

### COMMERCIAL LEASE AGREEMENT

THIS AGREEMENT made, entered into and executed this the \_\_\_\_\_ day of October, 2022, by and between Purcell Co., Inc. (hereinafter "Lessor"), and City of Diamondhead, Mississippi, (hereinafter "Lessee"). Lessor and Lessee contract and agree as follows:

1. Lessor hereby leases unto Lessee the following land located within the City of Diamondhead, and any improvements thereon (hereinafter "the leased property"): Tax Parcel 132J-10-002.39 more particularly described on Exhibit "A" attached hereto and made a part hereof.
2. The term of this lease shall be for a primary term of one (1) year, commencing on November 1, 2022, and expiring at midnight on October 31, 2023, unless extended as provided for herein. This lease can be extended automatically at the end of the primary term for a second term of one (1) year and for additional one (1) year terms thereafter until terminated by either party as provided herein.
3. During the primary term, Lessee shall pay to Lessor, as rental, the sum of One Dollar (\$1.00) per year, in advance, on or before the first day of the lease term.
4. The leased property, which Lessee accepts in its "AS IS, WHERE IS" condition, may be used for the following purposes and for no other purposes: Sponsored Events held by the City of Diamondhead, Mississippi, including but not limited to: City BBQ Contest; Cruisin' the Coast; festivals; or other lawful purpose approved by Lessor. Lessee shall provide security for all Sponsored Events held by the City of Diamondhead, Mississippi.
5.
  - (A) Indemnity: Lessor and Lessee shall indemnify, defend, and hold harmless the other as follows:
    - (i) Lessee shall indemnify, defend and hold Lessor harmless from any and all losses, fines, suits, damages, expenses, claims, demands and actions of any kind resulting from its (including its employees, guests, invitees) negligence, breach, or violation or non-performance of any condition hereof.
    - (ii) Lessor shall indemnify, defend and hold Lessee harmless from any and all losses, fines, suits, damages, expenses, claims, demands and actions of any kind resulting from its negligence, breach, or violation or non-performance of any condition hereof.
  - (B) Insurance: Lessee shall, during the entire term of the Lease keep in full force and effect a policy of public liability insurance with respect to the Property. Such coverage shall include a broad form general liability endorsement. The policy shall contain a clause that the Lessee will not cancel or change the insurance without first giving the Lessors ten (10) days prior written notice.
6. Lessee shall be allowed to install utilities (water, electricity, etc.) on the property and Lessee shall pay for all water, electricity, and other utilities used on the premises. Upon the termination of this Lease, Lessee shall remove all utilities and return the property to its original state.
7. Alterations and Repairs: Lessee shall maintain the property to include cutting grass, picking up litter and other common upkeep. Lessee shall be allowed to spread dirt and sand on property to keep property in usable condition. All repairs and maintenance are to be made by Lessee at Lessee's expense; provided, however, that Lessee shall not be responsible for repairs and maintenance for bulkheads on canals.
8. Lessee will keep the leased property in a clean and wholesome condition and will comply at all times with all lawful health and police regulations.

Lessee shall promptly comply with all of the ordinances of the City of Diamondhead, Hancock County, Mississippi, or of any other governmental body applicable for said premises and to all ordinances and requirements enforced by the state board of health, sanitary, fire or police departments of the City of





Diamondhead for the correction, prevention and abatement of nuisances in and about or connected with the Property because of Lessee's use thereof during the term of this Agreement, all at Lessee's expense. Lessee shall provide for the removal of its own trash, waste paper, boxes and cartons and shall not permit any accumulation of such materials. Lessee shall not engage in any act which shall constitute a nuisance.

9. If Lessee shall make default in the payment of the rent, or any part thereof or any other sums due under the terms hereof, when due as herein provided, or in any of the other covenants, agreements, conditions or undertakings herein contained, and such default shall continue for thirty days after notice thereof in writing to Lessee, or if (a) any proceeding under the bankruptcy act of the United States is begun by or against the Lessee, and an order of adjudication, or order approving the petition, be entered in such proceedings, or (b) a receiver or trustee is appointed for substantially all of the Lessee's business or assets, or (c) if Lessee shall make an assignment for the benefit of creditors, or (d) if Lessee shall vacate or abandon the leased property, then, and in any such event, it shall be lawful for the Lessor, at his election, to declare the term hereof ended and to re-enter the leased property, and to repossess and enjoy the said premises and any buildings and improvements situated thereon without such a re-entry and repossession working a forfeiture of the rents to be paid and the covenants to be performed by the Lessee during the full term of this agreement. If any default shall be made in any covenant, agreement, condition, or undertaking which cannot with due diligence be cured within a period of 30 days, and if notice thereof in writing shall have been given to the Lessee, and if the Lessee, prior to the expiration of 30 days from and after the giving of such notice, shall commence to satisfy the cause of such default and shall proceed diligently and with reasonable dispatch to take all steps and do all work required to cure such default, then the Lessor shall not have the right to declare said term ended by reason of such default; provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Lessor to declare the said term ended and enforce all of their rights and remedies hereunder for any other default not so cured.

