

LEASE

by and between

THE CITY OF SAN JOSÉ  
("LANDLORD" or "CITY")

and

HOME EAT, LLC  
("TENANT")

Site Address:  
88 S 4<sup>th</sup> Street, Suite 150  
San José, California

## EXHIBITS TO LEASE

EXHIBIT A The Property

EXHIBIT B The Premises

EXHIBIT C Insurance Requirements

## LEASE

This Lease ("Lease") dated as of February 28, 2024, is made and entered into by and between THE CITY OF SAN JOSÉ, a municipal corporation of the State of California (hereinafter "LANDLORD" or "CITY"), and HOME EAT, LLC, a California limited liability company ("TENANT"), and is effective as of March 1, 2024 (Commencement Date").

### 1. Basic Lease Provisions and Definitions.

- |      |                                |  |
|------|--------------------------------|--|
| 1.1. | <u>Tenant's Trade Name.</u>    | Home Eat   |
| 1.2. | <u>Address of Premises.</u>    | 88 S 4 <sup>th</sup> Street, Suite 150<br>San Jose, CA 95113   |
| 1.3. | <u>Floor Area of Premises.</u> | 11,035 square feet of space as depicted on <b><u>Exhibit B.</u></b>  |
| 1.4. | <u>Initial Lease Term.</u>     | Commence on the Commencement Date and terminate sixty-three (63) months after Commencement Date ("Initial Term").  |
| 1.5. | <u>Options to Extend.</u>      | Three (3) five (5) year TENANT options to extend at fair market value.   |
| 1.6. | <u>Holdover Term.</u>          | This Lease shall continue on a Month-to-Month holdover basis at 150% of the last month's rent with the same terms and conditions after the Initial Term ends, if the Option Term is not exercised. |
| 1.7. | <u>Rent Commencement.</u>      | Rent to commence three (3) months from the Commencement Date or when tenant opens for business to the public, whichever is sooner ("Rent Commencement Date").                                      |
| 1.8. | <u>Monthly Rent.</u>           | \$2.83 per square foot per month. Rent shall increase three percent (3%) every twelve (12) months from Rent Commencement Date.   |

<b>Months</b>	<b>Price/Square Feet</b>	<b>Monthly Rent</b>
1 – 3	\$0	\$0
4 – 15	\$2.83	\$31,229.05
16 – 27	\$2.91	\$32,165.92
28 – 39	\$2.49	\$33,130.90
40 – 51	\$2.57	\$34,124.83
52 – 63	\$2.64	\$35,148.57

1.9. Security Deposit. \$35,148.57.

1.10. Use. Full-service restaurant and catering business.

2. Lease of Premises. LANDLORD hereby leases to TENANT, and TENANT hereby leases from LANDLORD the Premises subject to the terms and conditions set forth herein.

3. Term. The term of this Lease shall commence on the Commencement Date and terminate sixty-three (63) months after the Commencement Date (“Termination Date”). The period between the Commencement Date and the Termination Date shall be referred to as the “Initial Term”.

4. Payments to LANDLORD. Beginning on the Rent Commencement Date, as defined in Section 4.3 below, TENANT agrees to pay LANDLORD as rent for the Premises, in the manner and at the times set forth in this Lease, the monthly base rent to be paid as described below (“Monthly Rent”). Checks shall be made payable to the “City of San José”. All payments shall be sent to the LANDLORD’s address below and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against LANDLORD:

City of San José  
c/o Real Estate Services  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San José, CA 95112  
Attn: Real Estate Fiscal Team

4.1. Monthly Rent. Monthly Rent shall be paid in accordance with the schedule set forth in Section 1.8 above.

4.2. Method and Time of Payment. Commencing on the Rent Commencement Date, as defined below in Section 4.3, and continuing thereafter throughout the term of this Lease, the Monthly Rent shall be paid by TENANT to LANDLORD on a monthly basis on the first day of each calendar month. If the first day of the month is a Saturday, Sunday or a holiday recognized by the Federal Reserve

Bank or the City of San Jose, then the Monthly Rent shall be due on the preceding business day.

4.3. Rent Commencement Date. Rent shall be abated for three (3) months after the Commencement Date during TENANT's fixturation period. Rent payments shall commence three (3) months after the Commencement Date or when TENANT opens for business to the public, whichever is sooner.

4.4. Late Charge. During the term of this Lease, TENANT shall pay, without the necessity of prior demand or notice, to LANDLORD a late charge equal to five percent (5%) ("Late Charge") of any installment of rent that is not received by LANDLORD within five (5) days after the due date for that payment. TENANT and LANDLORD agree that these Late Charges represent a fair and reasonable estimate of the additional costs and expenses LANDLORD will incur by reason of a late payment of rent or back rent by TENANT. In no event shall this subsection be deemed or interpreted to grant TENANT a grace period or extension of time within which to pay any payment of rent or to prevent LANDLORD from pursuing or exercising any right or remedy available to LANDLORD for TENANT's failure to pay a rent payment when due.

4.5. Security Deposit. TENANT shall deposit and maintain with LANDLORD upon execution of this Lease a sum equivalent to the last month's rent, as specified in Section 1.9 ("Security Deposit"). The Security Deposit shall be payable to the "City of San José" in the form of a cashier's check or certified bank check. The Security Deposit shall be held by LANDLORD and may be applied against any unpaid fees, rates or charges due and owing to LANDLORD under this Lease during the term of this Lease. LANDLORD shall not be required to keep the Security Deposit separate from its funds, and TENANT shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid fees, costs, or charges as specified above) at the end of the Lease term shall be returned to TENANT.

