tenant shall be solely responsible for the cost of providing any utility services to the interior of the Premises, including, without limitation gas, electricity, water, sewer, internet service, and any other utilities serving the Premises. To the extent such utilities are not separately metered, Tenant shall be responsible for the cost of the same through Tenant's Proportionate Share of Common Area Expenses. Landlord reserves the right to stop or reduce the level of any or all of the utility services contemplated hereunder when necessary by reason of: (i) accident or emergency, (ii) mechanical breakdown if beyond Landlord's control to repair, or (iii) any other cause beyond Landlord's reasonable control. Further, Tenant hereby acknowledges that Landlord shall have no liability for any interruption or failure to provide utility services so long as Landlord is taking all steps within Landlord's control to mitigate such causes of interruption or failure, other than as a result of the negligence or willful misconduct of Landlord.

SECTION 6

TAXES

6.1 **Real Estate Taxes.** Tenant shall pay to Landlord, on a monthly basis as Common Area Expenses, an amount equal to one-twelfth (1/12th) of Landlord's reasonable estimate of the Taxes to become due during the Lease Year in question, and Landlord shall apply such payments received from Tenant to such Taxes as they become due. As used herein, "Taxes" shall mean any and all taxes, assessments, impositions, or similar governmental charges or any kind or nature assessed upon or payable with respect to Landlord's ownership of the Project and the Premises, and Landlord's revenue or gross receipts arising from the Project, the Rent, or this Lease. Any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in

attempting to protest, reduce or minimize Taxes shall be included in Taxes in the calendar year such expenses are paid. Refunds of Taxes shall be credited against Taxes and refunded to Tenant regardless of when received, based on the calendar year to which the refund is applicable. Notwithstanding anything to the contrary contained in this Section 6, there shall be excluded from Taxes (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items paid by Tenant under Section 6.2, and (iii) tax penalties incurred as a result of Landlord's failure to make payments and/or to file any tax or informational returns when due.

6.2 Personal Property Taxes. Tenant shall be responsible for and pay, when due, any and all taxes, fees or assessments levied on Tenant's furniture, fixtures and equipment, trade fixtures, utility installations, and any other personal property in the Premises.

SECTION 7

COMMON AREAS, COMMON AREA CHARGES, AND PARKING

7.1. Landlord Control of Common Areas. There shall be available in the Project certain areas and facilities to be used for automobile parking and for the general use, convenience and benefit of the employees and invitees of Tenant and the other tenants, owners, and occupants of the Project, which areas together with the service corridors and all other service facilities and equipment are referred to herein as "Common Areas". Except as otherwise specifically set forth in this Lease, Tenant and its employees, and invitees are authorized, empowered and privileged to use the Common Areas in common with other authorized persons, as determined by Landlord, during the Term. Landlord shall keep or cause to be kept said Common Areas in a neat, clean and orderly conditions, properly lighted and landscaped, and shall repair any damage to the facilities thereof. Tenant's right to use the Common Areas shall be subject to the right of Landlord, from time to time as deemed reasonably necessary in Landlord's sole and absolute discretion, to: (i) establish, modify and enforce reasonable rules and regulations with respect to the Common Areas; (ii) enter into, modify, and terminate easements, licenses and other agreements pertaining to the use and maintenance of the Common Areas and any portions thereof and any additions thereto or exclusions therefrom; (iii) temporarily close any portions of the Common Areas; and (iv) do and perform such other acts which relate to, concern or arise out of the Common Areas and improvements thereon in Landlord's commercially reasonable judgment.

7.2. Common Area Expenses. Common Area expenses shall include all costs and expenses of every kind and nature paid or incurred by Landlord arising out of Landlord's ownership, maintenance, operation, repair, replacement, management and administration of the Project, including, but not limited to: (a) any and all Taxes ; (b) all utility costs, to the extent any utilities are not separately metered to the Premises or the other leased premises within the Project; (c) the cost and expense of any and all repairs and maintenance to the Common Areas of the Project, including, but not limited to, landscaping, lighting, parking lot maintenance and repair, painting, the Building, window washing, and the maintenance and repair of the roof deck included in the Premises, including such items as landscaping and floors on the roof deck; (d) the cost of

any capital improvements to the Building or the Common Areas, amortized over the useful life of the same (as determined by generally accepted accounting principles); (e) the cost of the premiums for insurance policies obtained by Landlord relating to the Building or the Common Areas, including reimbursement for deductibles not in excess of Ten Thousand Dollars (\$10,000.00) ; (f) any assessments owed pursuant to any covenants, conditions and restrictions or other restrictive covenants recorded against the Project; and (g) an administration fee equal to five percent (5%) of the Common Area Expenses. Common Area Expenses shall exclude the following expenses: (1) all amounts which are actually recovered by Landlord from specific tenants; (2) the Common Area Expenses recovered by Landlord from insurance proceeds; (3) leasing costs (including tenant improvements), fees, and leasing commissions; (4) costs and fines assessed against Landlord due to the violation by Landlord of any other leases within the Project; (5) all costs and expenses associated with the initial construction of any improvements or buildings to be occupied or used primarily by other tenants at the Project; (6) mortgage or ground lease payments; (7) costs incurred by Landlord in the repairs, capital additions, alterations or replacements made or incurred to rectify or correct defects in construction, design, materials or workmanship in connection with any portion of the Building or Project; (8) costs of leasing commissions, accounting fees', attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with past, present or prospective tenants or other occupants of the Building; (9) depreciation and amortization; (10) the cost of acquiring sculptures, paintings or other objects of art in the Building (11) costs of depreciation and amortization except as permitted in Section 7.2(d), (12) Landlord's corporate overhead, and (13) all grease trap costs and all maintenance costs attributable to the restaurant tenants in the Project. "Controllable Common Area Expenses" shall include all of the foregoing Common Area Expenses, excluding Taxes, Insurance, Utilities and trash collection.