The foregoing provision for the termination of this lease for any default in any of its covenants shall not operate to exclude or suspend any other remedy of the Lessor for breach of any of said covenants, or for the recovery of said rent for the full term, and in the event of the termination or default in any of the terms of this lease as aforesaid.

In addition to the above termination provision, either party may elect to terminate for any reason or no reason and at any time with thirty (30) days written notice to be provided to the other party. Notwithstanding the termination provision set forth herein above, the parties agree that the thirty (30) day termination provision will not start until January 1, 2023.

10. Lessee shall permit Lessor and his agents to enter the Property at all reasonable times for any of the following purposes to inspect the same: (i) to maintain the property, (ii) to make repairs to the Property as the Lessor is obligated or may elect to make, and (iii) to post notices of non-responsibility for alterations or additions or repairs.
11. If Property, including improvements thereon, are damaged by fire or other casualty through no fault of the Lessee or its employees, invitees or guests, Lessee shall have the exclusive right and option to either terminate this Agreement or reconstruct and/or repair the said damaged improvements and continue this Lease under its terms and conditions as if no such casualty occurred by giving written notice to Lessor of Lessee's intention to so continue this Lease within thirty (30) days after the date of said damage or casualty. In the event that Lessee so elects to continue this Lease, any insurance proceeds payable as a result of said fire or casualty shall be first applied to pay the reconstruction or repair of said improvements, and any balance of such insurance proceeds after payment of said reconstruction or repair shall be paid to whoever owns the insurance policy under which payment is made. In the event that the damage is caused by Lessee or its employees, guests or invitees, Lessee shall be liable to repair such damage at its sole cost and expense.
12. If, during the term of this Agreement, the Property shall be taken or condemned, either in whole or part, by competent authorities for public or quasi-public use, Lessee shall have the option to terminate this Agreement as of the date of taking. If Lessee elects not to terminate this Agreement, then this Agreement shall continue in full force and effect.



13. It is understood and agreed that the relationship of the parties hereto is strictly that of Lessor and Lessee and that the Lessor have no ownership in the Lessee's enterprise and the Agreement shall not be construed as a joint venture or partnership. The Lessee is not and shall not be deemed to be an agent or representative of the Lessor.
14. All covenants, conditions and agreements and undertakings contained in this Agreement shall extend to and be binding on the respective heirs, successors and assigns of the respective parties hereto the same as if they were in every case named and expressed.
15. It is further understood and agreed by and between the Lessor and Lessee that, on account of breach or default by either party of any of their obligations hereunder, it shall become necessary for the other party to employ and/or consult with an attorney to give advice, or to enforce or demand any of either party's rights or remedies hereunder, then, and in any such event, the defaulting or breaching party shall pay all attorney fees, court costs and other expenses occasioned by such default(s) or breach(es).
16. Written notice to Lessee, all rent checks and all notices from Lessee to Lessor shall be served or sent to:
- Jon McCraw, City Manager  
5000 Diamondhead Circle  
Diamondhead, MS 39525
- Until further written notice to Lessors, all notices from Lessors to Lessee shall be served or sent to Lessee at the following address:
- Artis E. James, Jr., President  
Purcell Co., Inc.  
4401 E. Aloha Drive  
Diamondhead, MS 39525
- All notices to be given under this Agreement shall be in writing and shall be served personally or sent by United States certified or registered mail.
17. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner other than by agreement in writing signed by all parties hereto or their respective successors in interest.
18. If any section, paragraph, sentence or portion of this Agreement or the application thereof to any party or circumstance shall, to any extent, be or become invalid or illegal, such provision is and shall be null and void, but, to the extent that said null and void provisions do not materially change the overall agreement and intent of this entire agreement, the remainder of this Agreement shall not be affected thereby and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent provided by law.
19. This Agreement shall be governed in accordance with the laws of the State of Mississippi.
20. Lessee shall have the right to make such alterations and improvements to the Property as it deems necessary or desirable upon giving written notice of same to Lessors and first obtaining Lessor's written approval. Such alterations and improvements shall comply with all applicable construction laws and regulations and shall conform generally with the existing improvements on the Property. The Lessee shall keep the Property free from any and all liens arising out of the work performed or materials furnished in making such improvements. Lessee shall be responsible for payment of the costs of any said improvements to the Property.
21. Lessee is responsible for its own security upon the leased premises, and hereby agrees to indemnify, defend and hold Lessor harmless from any and all claims or suits asserted against Lessor arising from an absence of or inadequate security procedures or personnel.





22. Conditioned upon Lessee's agreement to indemnify, defend and hold Lessor harmless from any and all liability arising out of or in any way related to the distribution, sale, and/or consumption of alcohol on the leasehold premises, Lessor does not object to Lessor's allowing the lawful sale or consumption of alcohol on the leasehold premises.

WITNESS the signatures of the parties, this the \_\_\_\_ of October, 2022.

LESSOR:

PURCELL CO., INC.

By: Artis E. James, Jr.

Artis E. James, Jr., President

LESSEE:

CITY OF DIAMONDHEAD

By: Jon McCraw

Jon McCraw, City Manager



*[Red handwritten mark]*

Exhibit "A"