5. Options to Extend. If this Lease shall not have been previously terminated and if TENANT is not in default under the terms of this Lease as of the date TENANT exercises its option hereunder, then TENANT shall have the option to extend the term of this Lease on the same terms and conditions (except for Monthly Rent) for up to three (3) additional terms of five (5) years ("Option Term") at the expiration of the Initial Term. Said options may be exercised only by the delivery of written notice by TENANT to LANDLORD at least one hundred eighty (180) days, but not more than three hundred sixty (360) days, prior to the expiration of the existing Term (the "TENANT's Option Election Notice"). Monthly Rent due each month during any Option Term shall be adjusted to (i) the "Prevailing Fair Market Rate" for the rental of restaurant spaces ("Renewal Rental Rate") or (ii) such other rental amount that may be agreed upon between LANDLORD and TENANT. Within sixty (60) days after receipt of TENANT's Option Election Notice, LANDLORD shall deliver written notice of LANDLORD's determination of the Renewal Rental Rate for the Option Term (the "Option Rent Notice"). If TENANT disputes such determination by LANDLORD, TENANT may elect to

withdraw TENANT's Option Election Notice within ten (10) business days after receipt of the Option Rent Notice and this Lease shall terminate on the original Termination Date. For the purposes of this Section, "Prevailing Fair Market Rate" shall be the monthly base rent in the San Jose metropolitan area for leases with substantially similar terms and square footage as may be reasonably determined by LANDLORD in LANDLORD's reasonable discretion.

6. Premises.

6.1. Use of Premises. The Premises shall be used during the term of this Lease for the sole purpose of operating a full-service restaurant and catering business.

6.2. TENANT may cease its operations at any time during the term of this Lease, provided that TENANT shall continue to pay the Monthly Rent and any additional amounts due under the Lease for the remainder of the Lease term.

6.3. Condition of Premises. TENANT accepts the Premises in its current "As-Is" condition.

6.4. Disclosure. Pursuant to California Civil Code Section 1938, Landlord hereby notifies Tenant that as of the date of this Amendment, the Premises has not undergone inspection by a "Certified Access Specialist" ("CASp") to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code Section 55.53. Landlord hereby discloses pursuant to California Civil Code Section 1938 as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Landlord and Tenant hereby acknowledge and agree that in the event that Tenant elects to perform a CASp inspection of the Premises hereunder, such CASp inspection shall be performed at Tenant's sole cost and expense and Tenant shall be solely responsible for the cost of any repairs, upgrades, alterations and/or modifications to the Premises, the Building or the Project necessary to correct any such violations of construction-related accessibility standards identified by such CASp inspection as required by Law, which repairs, upgrades, alterations and/or modifications may, at Landlord's option, be performed by Landlord at Tenant's expense, payable as Additional Rent within ten (10) days following Landlord's demand. Tenant hereby agrees and acknowledges that it shall, (i) provide Landlord with a copy of any and all findings, reports and/or other materials (collectively, the "CASp Report") provided by the

CASp immediately following Tenant's receipt thereof, (ii) maintain as confidential the CASp Report and any and all other materials related thereto, and (iii) pay for the CASp inspection and CASp Report at Tenant's sole cost and expense. If Tenant receives a disability access inspection certificate, as described in subdivision (e) of California Civil Code Section 55.53, in connection with or following any CASp inspection undertaken on behalf, or for the benefit, of Tenant, then Tenant shall cause such certificate to be provided immediately to Landlord.

## 7. Leasehold Improvements.

7.1. Improvements. LANDLORD shall not be required to install or make any additional improvements to the Premises in connection with this Lease. Subject to the provisions hereof, TENANT shall install on the Premises any additional improvements, fixtures, furniture, and equipment reasonably necessary for the operation of TENANT's business ("Tenant Improvements"), subject to the terms hereunder.

7.2. Landlord's Right to Review Plans. LANDLORD shall have the right to review and approve, in its sole discretion, all plans and drawings, including any material changes to the plans and drawings, for the TENANT Improvements, provided, however, that nothing herein shall relieve TENANT of any obligation to submit plans and submissions to City departments or other public agencies as required for construction of the TENANT Improvements. LANDLORD's approval of the TENANT Improvements may be based upon such conditions as LANDLORD deems necessary, including but not limited to TENANT's procurement of sufficient bonds for the TENANT Improvements.

7.3. Liens. All TENANT Improvements shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all laws, applicable permits, ordinances, orders, rules, and regulations (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to the TENANT Improvements, regardless of when they become effective. Nothing done by TENANT in its use or occupancy of the Premises shall create, require or cause imposition of any requirement by any public authority for structural or other upgrading of or improvement to the Premises.

7.4. Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, together with any of TENANT's trade fixtures which were not on the Premises prior to the execution of this Lease, (collectively, "Tenant's Property") shall remain the property of TENANT. Prior to the termination or expiration of the Lease term, TENANT shall remove TENANT's Property from the Premises. In addition, TENANT shall remove from the Premises all items installed by TENANT that are indicative of TENANT's business and shall otherwise "de-identify" the Premises, as TENANT reasonably believes necessary or appropriate for the protection of TENANT's interest in TENANT's trademarks, trade names or copyrights. TENANT shall repair any damage to the Premises caused by such removal, including patching and filling holes.

7.5. Abandonment. Any of TENANT's Property not removed from the Premises within fifteen (15) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of LANDLORD. LANDLORD may possess and dispose of such property as LANDLORD deems appropriate. This provision shall apply under all circumstances, including default by TENANT under this Lease.

8. Prevailing Wages. Throughout the term of this Lease, TENANT shall cause to be paid prevailing wages for all construction work performed at the Premises. For the purposes of this Lease, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 *et seq.*), and as established by the Director of the California Department of Industrial Relations ("DIR"), or in the absence of such establishment by the DIR, by the City's Office of Equality Assurance ("OEA"), for the respective craft classification.