7.3. Tenant's Proportionate Share of Common Area Expenses. Tenant's Proportionate Share of the Common Area Expenses for each calendar year shall be that portion of all Common Area Expenses, multiplied by a fraction, the numerator of which is the number of square feet of Floor Area of the Premises, and the denominator is the total number of square feet of Floor Area of the Building. The term "Floor Area" shall include all areas in the Building available for the exclusive use and occupancy by a tenant measured from the exterior surface of exterior walls and from the extensions thereof, in the case of openings, and from the center of walls dividing the Premises from other premises. No deduction or exclusion shall be made from Floor Area by reason of columns, stairs, elevators, escalators, or other interior construction or equipment within the Premises. The Floor Area of the Premises set forth in Section 1.1 shall be definitive and shall not be re-measured or otherwise amended or modified. The Parties agree that Tenant's Proportionate Share is as set forth in Section 1.1.

Notwithstanding anything contained in this Section 7.3 or elsewhere in this Lease to the contrary, at Landlord's option, Landlord shall have the right to allocate certain Common Area Expenses to less than all of the occupants in the Building (the "Cost Pool"). In the event Tenant is one of the occupants participating in such Cost Pool, its share of the applicable Common Area Expenses covered by such Cost Pool shall be computed in the manner set forth in this Section 7.3, but the denominator used to determine such share shall exclude those occupants not participating in such Cost Pool. In addition, in the event Tenant's operations from the Premises results in unusual or extraordinary Common Area Expenses (in comparison to other occupants in the Building), Landlord shall have the right to allocate such expenses solely to Tenant.

7.4. **Parking.** Tenant's use of the Common Areas shall include the non-exclusive right to park in such areas within the Common Areas as are designated by Landlord from time to time to be parking areas at no charge to Tenant or Tenant's employees or the Users. Landlord may, at its discretion, from time to time (i) change the location, size, and layout of the parking area, provided that Landlord does not reduce the number of parking spaces below that number of parking spaces currently located on the Project; (ii) designate a specific portion or portions of the parking area for parking by employees of all tenants of the Project; (iii) assign specific parking spaces for use by Tenant and or other tenants within the Project; and (iv) establish reasonable time limits on use of the parking areas. In no event shall any of the parking areas be used by Tenant for: (a) parking any inoperative vehicle, or for (b) any repair, maintenance, servicing, cleaning or other work on any vehicle.

SECTION 8

REPAIR AND MAINTENANCE OBLIGATIONS

8.1 Landlord's Obligations. Except as expressly provided in Sections 8.2 and 8.3, Landlord shall maintain in good condition and repair, commensurate with similar office buildings in the greater Las Vegas area, the Premises and the Building, including, without limitation, the following: (i) the roof, foundation, exterior walls and structural components of the Building; (ii) the Common Areas, (iii) all operating systems of the Project and those directly serving the Premises, including, without limitation, heating and air conditioning systems, mechanical systems, plumbing systems, and electrical systems, (iv) all utilities serving the Premises, (v) the hydraulic doors serving the Premises, and (vi) the utility meters systems serving the Premises, if any. Landlord agrees to maintain the parking lot in the Project in good repair and clean condition at all times. Tenant agrees that all such costs shall be included in Common Area Expenses. Tenant shall promptly notify Landlord of any damage or necessity of repair of any systems, appliances or other fixtures or equipment located in the Premises. In addition, Landlord agrees that it shall maintain the Appliances in good and working condition at its sole cost and expense for the Lease Term, subject to the terms and conditions of Section 8.3 herein below.

8.2 Tenant's Obligations. Except for those obligations assumed by Landlord in Section 8.1 and Section 8.3, Tenant shall, at its sole cost and expense, maintain the interior of the Premises and every part thereof in good order, condition and repair, including without limitation the interior and non-structural walls, ceilings, floor surfaces and doors within the Premises and the furniture within the Premises. Tenant shall provide its sole cost and expense janitorial services required for the Premises. Tenant shall dispose of garbage in the proper, designated containers serving the Building. Landlord reserves the right to require that all repair and maintenance to be performed by Tenant at the Premises be performed by contractors approved in writing by Landlord, provided, however that Tenant may utilize employees of the City of Las Vegas to perform such maintenance and repairs at Tenant's discretion. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in at least as good condition as existing as of the Commencement Date, reasonable wear and tear excepted.

8.3 Tenant/User Actions. Notwithstanding anything to the contrary set forth in this Section 8, Tenant agrees that any repair or replacement required to the Premises as a result of the

negligent or willful actions of Tenant or of a User, including the misuse of the Appliances, shall be the sole responsibility of Tenant to replace or repair at Tenant's sole cost and expense.

SECTION 9

ALTERATIONS TO PREMISES

9.1. **Alterations.** Tenant shall not make any interior, exterior, or structural additions, alterations, improvements or changes ("Alterations") in, or to the Premises without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole discretion. Any such approved Alterations shall be at the sole cost and expense of Tenant. Landlord may impose, as a condition to such consent, such requirements as Landlord may deem reasonably necessary. Landlord shall be entitled to post notices on and about the Premises with respect to Landlord's non-responsibility for mechanics' liens. Any Alterations shall be made promptly and in a professional manner, lien free, and in compliance with all applicable laws, all reasonable insurance requirements of Landlord, and with such other requirements as Landlord may impose. Any Alterations made by Tenant shall, at Landlord's option, become the property of Landlord upon the expiration or sooner termination of this Lease. Landlord shall have the right, however, to require Tenant to remove such Alterations, at Tenant's sole cost and expense, upon such termination of this Lease and to surrender the Premises in the same condition as it was prior to the making of any or all such Alterations, reasonable wear and tear excepted.

9.2. **Construction Insurance.** In addition to the requirements of Section 11 of this Lease, prior to the commencement of any Alterations, Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Section 11 of this Lease immediately upon completion thereof.

9.3. **Tenant Indemnity.** Tenant shall indemnify and hold Landlord and the Project free of and harmless from any and all liabilities, losses, claims, or damages arising out of any Alterations undertaken by Tenant, whether specifically under the provisions of this Lease or otherwise, including all costs, damages, expenses, court costs and reasonable attorneys' fees incurred in or resulting from claims made by any person or persons, by other tenants in the Project, their subtenants, agents, employees, customers and invitees. The indemnity set forth in this Section 9.3 shall survive the expiration or earlier termination of the Lease.

SECTION 10

HAZARDOUS MATERIALS

10.1. **Compliance with Environmental Laws.** Tenant agrees that it will comply with all environmental laws, whether local, state or federal (collectively "Environmental Laws"), including, without limitation, (a) the Clean Air Act, 42 U.S.C. 1857 et seq.; (b) the Water Pollution Act, 33 U.S.C. 1151, et seq.; (c) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.; (d) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; (e) the Clean Water Act, 33 U.S.C. 1251, et seq.; (f) the Toxic Substances Control Act, 15 U.S.C. 2301, et seq.; and NRS Chapters 445C (Environmental Requirements) and

459 (Hazardous Materials), all as shall be amended from time to time. Without limiting the foregoing, Tenant agrees as follows: (i) Tenant shall not use the Premises or any portion of the Project to handle, transport, store, treat or dispose of any Hazardous Waste, whether or not it was generated or produced on the Premises; (ii) Tenant shall notify Landlord immediately upon receipt of any notice of a violation of any Environment Laws relating to the Premises or the Project; and (iii) defend, indemnify and hold Landlord and its Mortgagee harmless from and against any and all claims, damage, liability, expense or cost of any kind whatsoever, which Landlord, or its Mortgagee may suffer, incur or pay resulting from or arising out of any act or omission of Tenant, its agents, employees, contractors or invitees, regarding the handling, storage, treatment, transportation, disposal, release or threat of release, or removal of Hazardous Waste in, on, around or from the Premises or any portion of the Project, or a violation of any Environmental Law by Tenant.

10.2. **Hazardous Materials Defined.** The term “Hazardous Materials” shall include, without limitation, any toxic waste, chemical pollutant, solid waste, combination of solid waste, or similar environmental hazard, which, because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to (i) an increase in mortality, (ii) an irreversible or incapacitating illness, or (iii) a substantial, present, or potential hazard to human health or the environment, when improperly treated, stored, transported or disposed, or otherwise managed, whether or not at such time of occurrence, it shall be deemed a violation of any Environmental Law. The obligations of Tenant, as well as the foregoing indemnity, in connection with this Section 10.2, shall survive the expiration or earlier termination of this Lease, anything herein to the contrary notwithstanding.

SECTION 11

INSURANCE; INDEMNIFICATION

11.1. **Tenant’s Insurance.** At all times during the Term, Tenant shall keep in full force and effect, at its sole cost and expense, the following insurance policies:

11.1.1. Fire and extended coverage insurance, with an “all risk” coverage endorsement, insuring Tenant’s stock in trade, furniture, personal property, merchandise, trade fixtures, operating equipment, wall coverings, carpeting and window treatments, and, to the extent installed or paid for by Tenant, all leasehold improvements, fixtures, and non-moveable equipment on the Premises, all in an amount equal to one hundred percent (100%) of the replacement value thereof.

11.1.2 In accordance with Section 41.038 of the Nevada Revised Statutes, the City of Las Vegas has adopted a self-insured liability program. Tenant is covered under such self-insured liability program and, therefore, Tenant self-insures each occurrence. This self-insured liability program is established through a funded reserve system appropriately known as the “Self-Insurance Liability Trust Fund”, and is supported by an annual budgetary allocation. In addition, in accordance with Section 354.580 of the Nevada Revised Statutes, such program includes a Self-Insured Workers’ Compensation Program, effective December 19, 1985. Tenant self-insures each occurrence up to \$1 million for non-public safety personnel and up to \$4 million for public safety personnel, and purchases commercial excess insurance, with statutory limits. This self-insured

workers' compensation program is established by a funded reserve system appropriately known as the "Industrial Self-Insurance Expendable Trust Fund", and is supported by an annual budgetary allocation. Tenant will maintain these programs during the term of this Agreement. Landlord acknowledges that Tenant is not able to provide Landlord or any third parties a certificate naming Landlord or any third parties as an additional insured. Tenant's self-insured liability program shall provide coverage for and insure against any and all liability, claims, damages, and losses relating to, caused by or resulting from Tenant's User Agreements and the Users thereunder occupancy, use and entry in and on the Premises.

11.2. Landlord's Insurance. Landlord shall obtain and keep in force a policy or policies of insurance covering loss or damage to the Building (including exterior walls and roofs) in the amount of eighty percent (80%) of full replacement value. If the premium for any such policy of insurance maintained by Landlord increases as a result of any act, omission, or use of the Premises or the Project by Tenant or the Users under any User Agreement, , Tenant shall pay the full amount of such increase upon demand by Landlord.

11.3. Waiver of Subrogation. Each insurance policy required by this Lease shall contain an express waiver of any and all rights of subrogation against the insured party, its partners, officers, agents, and employees, to the extent of the insurance coverage required under this Lease. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which such party may carry.