8.1. Goals. In addition to State Law requirements regarding prevailing wages, the City of San José recognizes that TENANT's payment of prevailing wages promotes the following goals:

A. Protection of job opportunities within the City of San José and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;

B. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;

C. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San José by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and

D. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

8.2. Compliance. TENANT's compliance with prevailing wage requirements is a material consideration of LANDLORD in entering into this Lease. LANDLORD will monitor TENANT's compliance with the Labor Code requirements and additional requirements of this Lease through the City of San José's Office of Equality Assurance ("OEA"). TENANT shall:

A. Require its construction contractor and subcontractors to complete and submit all prevailing wage initial compliance documentation to OEA.

B. Following commencement of construction, require its contractor and subcontractors to submit completed certified payroll records with each monthly pay request and TENANT shall refuse to pay all or a portion of a pay request to the extent not supported by certified payroll documentation.

C. Submit all contractor and subcontractor certified payroll to LANDLORD or OEA on a monthly basis within fifteen (15) days of TENANT's receipt ("Payroll Due Date").

D. Require the contractor for the construction of the improvements to grant the LANDLORD access to the Premises at reasonable times for the purpose of enforcing the provisions of this Section.

E. Provide the LANDLORD with documentation relating to compliance with this Section.

F. Indemnify and hold the LANDLORD harmless from any third party costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages.

8.3. Breach. LANDLORD and TENANT recognize that TENANT's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and LANDLORD's additional prevailing wage compliance provisions within this Lease, will cause the LANDLORD damage by undermining LANDLORD's goals in assuring timely payment of prevailing wages, and will cause the LANDLORD additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by TENANT's payment of restitution to the worker paid less than the prevailing wage. LANDLORD and TENANT further recognize the delays, expense and difficulty involved in proving LANDLORD's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, LANDLORD and TENANT agree that:

- (A) for each day beyond the Payroll Due Date that TENANT fails to submit contractor's certified payroll to LANDLORD, TENANT shall pay to LANDLORD as liquidated damages the sum of FIFTY DOLLARS (\$50.00); and
- (B) for each instance where LANDLORD or OEA has determined that prevailing wage requirements were not met, TENANT shall pay to LANDLORD as liquidated damages the sum of three (3) times the

difference between the actual amount of wages paid and the prevailing wages which should have been paid.

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LANDLORD

*Wenming Zhang*

TENANT

9. Maintenance, Repairs, and Alterations.

9.1. Tenant's Obligations. TENANT, at TENANT's sole cost and expense, shall keep the Premises in first class condition and repair, including maintaining all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and all doors and plate glass windows (both interior and exterior) in the Premises, interior walls, any TENANT signage and any flooring. Except for interior structural and other items to be maintained and repaired by LANDLORD pursuant to **Section 9.2** below, TENANT, at its sole cost and expense, shall keep the entirety of the interior of the Premises, including TENANT's fixtures, case goods and furnishings, in good condition and repair. TENANT shall provide a contract for regular maintenance of the HVAC with an HVAC company approved by LANDLORD. Notwithstanding any provision to the contrary, TENANT's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of LANDLORD, its agents, employees or servants, or of any other TENANT of the Property; or (b) any repair or improvement caused by LANDLORD's failure to perform its obligations hereunder or under any other agreement between LANDLORD and TENANT.

9.2. Landlord's Obligations. Except for repairs and replacements to the Premises that TENANT must make under Section 9.1 above, LANDLORD shall make all other repairs and/or replacements to the Premises. LANDLORD shall commence such repairs and/or replacements within thirty (30) days of receiving, from TENANT, written notice of the need for the repairs and/or replacements. Such repairs, replacements and maintenance shall include without limitation the upkeep of the roof, roof structures and supports, HVAC (excluding TENANT's maintenance contract), sprinkler system, gutters, downspouts, foundation, exterior walls, storefront, and all structural components of the Premises. LANDLORD shall also repair and maintain all sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the Property as a whole. LANDLORD shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and storefronts. In the event of an emergency, TENANT may give LANDLORD such notice as is practicable under the circumstances, and if LANDLORD fails to make such repairs immediately, TENANT may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to LANDLORD for reimbursement. Notwithstanding any provision to the contrary, LANDLORD's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful

misconduct of TENANT, its agents, employees or servants; or (b) any repair or improvement caused by TENANT's failure to perform its obligations hereunder or under any other agreement between LANDLORD and TENANT.

9.3. Surrender. Upon the expiration or termination of this Lease, TENANT shall surrender the Premises to LANDLORD, broom clean, and in good order, condition and repair, ordinary wear and tear and damage which LANDLORD is obligated to repair hereunder excepted.

9.4. LANDLORD's Rights. If TENANT fails to perform TENANT's obligations under Section 9.1 above, LANDLORD may, but shall not be required to, enter upon the Premises, after ten (10) days prior written notice to TENANT, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not less than twenty percent (20%) of the actual costs thereof, shall become due and payable as additional rent to LANDLORD together with TENANT's next monthly installment falling due after TENANT's receipt of an invoice for such costs.

9.5. Alterations. The installation of any additional leasehold improvements necessary for TENANT's operation of its business in the Premises shall be performed in accordance with Section 7. TENANT shall not thereafter make any alterations, improvements, additions, or utility installations in, on or about the Premises without LANDLORD's consent, which consent shall not be unreasonably withheld with respect to any non-structural alteration of the Premises that does not affect the exterior appearance of the Premises or affect in any material way building systems (i.e. electrical, plumbing and HVAC). All other alterations, improvements, additions or installations shall be subject to LANDLORD's prior approval which may be withheld or conditioned in its sole discretion. LANDLORD shall provide a written response to the request for approval within thirty (30) days after receipt of TENANT's written request; a failure to receive a written approval shall be deemed a denial. Notwithstanding the foregoing, during the Lease term, TENANT may replace and repair the improvements that were installed as TENANT Improvements in accordance with this Lease, without LANDLORD's prior consent, if such replacement and repair is consistent with the plans or design concept approved by LANDLORD in accordance with Section 7.