11.4. Tenant Indemnification. Landlord shall not be liable for any damages or liability arising out of or resulting from a breach of any duty of any kind or for any injury to or death of persons or loss or damage to Tenant's business or damage to any property of Tenant or any other person arising out of or in any way related to the use, occupancy and enjoyment of the Premises or the Common Areas by Tenant or any person claiming by, through, or under Tenant, unless the same shall be caused solely by the gross negligence or willful misconduct of Landlord. In addition, Landlord shall not be liable to Tenant for any injury, damage, or loss arising out of or in any way related to any act, omission, or negligence of any tenants or occupants of the Building or of other owners of adjacent or contiguous property, all claims against Landlord for any such injury, damage, or loss being hereby expressly waived by Tenant, unless said injury, damage or loss is directly caused by the gross negligence or willful misconduct of Landlord. To the fullest extent permitted by law, but in all events subject to the liability limitations set forth in Chapter 41 of Nevada Revised Statutes Section 41.035, Tenant shall at Tenant's sole cost and expense, protect, indemnify, save and hold harmless Landlord against and from all liability, claims, loss, injury, liens, cost, damage or expense arising out of or in any way related to: (1) any accident or other occurrence in, on or at the Premises caused by Tenant's negligence or willful misconduct; ((2) the occupancy or use of the Premises or any negligent act or willful omission of Tenant, Users, Tenant's its employees, agents, invitees, subtenants, licensees, assignees or contractors; (3) any penalty or damage or charges imposed for any violations of any law or ordinance whether occasioned by the negligence of Tenant or those claiming by, through, or under Tenant; and (4) any failure of Tenant in any respect to comply with and perform all the requirements and provisions of this Lease. Tenant's obligation to indemnify Landlord, shall survive the expiration or earlier termination of this Lease for acts or omissions occurring prior to such expiration or earlier termination, and shall additionally include the retention of legal counsel and related reasonable attorneys' fees and reasonable investigation costs (as well as all other reasonable and related costs,

expenses and liabilities). For purposes of this Subsection 11.5 only, the term "Landlord" shall be deemed to include Landlord, the members of Landlord, the fee owner of the Project if other than Landlord, Landlord's managing agent for the Building, their respective subsidiaries and affiliates, and the respective members, directors, officers, agents, servants, and employees of each of the foregoing. Tenant acknowledges and agrees that its liability pursuant to this Subsection 11.5 is not limited to the amount of any insurance set forth and provided for in Section 11.1. The obligations of Tenant, as well as the foregoing indemnity, in connection with this Section 11.5, shall survive the expiration or earlier termination of this Lease, anything herein to the contrary notwithstanding.

SECTION 12

DAMAGE OR DESTRUCTION

12.1. **Damage to Premises.** If the Premises or the Building are damaged or destroyed in whole or in substantial part by fire or any other casualty, Landlord may, by notice to Tenant given within sixty (60) days of such damage or destruction, terminate this Lease. In such event, neither Landlord nor Tenant shall be required to repair the Building or Premises and Tenant shall surrender the Premises to Landlord within thirty (30) days after delivery of the notice of termination. Rent shall be apportioned and paid promptly to Landlord through the date on which Tenant delivers vacant possession of the Premises to Landlord. If Landlord is entitled to but does not elect to terminate this Lease, Landlord shall, following such damage or destruction, diligently repair that part of the Building damaged or destroyed, but only to the extent of Landlord's obligations pursuant to the terms of this Lease, excluding any tenant's responsibilities with respect to such repair. If Landlord elects to repair the Building, Landlord may do so in accordance with plans and specifications which may be different from those used in the original construction of the Building. Notwithstanding the foregoing, if the restoration and repair of the damage may reasonably be estimated to take more than six (6) months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving written notice to Landlord of its intent to terminate. In such instance, this Lease shall terminate on the date on which Tenant delivers vacant possession to Landlord.

12.2. **Abatement of Rent.** If any damage or destruction to the Premises described in Section 12.1 causes material interference with the operation of Tenant's business at the Premises, and if this Lease is not terminated pursuant to any provision of this Section 12, Tenant shall be entitled to a proportionate reduction and abatement of Minimum Rent and Tenant's Share of Operating Costs equal to the unusable Floor Area of the Premises as a percent of the total Floor Area of the Premises. Any such reduction shall be prorated so that such abatement shall be in effect only for those days and to the extent that the Floor Area of the Premises is actually unusable.

SECTION 13

CONDEMNATION

If the whole or any part of the Premises or any part of the Building shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier (the "Condemnation Date"), whereupon the Rent shall be

paid up to the Condemnation Date with a proportionate refund by Landlord of any Rent paid for a period subsequent to the Condemnation Date. All compensation awarded or paid upon a total or partial taking of the Premises, Common Areas or Building, including the value of the leasehold estate created hereby, shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. Nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or the cost of removing trade fixtures, furniture and other personal property belonging to Tenant; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any Mortgagee.

SECTION 14

ASSIGNMENT AND SUBLETTING

14.1. Request by Tenant. Subject to Section 2.3, Tenant shall not assign, sublease, transfer or encumber (together, a "Transfer") this Lease or Tenant's interest herein, without the prior written consent of Landlord. If Tenant is a limited liability company, corporation, partnership or other entity, any proposed Transfer of more than thirty (30%) percent of the ownership interest in Tenant shall constitute a Transfer for which Landlord approval is required hereunder. Upon receipt of a request by Tenant to Transfer its interest under the Lease, Landlord shall have the right to request such reasonable information and documentation as Landlord may require to evaluate such request, and Landlord shall respond to Tenant's request within thirty (30) days of receipt of the same. Landlord shall have the right to charge Tenant a non-refundable fee of One Thousand Five Hundred Dollars (\$1,500.00) to compensate Landlord for its time and expenses incurred in connection with the proposed Transfer. Any attempted Transfer by Tenant without Landlord's prior written consent shall be null and void, and of no force and effect. Landlord's acceptance of Rent from any party other than Tenant shall not serve as evidence of Landlord's consent to any Transfer.

14.2. Tenant Remains Liable. No assignment, sublease or Transfer of this Lease by Tenant shall release Tenant of its obligations set forth herein, and Tenant shall remain primarily liable to Landlord with respect to the same. Upon the occurrence of an Event of Default by an assignee, sublessee or transferee of Tenant, Landlord may proceed directly against Tenant without the necessity of pursuing any remedy against such assignee, sublessee or transferee. Consent to one Transfer by Landlord shall not constitute Landlord consent to any subsequent Transfer.