## 10. Compliance with Law and Increased Hazards.

10.1. Compliance with Laws. During the Lease term, TENANT, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") affecting the Premises or the improvements thereon, or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, TENANT acknowledges that

LANDLORD, acting not as LANDLORD but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by LANDLORD acting not as LANDLORD but in its capacity as a governmental regulatory body.

10.2. Increased Hazards. TENANT shall not occupy or use or permit any portion of the Premises to be occupied or used, for any business or purpose that is disreputable or productive of fire hazard or permit anything to be done that would increase the rate of fire or other insurance coverage on the Property and/or its contents. TENANT shall comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to the use, condition or occupancy of the Premises, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions and other environmental matters. Nothing done by TENANT in its use or occupancy of the Premises shall create, require or cause imposition of any requirement by any public authority for structural or other upgrading of or improvement to the Premises or the Property.

11. Signage and Displays. With respect to signage on the Premises, LANDLORD and TENANT agree as follows:

11.1. LANDLORD may allow TENANT, at TENANT's sole cost and expense, to place one or more signs on the exterior of the Premises provided that any such sign is in accordance with the City's Sign Ordinance, and the design and location of any such sign has been approved in advance in writing by LANDLORD. Any such signage shall be designed and installed in a manner that maintains existing building system warranties. Upon expiration or earlier termination of this Lease, TENANT shall remove TENANT's signs from the exterior of the Premises and restore the exterior of the Premises to its original condition, unless otherwise approved by LANDLORD.

11.2. No merchandise shall be displayed except within the Premises.

11.3. TENANT shall comply with such reasonable rules and regulations with respect to the Premises as the LANDLORD may from time to time enact, provided that LANDLORD shall first notify TENANT in writing as to any such rules and regulations.

12. Taxes and Assessments/ Possessory Interest Tax. TENANT acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. TENANT agrees to pay and discharge, during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer

rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of TENANT's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of TENANT acquired pursuant to this Lease on account of any taxable possessory right which TENANT may have acquired pursuant to this Lease. TENANT shall pay or reimburse LANDLORD, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by TENANT hereunder. If at any time during the term of this Lease any taxes (other than personal property taxes) are levied which may, at the election of the taxpayer, be paid in installments and the taxpayer makes such election, TENANT shall pay such installments during the term of this Lease and LANDLORD shall pay any installments thereafter. If any such taxes must be paid in a lump sum, TENANT shall pay the entire amount.

13. Utilities. TENANT shall pay for all water, sewer, gas, electricity, telephone, trash collection and recycling used by TENANT during the Lease term, all of which shall be separately metered/billed to the Premises and paid by TENANT directly to the provider of such service. TENANT shall not be responsible to pay any operating expenses for the building.

14. Assignment and Subletting. TENANT shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Lease, the Premises or any part thereof, or any rights of TENANT hereunder, whether voluntarily or by operation of law, without the prior written consent of LANDLORD, which consent will not be unreasonably withheld. A transfer within the meaning of this Section shall include, but is not limited to, the following: (i) the incorporation of an individual TENANT and the transfer of TENANT's rights hereunder to the corporation which is not wholly owned by TENANT; (ii) in the event that TENANT is a partnership, incorporation of TENANT and transfer of TENANT's rights hereunder to the corporation, or the withdrawal or addition of any partner to TENANT's partnership; (iii) in the event that TENANT consists of co-tenants, the incorporation of TENANT and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of his, her or its rights hereunder to his, her or its co-tenant or to a third person; (iv) in the event that TENANT is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of TENANT; and (v) in the event that TENANT is an unincorporated association, the incorporation of TENANT and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association. In determining whether to consent to such a transfer, LANDLORD may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed

to be conducted by such transferee at the Premises; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to LANDLORD associated with such proposed transfer. Reasonable grounds for denying consent shall include any of the following: (i) the proposed transferee's intended use of the Premises is not for an aviation-related purpose or will materially and adversely affect the LANDLORD's interests at the Premises; (ii) the proposed transferee's financial condition is or may be inadequate to support its obligations under the Lease; (iii) the proposed transferee has failed to meet any legal or contractual obligations to the LANDLORD or is adverse to the LANDLORD in any pending litigation. In addition, LANDLORD's consent to any proposed transfer under this Lease may be conditioned upon, among other things, the express written assumption by the proposed transferee of TENANT's obligations under this Lease and/or performance of required or necessary repairs or maintenance to the Premises. LANDLORD may require payment by TENANT of any processing fee established by LANDLORD pursuant to a resolution or ordinance for reviewing the proposed transfer and preparing any documents in connection therewith. TENANT's failure to provide LANDLORD with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for LANDLORD to deny consent to, or to refuse to review, the proposed transfer. The consent of LANDLORD to any transfer described in this Section shall not relieve TENANT of its obligation to obtain the further consent of LANDLORD for any subsequent transfer. Any attempt to transfer without the consent of LANDLORD shall be void, and shall constitute a default of this Lease. Any such consent, if given by LANDLORD, shall be in writing and may be approved by the Director of Economic Development or his/her designee on behalf of LANDLORD. An approval of an assignment or sublet hereunder shall not relieve TENANT of any liability or responsibility under this Lease, and TENANT shall remain liable for fulfilling all terms, provisions, and conditions of this Lease, including payment of rentals, fees and charges. Any new assignee shall be required to execute an agreement expressly assuming the Lease.

15. Insurance; Indemnity.

15.1. TENANT's Insurance. Prior to the Commencement Date, TENANT at its sole cost and expense and for the full term of this Lease and any extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of TENANT and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in **Exhibit C** on terms and conditions and in amounts as required by LANDLORD from time to time and with insurers acceptable to LANDLORD. Prior to hiring contractors or commencing any work on the Premises, TENANT shall provide proof of coverage of the Automobile Liability OR submit certificates of insurance from their contractors verifying that their contractors meet the minimum insurance requirements with the City of San Jose endorsed and added as Additional Insured per the requirements set forth in **Exhibit C**. LANDLORD shall not be obligated to take out insurance on TENANT's Property or

TENANT's Improvements. TENANT shall provide LANDLORD with certificates of insurance or copies of all policies and such endorsements as may be required by LANDLORD. These requirements are subject to amendment or waiver at the discretion, in writing, of the LANDLORD's Risk Manager. Should TENANT fail to obtain and provide proof of coverage to LANDLORD prior to hiring contractors or commencing work on the Premises, the abated rent for months 1-3, totaling \$93,687.15, shall become immediately due and payable to LANDLORD at LANDLORD's sole discretion, in addition to other remedies.