SECTION 15

EVENTS OF DEFAULT AND REMEDIES

15.1. Tenant Default. The occurrence of any of the following events shall constitute a "Default" or an "Event of Default" and material breach of this Lease by Tenant:

15.1.1. Any failure by Tenant to pay any Minimum Base Rent, Common Area Expenses, or any other sum required to be paid under this Lease, or any part thereof, more than ten (10) days after the date due;

15.1.2. Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in Default if it commences such cure within the thirty (30) day period and thereafter cures said Default and diligently pursues said cure to completion;

15.1.3. Abandonment or vacation of the Premises by Tenant. As used in this Lease with respect to the Premises, the terms “vacate” and “abandon” shall include, without limiting the broadest meaning of those terms, the failure of Tenant to be open to the public for business in the Premises for a period of thirty (30) consecutive days unless such failure is excused or permitted under the express terms of this Lease or by written agreement between Tenant and Landlord.

15.1.4. Tenant or any guarantor of Tenant’s obligations under this Lease makes an assignment for the benefit of creditors, files a petition in bankruptcy, takes the benefit of any insolvency act, is dissolved, or adjudicated a bankrupt, or an involuntary petition in bankruptcy is filed by any party against Tenant or any guarantor, a receiver is appointed for Tenant’s business or its assets, or Tenant’s assets are otherwise seized by process of law.

15.1.5. Tenant has failed to perform or been in Default under this Section 15 more than twice within any twelve (12) month period during the Term, and as a result thereof, Landlord delivered a default notice to Tenant. Any third or subsequent Default under the Lease within said twelve (12) month period shall be deemed a non-curable Default and Landlord, in addition to all other rights and remedies it may have hereunder, shall have the right to take immediate possession of the Premises and/or terminate the Lease.

15.2. Landlord Remedies. Upon the occurrence of any Event of Default by Tenant, Landlord may, at any time thereafter, with or without notice or demand, pursue any and all rights and remedies of Landlord at law or in equity, including, but not limited to, retaking possession of the Premises and terminating the Lease. Landlord’s rights and remedies as set forth herein shall be cumulative, and the exercise by Landlord of any right or remedy shall not preclude Landlord from pursuing any other rights or remedies. Notwithstanding anything to the contrary in this Lease, in no event whatsoever shall Tenant be liable for or shall Landlord be entitled to special, incidental, consequential or punitive damages for Tenant’s Default.

15.3. Landlord Default. Landlord shall not be in Default hereunder unless Landlord fails to perform the covenants and agreements contained in this Lease, on or before thirty (30) days after written notice by Tenant to Landlord and following Landlord’s failure to act within such thirty (30) day notice period, to the holder of any first mortgage or deed of trust covering the Premises whose name and address was furnished to Tenant in writing. If the nature of Landlord’s Default is such that more than thirty (30) days are required to cure the Default, then Landlord shall not be in Default if Landlord commences the cure within said thirty (30) day period and thereafter diligently prosecutes the same to completion. In the case of a Default by Landlord, prior to Tenant’s exercise of any remedy, the holder of any first mortgage or deed of trust encumbering the Project shall have the right, but not the obligation, to cure the default pursuant to the terms and conditions of Section 16.3.

15.4. **Tenant Remedies.** Upon the occurrence of any Event of Default by Landlord, Tenant may, at any time thereafter, pursue any and all rights and remedies of Tenant at law or in equity, including damages, injunctive relief or specific performance. Tenant's rights and remedies as set forth herein shall be cumulative, and the exercise by Tenant of any right or remedy shall not preclude Tenant from pursuing any other rights or remedies. Notwithstanding anything to the contrary in this Lease: in no event shall Tenant have the right to terminate this Lease as a result of Landlord's Default, and in no event whatsoever shall Landlord be liable for or shall Tenant be entitled to special, incidental, consequential or punitive damages for Landlord's Default. Tenant's claim for damages shall be limited to the income generated from the Project as more specifically described in Section 20.4, and no other assets of Landlord shall be subject to any liability therefor.

SECTION 16

SUBORDINATION, ESTOPPEL CERTIFICATE AND MORTGAGEE PROTECTION

16.1. **Subordination.** As used herein, SNDAA means a customary subordination non-disturbance and attornment agreement which requires any mortgage holder or ground lessor to accept this Lease, and not to disturb Tenant's possession, so long as an event of default has not occurred and be continuing (a "SNDAA") executed by Landlord, Tenant and the appropriate mortgage holder or ground lessor now or in the future in place. This Lease is and shall be subordinate to all present and future ground leases, deeds of trust and other security interests in the Premises, the Building or the Project, including any modifications, renewals or extensions thereof, provided that Tenant has received a SNDAA in connection therewith. Tenant agrees that upon demand from Landlord, to execute the SNDAA along with the appropriate mortgage holder or ground lessor. If Landlord or any Mortgagee elects to have this Lease prior to the lien of any ground lease, deed of trust or other security instrument, and Landlord or Mortgagee provides written notice of such election to Tenant, then such ground lease, deed of trust or other security instrument shall be subordinate to this Lease. Should any Mortgagee ever acquire or foreclose upon Landlord's ownership interest in the Premises, Tenant shall attorn to such Mortgagee, or the purchaser at the foreclosure sale, as applicable, as Landlord under this Lease as provided in the SNDAA Tenant has received in connection therewith. Notwithstanding anything to the contrary contained herein, Landlord agrees to secure and provide to Tenant prior to the Commencement Date a SNDAA from any mortgage holder or ground lessor currently in place. In the event that the SNDAA is not delivered to Tenant by the Commencement Date, Tenant shall have the right to delay the Commencement Date until the SNDAA is received, provided, however, that in the event the SNDAA is not received within ninety (90) days of the Effective Date, Tenant can terminate this Lease by written notice to Landlord and upon such termination neither Landlord nor Tenant shall have any further obligations hereunder.

16.2. **Estoppel Certificate.** Tenant hereby agrees that, from time to time during the Term, Tenant shall provide to Landlord, within thirty (30) days of Landlord's written request a statement confirming that this Lease is unmodified and in full force and effect (or, if this Lease has been modified, that this Lease is in full force and effect as so modified), stating the date through which Rent has been paid, confirming that Landlord and Tenant are not in default of their obligations under the Lease, and such other commercially reasonable matters as Landlord may require.

16.3. **Mortgagee Protection Clause.** Tenant agrees to give any mortgagees and/or trust deed holders, by certified mail, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing of the addresses of such lender, mortgagees and/or trust deed holders. Tenant further agrees that if Landlord shall have failed to cure such Default within the time provided for in this Lease, then the lenders, mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days any mortgagee and/or trust deed holder has commenced and is diligently pursuing the remedies necessary to cure such default, including, but not limited to, commencement of foreclosure proceedings if necessary to effect such cure.

SECTION 17

HOLDING OVER

17.1. **Holdover Tenancy.** In the event that Tenant shall remain possession of the Premises after the expiration or earlier termination of the Term, such holding over shall be deemed to have created a month-to-month tenancy, terminable upon thirty (30) days' written notice by either party to the other, subject to all of the terms and provisions of this Lease (including the payment of Tenant's Proportionate Share of Common Area Expenses). Notwithstanding the foregoing, the Minimum Base Rent payable during the holdover period shall equal one hundred fifty percent (150%) of the Minimum Base Rent payable by Tenant to Landlord during the immediately preceding twelve (12) month period.

17.2. **Surrender of Premises.** Tenant shall, upon expiration or termination of the Term, surrender the Premises broom clean, in good condition and repair, with all mechanical, electrical and plumbing systems in good operating condition, reasonable wear and tear excepted. Tenant shall promptly surrender all keys for the Premises at the place then fixed for payment of Rent. At the expiration or earlier termination of the Term, Tenant shall execute, acknowledge and deliver to Landlord, within five (5) days after written demand from Landlord to Tenant, any document required by Landlord or its title company to remove the cloud of this Lease from the real property upon which the Premises are situated.

SECTION 18

SALE OF PREMISES BY LANDLORD

In the event of any sale, exchange or other conveyance of Landlord's interest in the Project or any portion or portions thereof by Landlord, and an assignment by Landlord of this Lease, Landlord shall be and is hereby entirely released and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale, exchange or conveyance and assignment. The transferee of the Project shall not be required to sign any assignment and assumption agreements specifically relating to this Lease, but shall assume this Lease in a general form of assignment of leases for the Project on a form approved by the transferee.

SECTION 19

NOTICE

Any notice, request, approval, demand, consent or other communication required or permitted under this Lease (including also any exhibits, addenda and riders attached hereto and made a part hereof) shall be in writing and shall be deemed sufficiently given or served by Landlord or Tenant to or on the other, as the case may be, at the time of mailing by certified or registered mail, postage prepaid, or upon personal delivery, which shall include deposit with a local courier service or a nationally recognized overnight courier service with a package tracking system, addressed to the notice address of the addressee specified in Section 1.1 hereof. Either party may change such address (provided personal delivery is able to be delivered at such new address) by written notice to the other in accordance with this Section 19. Notice given by the legal counsel for a Party or by the authorized agent of the Landlord shall be effective notice under this Section 19.

SECTION 20

MISCELLANEOUS PROVISION

20.1. **Entry by Landlord.** Landlord shall have the right, upon providing twenty-four (24) hours' notice to Tenant, to enter upon the Premises, together with Landlord's agents, vendors and representatives, for the purpose of (i) showing the Premises to prospective purchasers or lessees thereof; and (ii) undertaking repairs or improvements as required or authorized hereunder. For the purpose of this Section 20.1, notice may be provided verbally or via email to the email address provided by Tenant. In the event of an emergency, no notice shall be required.

20.2. **Successors and Assigns.** Each and all of the provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns, subject to all agreements, covenants, and restrictions contained elsewhere in this Lease with respect to the assignment, transfer, encumbering or subletting of all or any part of Tenant's interest in this Lease or the Premises.

20.3. **Partial Invalidity.** If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and such other provision shall remain in full force and effect. If any provision of this Lease is capable of two constructions, one of which would render the provision void and one of which would render the provision valid, the provision shall be interpreted in the manner which would render it valid. It is the intention of the parties hereto that the covenants of this Lease be independent of each other. It is agreed that, if any provision of this Lease shall be determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect.

20.4. **No Personal Liability of Landlord.** Tenant shall look solely to Landlord's interest in the Premises and the Project of which the Premises are a part for the satisfaction of any judgment or decree requiring the payment of money by Landlord based upon any Event of Default under this Lease or upon any act or omission of any partner, member, shareholder or director of Landlord

(including also any of the respective successors of any of the foregoing), arising out of this Lease or relating in any way thereto or to the Project, and no other property or assets of Landlord or of said partners, members, shareholders or directors of Landlord (including also any of the respective successors of any of the foregoing), shall be subject to levy, execution or other enforcement procedures for satisfaction of any such judgment or decree.

20.5. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof. This Lease is and shall be the only lease agreement between the parties relative to the Premises hereto and their respective representatives and agents as of the date hereof. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein, and no modification of this Lease shall be effective unless the same shall be in writing and be signed by the parties hereto or, as the case may be, their respective successors or assigns.

20.6. Governing Law. The laws of the State of Nevada shall exclusively govern the validity, construction, performance and enforcement of this Lease. Should either party institute legal action to enforce any obligation contained herein, it is agreed that the proper venue of such suit or action shall be Clark County, Nevada. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of its language. LANDLORD AND TENANT HEREBY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (INCLUDING ANY CLAIM FOR INJURY OR DAMAGE AND ANY EMERGENCY AND OTHER STATUTORY REMEDY IN RESPECT THEREOF) BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, AND/OR TENANT'S USE OR OCCUPANCY OF THE PREMISES

20.7. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, pandemics and endemics and any business stoppage or lockouts or lockdowns related thereto, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage, excluding Tenant's obligations to pay the Minimum Base Rent and the Common Area Expenses pursuant to this Lease, which shall not be interrupted or delayed.