15.2. Indemnification by Tenant. TENANT shall defend, indemnify, and hold LANDLORD and LANDLORD's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising out of TENANT's use of the Premises ("**Claims**"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of TENANT or TENANT's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on TENANT's part to be performed under this Lease; (d) any violation of any law, ordinance or regulation governing the use of the Premises or (e) the failure of any representation or warranty made by TENANT herein to be true when made. This indemnity does not include any Claims caused by the intentional or solely negligent acts or omissions of LANDLORD or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease as to any Claims arising out of events that occur prior to termination or expiration of the Lease.

16. Environmental Liability.

16.1. Environmental Law. The term "Environmental Law" means any federal, state, or local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

16.2. Hazardous Substance. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by products; asbestos; and polychlorinated biphenyl.

16.3. Release of Hazardous Substances. Except as provided below in Section 16.4, TENANT shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Substance in, on or around the Premises. If any Hazardous Substance is deposited, released, stored, disposed, transported, generated or otherwise introduced by TENANT in, on, or around the Premises or the Property, TENANT, at TENANT's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and

cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances.

16.4. TENANT's Use of Hazardous Substances. Notwithstanding the above and provided that TENANT complies with all applicable Environmental Laws, TENANT shall have the right to use Hazardous Substances on the Premises to the extent such Hazardous Substances (i) are contained in household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, or management of facilities similar to the Premises; or (ii) are commonly used by a significant portion of the population living within the region of the Premises.

16.5. Environmental Indemnity. TENANT shall protect, indemnify, and hold harmless LANDLORD and LANDLORD's agents, officers, directors, employees, and contractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to TENANT's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to TENANT's or TENANT's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. This indemnity shall survive the termination of this Lease.

17. Damage to Premises.

17.1. Landlord's Option to Repair. If a material part of the Premises provided by LANDLORD shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within ninety (90) days from the date of such destruction or damage, LANDLORD may elect, in its sole discretion, to promptly and diligently repair the damage (subject to the limitations set forth in Section 17.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by LANDLORD is damaged, and the damage cannot, by proceeding with reasonable diligence at the sole discretion of LANDLORD, be repaired within ninety (90) days from the date of such destruction or damage, this Lease may be terminated by LANDLORD by written notice given to TENANT within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

17.2. Election to Terminate. If a material part of the Premises provided by LANDLORD is damaged, and the damage cannot, by proceeding with reasonable diligence at the sole discretion of LANDLORD, be repaired within ninety (90) days from the date of such destruction or damage, and LANDLORD has not terminated this Lease pursuant to Section 17.1 above, then this Lease may be terminated by TENANT by written notice given to LANDLORD within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If TENANT does not make the foregoing election within the required period and LANDLORD has not terminated the Lease, then LANDLORD may elect to promptly and diligently repair the

damage and this Lease shall remain in full force and effect (subject to the provisions of Section 17.3 below regarding completion of LANDLORD's repairs).

17.3. Abatement of Rent. If a material part of the Premises provided by LANDLORD is damaged, and LANDLORD elects to repair them pursuant to the provisions of Section 17.1, the Monthly Rent payable pursuant to Section 4.1 shall be abated from the date of the casualty and while such repairs are being made. If, however, TENANT is able to occupy and operate its business within a portion of the Premises, Monthly Rent shall be abated only for the portion of the Premises that TENANT cannot occupy and use. Such partial abatement shall be calculated on a square foot basis. The abatement of Monthly Rent shall be TENANT's sole remedy due to the occurrence of the casualty. LANDLORD shall not be liable to TENANT or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

18. Condemnation.

18.1. Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which TENANT was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both LANDLORD and TENANT shall be released from any future obligations arising under this Lease.

18.2. Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion, in the sole discretion of TENANT, is suitable for the purposes for which TENANT was using the Premises prior to the taking, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both LANDLORD and TENANT shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

18.3. Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then LANDLORD shall be entitled to the entirety of any condemnation award except that TENANT shall be entitled to that portion of such condemnation award allocable to (i) any personal property of TENANT, (ii) any unsalvageable trade fixtures or furnishings owned by TENANT, and (iii) any amounts specifically awarded or agreed upon by the TENANT and the condemning authority for the unamortized portion of TENANT's leasehold improvements and moving expenses. TENANT acknowledges that given LANDLORD's right to terminate this Lease upon ninety (90) days' notice as provided in Section 21 below, TENANT shall not be entitled to any portion of the condemnation award for its leasehold interest in the Premises.

18.4. Effect of Termination. If this Lease is canceled or terminated pursuant to any of the provisions of this Section 18, all rentals and other charges payable on the part of TENANT to LANDLORD hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which TENANT ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

19. Default and Remedies.

19.1. TENANT's Default. If: (i) TENANT shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to TENANT, or (ii) TENANT shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless TENANT shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity, or (iii) the TENANT's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, without permission of the LANDLORD when such permission is required by the terms of this Lease, whether by judgment, execution, death or any other means, or (iv) the TENANT shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the TENANT and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of TENANT shall be appointed by any court (except a receiver appointed at the instance or request of the LANDLORD) and TENANT fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) TENANT shall make a general or any assignment for the benefit of its creditors; or (vi) TENANT shall abandon or vacate (other than a temporary cessation of operations in connection with renovations of the Premises to which TENANT has obtained LANDLORD's approval as required by the terms hereof) the Premises; then in any of such events LANDLORD shall have the following options:

A. To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of TENANT required to be kept or performed; and/or,

B. To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating LANDLORD to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the

term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as LANDLORD in its sole discretion may deem advisable; and/or

C. To terminate this Lease, in which event TENANT agrees immediately to surrender possession of the Premises and to pay to the LANDLORD any unpaid rent or other amounts due to LANDLORD pursuant to this Lease.

20. Holding Over. If TENANT shall hold over the term of this Lease, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease at 150% of the last month's rent.

21. INTENTIONALLY OMITTED.

22. No Relocation. **In consideration of LANDLORD'S consent to this Lease**, LANDLORD and TENANT agree that the tenancy created hereby is of a temporary and finite nature, is occurring after LANDLORD's acquisition of the Property, and that no relocation payments or assistance are owed or will be paid or claimed in any form as a consequence of this Lease. TENANT hereby acknowledge and agree that TENANT is not displaced persons and that continued occupancy and later termination of this Lease agreement does not in any way trigger TENANT's status as a displaced person.

TENANT hereby waives and releases all rights, claims, costs, expenses, demands, damages or causes of action TENANT have or may have in the future against CITY, its officers, directors, employees, consultants, attorneys, accounts, other professionals, insurers and agents of CITY, as a result of, or arising out of, TENANT's relocation from the Property and Premises.

In furtherance of the intentions set forth herein, TENANT acknowledges that he or she is familiar with Section 1542 of the Civil Code of the State of California, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

TENANT's Initials: WZ

TENANT hereby waives and relinquishes any right, appeal or benefit which he or she has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive such rights and benefits pertaining to the subject matter of this Agreement.

23. Time of the Essence. Time is of the essence hereof, and waiver by the LANDLORD or TENANT of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by LANDLORD of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar LANDLORD from recovering the *full* amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for TENANT's performance of any obligations set forth in this Lease may be extended by the LANDLORD's Director of Economic Development or designee, if he/she finds at his/her sole discretion that TENANT has been delayed for reasons not in TENANT's control. Any such extension shall be in writing.

24. Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

25. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be via e-mail or in writing and shall be deemed served when the other party acknowledges receipt via e-mail or when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to:

TENANT at: Home Eat  
20588 Stevens Creek Blvd  
Cupertino, CA 95014  
Attention: Marcus Yang  
E-Mail: [homeeatus@gmail.com](mailto:homeeatus@gmail.com)

LANDLORD at: City of San José  
c/o Real Estate Services  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San José, CA 95113  
Attention: Real Estate Manager  
E-Mail: [kevin.ice@sanjoseca.gov](mailto:kevin.ice@sanjoseca.gov)

with a copy to: City of San José  
Office of the City Attorney  
200 East Santa Clara, 16<sup>th</sup> Floor  
San José, CA 95113  
Attention: Real Estate Attorney  
E-Mail: [cao.main@sanjoseca.gov](mailto:cao.main@sanjoseca.gov)

or to such other address as either party may designate by notice in accordance with this Section.

26. LANDLORD's Access. LANDLORD and its agents shall have the right to enter the Premises upon seventy-two (72) hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring LANDLORD's entry into the Premises, LANDLORD may give TENANT shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, LANDLORD, its agents, employees and/or contractors (a) shall identify themselves to TENANT's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with TENANT's use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

27. Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between LANDLORD and TENANT. LANDLORD and TENANT expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between LANDLORD and TENANT other than the relationship of LANDLORD and TENANT.

28. Advice of Attorneys, Independent Investigation. The parties acknowledge that each has had the opportunity to seek counsel to review the contents of this Lease. This Lease shall be interpreted and construed only by the contents of this Lease and there shall be no presumption or standard of construction in favor of, or against, either party. In executing this Lease, the parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress, or undue influence.

29. Further Acts. Each of the parties agrees to perform any further actions, execute and deliver any further documents and obtain consents, as may be reasonably requested to fully effectuate the purposes, terms and conditions of this Lease.

30. Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews

required of LANDLORD under this Lease may be undertaken and/or given by LANDLORD's Director of Economic Development or designee.

31. Non-discrimination. TENANT shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of TENANTS, lessees, or vendees of the land.

32. General. The terms "LANDLORD" and "TENANT" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in San José, California.

33. Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by TENANT of all of the terms and provisions to be observed by TENANT under this Lease, TENANT shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by LANDLORD or any other person, except as herein expressly provided.

34. Force Majeure. If any act required to be performed by LANDLORD or TENANT hereunder, shall be delayed due to strikes, riots, acts of God, shortages of labor or materials, national emergency, governmental restrictions, laws or regulations, or any other causes beyond either party's control (collectively "Force Majeure Events"), such delay shall not be a violation of this Lease and the time within which such act is required to be performed shall be extended for a period of time equal to the period of such delay. Notwithstanding the preceding, any such Force Majeure Event shall not excuse or abate Tenant's obligation to pay timely Monthly Rent pursuant to Section 4 or utilities under Section 13 of this Lease.

35. Regulatory Authority. TENANT acknowledges that, at any time when the City is the LANDLORD hereunder, LANDLORD shall have certain governmental regulatory authority over the Premises. TENANT agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the City, acting in its capacity as LANDLORD under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

36. City Ethics Requirements.

36.1. Prohibition of Gifts

A. TENANT is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.

B. TENANT agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Lease by TENANT. In addition to any other remedies LANDLORD may have in law or equity, LANDLORD may terminate this Lease for such breach as provided in Section 19 of this Lease.