20.8. Time. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

20.9. Relationship of Parties. Nothing contained in this Lease shall be deemed to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, other than the relationship of landlord and tenant.

20.10. **Real Estate Brokers.** Landlord and Tenant hereby warrant to the other that they have had no dealings with any broker or agent in connection with this Lease, other than Landlord's Broker set forth in Section 1.1 which will be paid by and is the sole obligation of Landlord. Landlord and Tenant hereby hold each other harmless and indemnify the other from and against any and all cost, expense or liability including legal fees and costs in defense thereof for any compensation, commissions and charges claimed by any broker or agent, other than Landlord's Broker, with respect to this Lease.

20.11. **Subtenancies.** The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this Lease shall not result in a merger and shall, at Landlord's option, terminate all existing subtenancies or operate as an assignment to Landlord or any or all of such subtenancies.

20.12. **Quiet Enjoyment.** Landlord covenants that Tenant, on paying the Minimum Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, as such may be extended, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord, including any matters of record.

20.13. **Prevailing Party.** In the event that either party shall institute any legal action or proceeding against the other relating to the provisions of this Lease, or any Event of Default hereunder, the prevailing party shall have the right to recover reasonable attorneys' fees and costs incurred by the prevailing party.

20.14. **Disclosure of Principals.** Landlord warrants that it has disclosed, on the form attached hereto as Exhibit "D", all principals, including partners or members, of Landlord, as well as all persons and entities holding more than one percent (1%) interest in Landlord or any principal, partner or member of Landlord. Landlord shall provide Tenant with written notification of any material change in the above disclosure within thirty (30) days of any such change.

Signatures on following page

IN WITNESS WHEREOF, Landlord and Tenant have duly executed and delivered this Lease as of the date first above written.

LANDLORD:

THE HERBERT, LLC
a Nevada limited liability company

By: JCD Holdings, LLC
a Nevada limited liability company
Its: Managing Member

By: _____
Name: J Dapper
Its: Manager

AMJS BASIN, LLC
a Nevada limited liability company

By: _____
Name: J Dapper
Its: Authorized Representative

TENANT:

CITY OF LAS VEGAS REDEVELOPMENT
AGENCY,
an agency organized under the laws of the state
of Nevada

By: _____
Name: Carolyn G. Goodman, Chair

Attest: _____
LuAnn D. Holmes, Secretary

Approved to Form

Office Lease

RDA/CC Meeting ___/___/2021
RDA Item #___ & CC Item #___

[signature page]

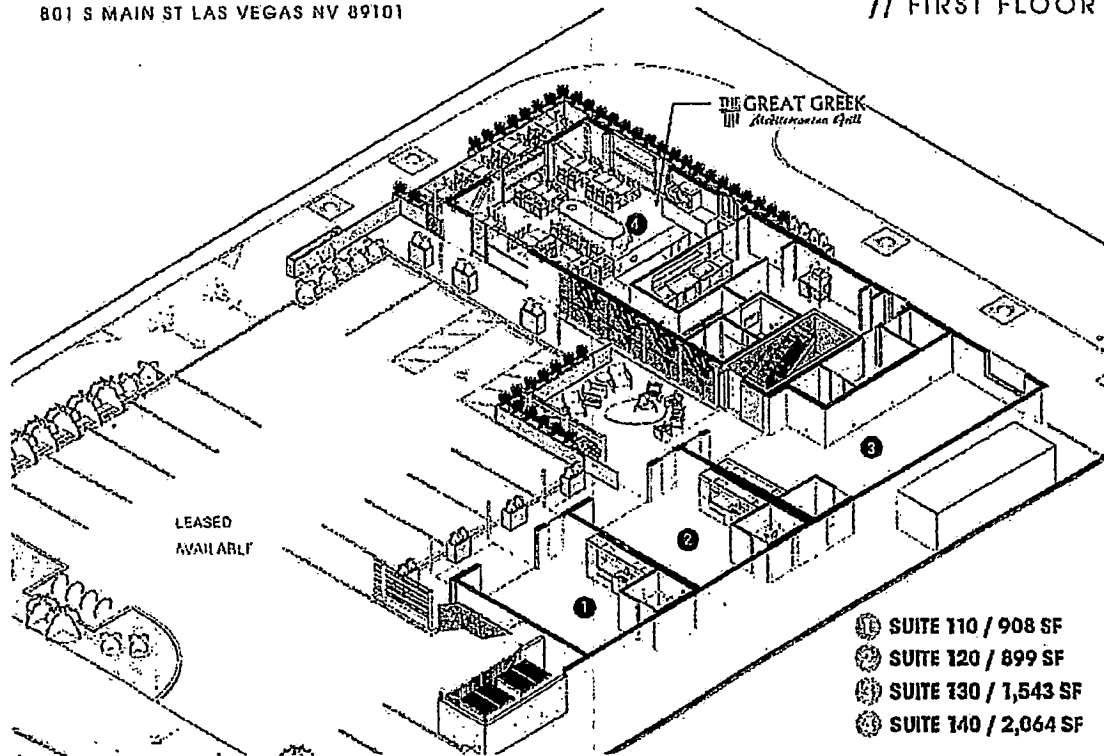
EXHIBIT "A"

PROJECT SITE PLAN

THE HERBERT

801 S MAIN ST LAS VEGAS NV 89101

// FIRST FLOOR



PREMISES SITE PLAN

801 S MAIN ST LAS VEGAS NV 89101

LEASED
AVAILABLE

1 CREATIVE OFFICE SPACE
SUITE 210 / 3,654 SF

2 CONFERENCE

3 PRIVATE DECK WITH
CITY VIEWS 1,750 SF

EXHIBIT C

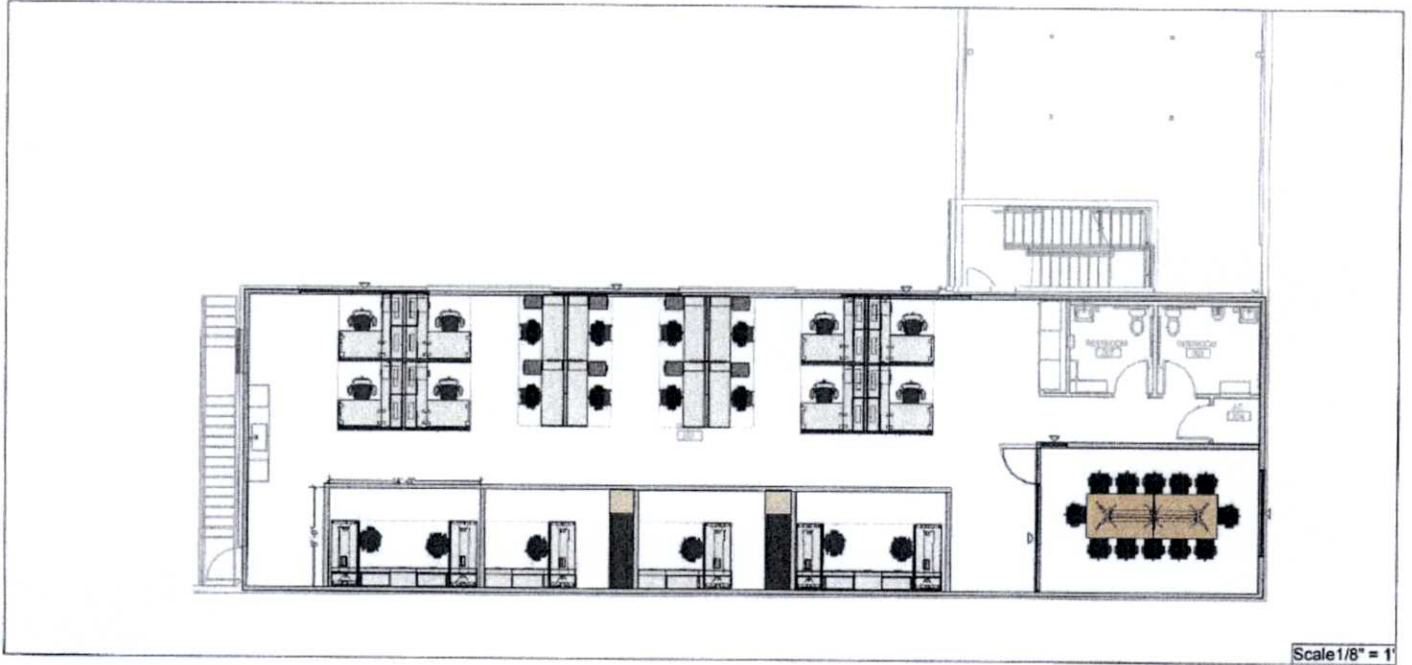
LANDLORD WORK

“Landlord’s Work”: Landlord shall install and construct four (4) 9’ by 14’ offices in Suite 210, to be either, in Landlord’s discretion, traditional studs and sheet rock construction or modular offices, similar to the DIRT systems, in the location and configuration shown on the Floor Plan attached hereto as Exhibit “C-1”, in final turnkey build-out condition, with all improvements, including, but not limited to, all fixtures, equipment, appliances, and all mechanical, electrical and plumbing systems in new and operating condition. .

Tenant shall accept delivery of possession of the Premises within ten (10) days of receipt of written notice from Landlord that Landlord’s Work is “**Substantially Complete**”, and a certificate of occupancy has been obtained for the Premises, and Tenant has been given exclusive possession of the Premises. Landlord’s Work shall be deemed “Substantially Complete” at the expiration of said ten (10) day period, despite any refusal by Tenant to accept Landlord’s tender of delivery of possession of the Premises or even if the following are not then complete: (i) minor details or adjustments, the non-completion of which shall not materially interfere with Tenant’s ability to perform any of Tenant’s work or improvements or conduct its regular business. All Landlord’s Work shall be done using new materials and shall be performed in a good and workmanlike manner. Upon receipt of written notice from Tenant of any defect in Landlord’s Work received by Landlord on or before the date that Tenant opens for business, Landlord shall promptly correct such condition.

Exhibit "C-1"

Floor Plan for Suite 210



The Herbert

ACCT MGR: Heather Bressler
DESIGNER: Rachel Conrad

PROJECT# | CORE:
95125

SHEET:
4/4

APPROVAL:

HB HENRIKSEN
BUTLER
DC:Herbert_6.1.2021.cdw

Exhibit D

CERTIFICATE DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1	Contracting Entity
Name	THE HERBERT, LLC
Address	985 WHITE DR
	LAS VEGAS, NV 89119
Telephone	(702) 733-3622
EIN or DUNS	84-3520771

Block 2	Description

Block 3	Type of Business
☐ Individual	☐ Partnership
☒ Limited Liability Company	☐ Corporation
☐ Trust	☐ Other:

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS
(CONTINUED)

Block 4 Disclosure of Ownership and Principals

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	AMJS BASIN, LLC See Organizational Chart Attached	10899 EDEN RIDGE AVE LAS VEGAS, NV 89135	(702) 236-9874
2.	BENJAMIN ENGLER	6056 S DURANGO DR LAS VEGAS, NV 89113	(563) 343-8211
3.	DREAM BIG HOLDINGS, LLC See Organization Chart Attached	10899 EDEN RIDGE AVE LAS VEGAS, NV 89135	(702) 236-9874
4.	3B HOLDINGS, LLC FRANK R BONANNO III	6950 W ROME BLVD LAS VEGAS, NV 89131	(702) 289-1215
5.	JMS SEPARATE PROPERTY TRUST JASON M SMYLLIE, TRUSTEE	10314 GARDEN GLEN LN LAS VEGAS, NV 89135	(702) 373-6359
6.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Name The Herbert, LLC, by JCD Holdings, LLC
its Managing Member by J Dapper, its Manager

Date 9-7-21

Subscribed and sworn to before me this 7th day of

September, 2021

Joy M. Clowes
Notary Public