36.2. Disqualification of City Employees. TENANT is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). TENANT shall not utilize either directly or indirectly any officer, employee, or agent of TENANT to perform services under this Lease, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

37. Subordination. This Lease shall, at LANDLORD's option, be subordinate or superior to any mortgage, deed of trust or ground lease that may exist or hereafter be placed upon the Premises or any part thereof and to any and all advances to be made thereunder and to the interest thereon and to all renewals, replacements and extensions thereof, provided, however, so long as TENANT performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, sale, and no procedures taken under the encumbrance shall affect TENANT's rights under this Lease and the holder of such encumbrance shall agree to recognize this Lease and all of the TENANT's rights hereunder. TENANT shall upon written demand by LANDLORD execute such instruments as may reasonably be required at any time and from time to time to subordinate the rights and interest of TENANT under this Lease to the lien of

any such ground lease, mortgage or deed of trust, or, if requested by LANDLORD, to subordinate any such ground lease, mortgage or deed of trust to the Lease, so long as such instrument includes reasonable non-disturbance protection; provided, however, that TENANT shall, in the event any proceedings are brought for the foreclosure of any such mortgage or deed of trust on termination of such ground lease, attorn to the purchaser upon foreclosure sale or sale under power of sale or the LANDLORD under such ground lease, and shall recognize such purchaser or ground lessor as LANDLORD under this Lease, and so long as TENANT is not in default hereunder, no such termination or foreclosure shall terminate this Lease or otherwise affect TENANT's rights hereunder.

38. Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

39. Authorizations. Where this Lease requires or permits LANDLORD to act and no officer of the CITY is specified, the City Manager or the designated representative of the City Manager (including the Director of Economic Development) has the authority to act on LANDLORD's behalf.

40. Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof, and supersede any prior written or verbal agreements or understandings with respect thereto. This Lease fully integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter of this Lease.

41. Execution in Counterparts. This Lease may be executed in any number of separate counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Unless otherwise prohibited by law or policy of a Party, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the LANDLORD and TENANT. Each Party (i) has agreed to permit the use, from time to time and when allowed by law, of electronic signatures in order to expedite the transaction contemplated by this Lease, (ii) intends to be bound by electronic signature, (iii) is aware that the other will rely on the electronic signature, and (iv) acknowledges such reliance and waives any defenses (other than fraud) to the enforcement of any document based on the fact that a signature was sent by telecopy. As used herein, the term "electronically signed contract" shall include any signature sent via facsimile or via email in portable document format (".pdf").

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year written below.

APPROVED AS TO FORM

  
Email: cameron.day@sanjoseca.gov  
Date: 02/28/2024 PST

CAMERON DAY  
Senior Deputy City Attorney

**LANDLORD:**

CITY OF SAN JOSÉ, a municipal corporation of the State of California

By:   
Email: sarah.zarate@sanjoseca.gov  
Date: 02/28/2024 PST

Name: Sarah Zárate

Title: Director of Administration, Policy, and Intergovernmental Relations

Date: 02/28/2024

**TENANT:**

HOME EAT, LLC, a California limited liability company

By:   
Email: homeeat.us@gmail.com  
Date: 02/28/2024 PST

Name: WENMIN ZHANG

Title: \_\_\_\_\_

Date: 02/28/2024

**This Lease is personally guaranteed by Wenmin Zhang.**

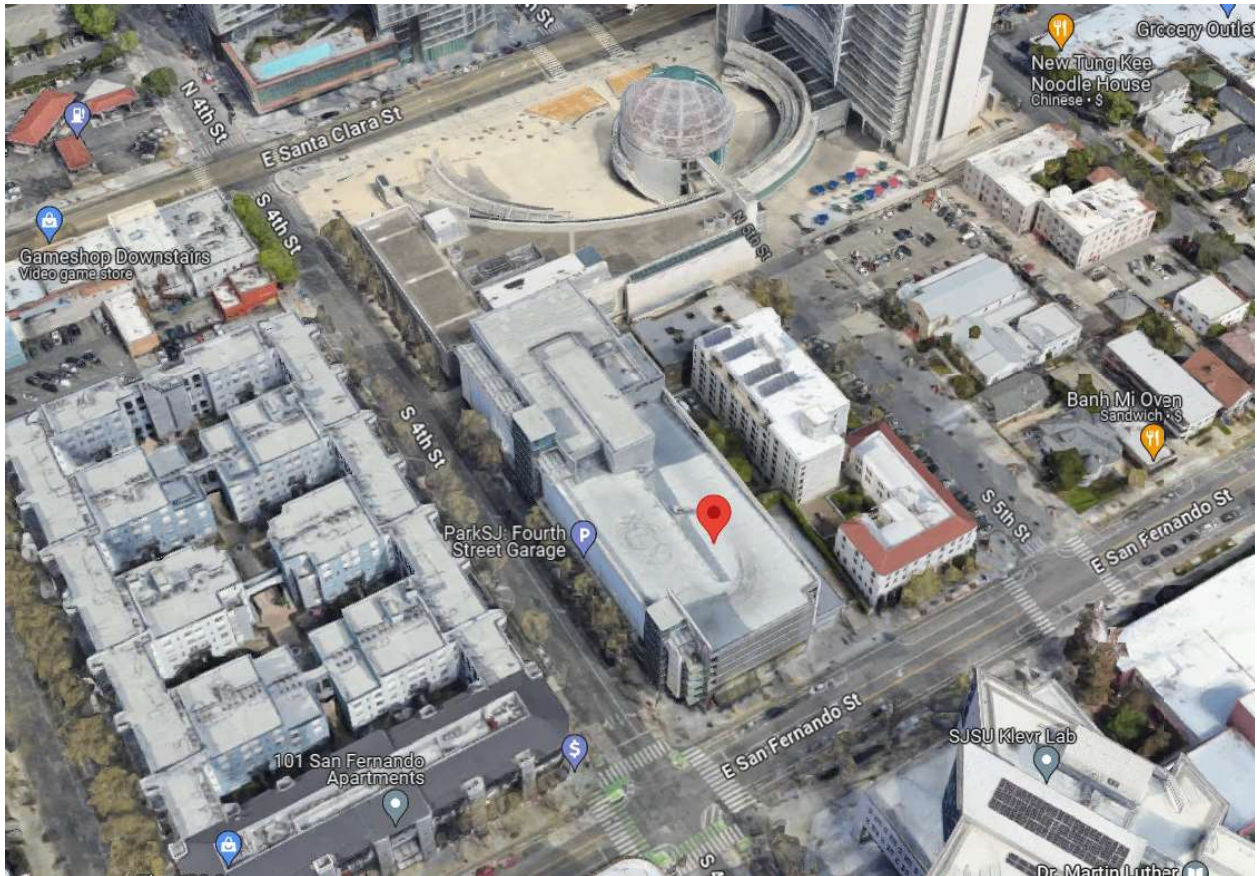
AGREED, ACCEPTED, AND  
GUARANTEED BY:

  
Email: seanzhang1986@gmail.com  
Date: 02/28/2024 PST

WENMIN ZHANG

## EXHIBIT A

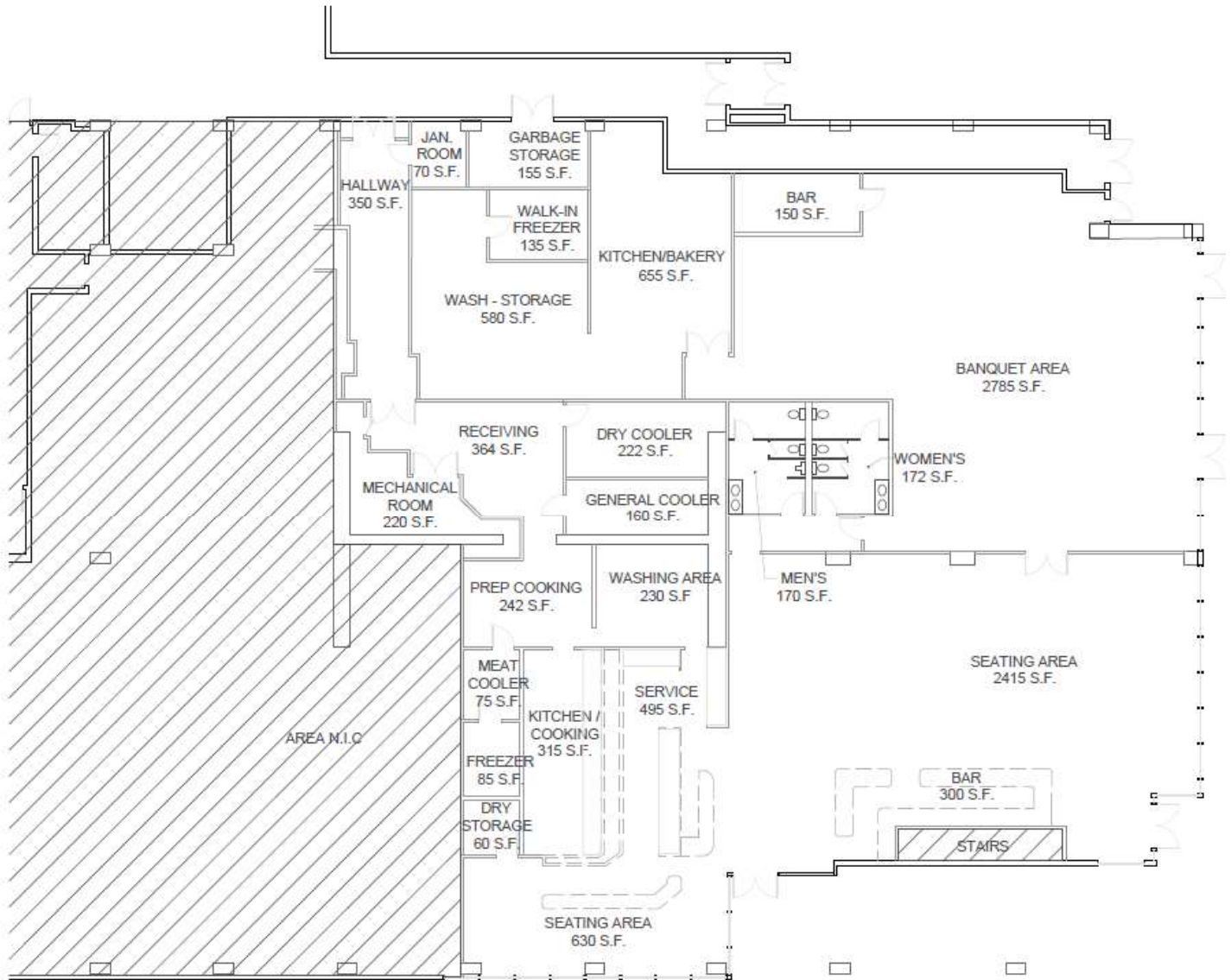
### “Property”



## **EXHIBIT B**

### **"Premises"**

*\*Note, Premises may include sidewalk seating contiguous with the figure shown below, subject to receipt of all applicable permits.*



## **EXHIBIT C**

### **Insurance Requirements**

TENANT, at TENANT's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by TENANT, its officers, employees, agents or contractors.

#### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property for all personal property, contents or materials of TENANT, its licensees, contractors or materials men or subcontractors stored at, on or about the Leased Premises.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

#### **B. Minimum Limits of Insurance**

TENANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.
4. Property casualty insurance or a program of self-insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through TENANT at the Leased Premises.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions in excess of \$250,000 must be declared to and approved by CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, TENANT; products and completed operations of TENANT; premises owned, leased or used by TENANT; and automobiles owned, leased, hired or borrowed by TENANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. TENANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of TENANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by TENANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
  - d. Coverage shall state that TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

2. Property and Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

TENANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format  
to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov):

Certificate Holder  
City of San Jose – Finance Department  
Risk & Insurance Program  
200 East Santa Clara St., 14th Floor  
San Jose, CA 95113-1905

G. **Contractors**

TENANT shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor