

Lease Agreement

This Lease Agreement ("Lease") is made and effective _____ 202____, by and between the City of Douglas ("City") and A&P Southwest LLC DBA: Adolfson & Peterson ("Tenant").

The City is the owner of a vacant lot located within Cochise County parcel 410-14-001K2 comprised of approximately 42,000 square feet of vacant unimproved land located by Dolores Avenue and Estrella Avenue intersection with northeast corner coordinates 31.35228, -109.53971 and southwest corner 31.35166, -109.53903, Douglas, Arizona depicted on Exhibit A attached hereto and incorporated herein. (the "Premises").

The City desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from the City for the term, at the rent and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

A. The City hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from the City for an initial term ("Initial Term") of eight (8) months commencing on January 13, 2021.

B. At the end of the Initial Term, the Lease will be extended for an additional eight (8) months on a month-to-month basis (the Extended Term) by Tenant giving written notice to the City not less than thirty (30) days prior to the expiration of the Initial Term. The Extended Term may be terminated at any time by the City or Tenant by providing notice to the other party not less than ten (10) days prior to the expiration of each additional one-month term. The Rent for the Extended Term shall be at the rent set forth in Section 2 and upon the same covenants, conditions and provisions as provided in this Lease.

2. Rent.

Tenant shall pay to the City rent in the amount of \$500.00 per month during the Initial Term and each renewal term. Each rent payment shall be due on the first day of each month during the Lease term. The rent amount for any partial calendar month included in the Lease term shall be prorated on a daily basis.

3. Use

A. The Premises are to be used by Tenant as parking for Tenant's employees.

B. Any other uses shall be first approved in writing by the City.

C. Tenant agrees that all services provided by Tenant will meet all federal requirements regarding nondiscrimination as required by Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and any regulations or rules promulgated with respect thereto.

D. Tenant shall not allow any waste or nuisance on the Premises, or use or allow the Premises

to be used for unlawful purposes.

4. Alterations and Improvements.

Tenant shall smooth out the property and add gravel to the entire lot. Gravel shall not be removed after the end of rental term. Tenant shall not construct other improvements on the Premises without the City's prior written approval. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by the City. Tenant shall remove all personal property, trade fixtures, equipment and other temporary installations at the end of the Lease Term. All damage to the Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

5. Acceptance of Premises.

Tenant's taking of possession of the Premises shall be conclusive evidence of Tenant's acceptance thereof in good order and satisfactory condition. Tenant agrees that no representation respecting the condition of the Premises and that no promises to alter, repair or improve the Premises either before or after the execution hereof, have been made by the City or its agents to Tenant unless the same are contained herein or made a part hereof. Tenant understands that premises is adjacent to the City of Douglas Little League Baseball field and that its baseball activities may coincide, thus presenting a potential hazard for baseballs to be hit to or near the leased premises where vehicles can be struck. Tenant accepts these conditions and will instruct its employees to park at their own risk during baseball games.

6. Tenant to Maintain Premises.

Tenant shall, at no expense to the City, maintain the Premises in a neat, clean, safe condition, free of weeds, trash and debris, and in compliance with all applicable laws, rules, regulations and orders.

7. Hazardous Substances.

A. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security, and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Tenant or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Tenant, or any third party.

B. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under, or about the Premises, other than as previously consented to by City, Tenant shall immediately give written notice of such fact to the City, and provide the City with a copy of any report, notice, claim, or other documentation which it has concerning the presence of such Hazardous Substance.

C. Tenant shall indemnify, defend, and hold the City, its agents, and employees harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance

brought onto the Premises by or for Tenant, its agents, employees or invitees (provided, however, that Tenant shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Premises). Tenant's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration, and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation, or release agreement entered into by the City and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed to by the City in writing at the time of such agreement.

D. "Hazardous Substances" means and includes all regulated, hazardous and toxic substances (including without limitation petroleum and petroleum products), pesticides, metals or heavy metals, infectious wastes, solid, liquid or gaseous wastes or materials, any pollutants or contaminants (including, without limitation, PCBs, asbestos and materials or components which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any now existing or hereafter enacted or promulgated local, state or federal law, statute, ordinance, rule or regulation pertaining to environmental protection, regulation, contamination or clean-up, toxic waste, underground storage tanks and hazardous substance or material handling, treatment, storage, use, transportation or disposal, including without limitation the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), state lien or environmental clean-up statutes, all as exist from time to time (all such laws, statutes, ordinances, rules and regulations being referred to collectively as "Environmental Laws").

8. Insurance and Indemnity.

A. If the Premises are damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Tenant shall, at its own expense, maintain a policy or policies of commercial general liability insurance with respect to the activities on the Property. issued by and binding upon an insurance company approved with an AM Best rating of A- or better. Such insurance shall afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. The City shall be an additional insured on Tenant's policy or policies of commercial general liability insurance, and Tenant shall provide the City with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify the City that a policy is due to expire at least (10) days prior to such expiration or, if Tenant's insurers do not so agree, Tenant undertakes to notify the City if any policy that Tenant is required to carry under this Agreement lapses or is canceled. The City shall not be required to maintain insurance against thefts within the Premises.

C. The City shall not be liable for liability or damage claims for injury to persons or property from any cause relating to Tenant's use of the Premises or for those arising out of damages or losses occurring on other areas immediately adjacent to the Premises that may be used by Tenant during the term of this Lease or any extension thereof. But the foregoing does not release the City from liability to the extent arising out of the negligence or willful misconduct of the City, its officers, employees, agents, or contractors (the "City Parties"). Tenant shall defend, indemnify and hold the

City harmless against any and all liabilities, causes of action, claims, damages, demands, costs, penalties and expenses (including reasonable attorney's fees and expenses incurred in the defense thereof) resulting from any injury to person or property or from loss of life sustained in or about the Premises caused by, or resulting from any act, omission, or negligence of Tenant or any employee, agent or invitee of Tenant or arising in connection with the presence, use, storage, disposal, release or transport of any hazardous materials on, under, from or about the Premises, arising from Tenant's use of the Premises, except to the extent such damage or injury results from the intentional misconduct or the negligence of the City or the City Parties. In addition, Tenant hereby releases the City from any and all liability for any loss or damage to Tenant's property caused by fire or any of the extended coverage casualties, unless such fire or other casualty shall be brought about by the misconduct or negligence of the City. Tenant's obligations pursuant to this Section 8C shall survive the expiration or termination of this Lease.

9. Damage and Destruction and Maintenance.

If the Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ten (10) days following damage to elect by notice to the City to terminate this Lease as of the date of such damage.

10. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to City to:

City of Douglas
Attention: City Manager
425 E. 10th Street
Douglas, AZ 85607

If to Tenant to:

A&P Southwest LLC, DBA Adolfson & Peterson
Attention: Rob Cortazzo
5002 S Ash Avenue
Tempe, AZ 85282

The City and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

11. Compliance with Law.

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Premises.

12. **Entire Agreement.**

This Lease terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Lease may be modified only by a further writing that is duly executed by both parties.

13. **Governing Law; Venue.**

This Lease shall be governed, construed and interpreted by, through and under the laws of the State of Arizona. Any litigation between the parties hereto concerning this Lease shall be initiated in Cochise County. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

14. **Assignment.** Tenant shall not assign this Lease or sublet any portion of the Premises, or allow any other persons except the employees, agents, and invitee of Tenant to occupy the Premises without the prior written consent of the City, which consent may not be unreasonably withheld.

15. **Breach by Tenant.** Failure of Tenant to comply with each and every term and condition of this Lease shall constitute a breach of this Lease. Except as otherwise set forth herein, Tenant shall have five (5) days after receipt of written notice from the City of any breach to correct the condition specified in the notice, or if the corrections cannot reasonably be made within the five (5) day period, Tenant shall have a reasonable time to correct the default if action is commenced and thereafter diligently pursued by Tenant within five (5) days after receipt of the notice. In the event of a breach of this Lease by Tenant, the City shall have the right to terminate this Lease and shall have all other rights and remedies provided by law.

16. **Breach by City.** In the event of the breach of this Lease by the City, Tenant shall have the right to terminate this Lease and shall have all other rights and remedies provided by law.

16. **Conflict of Interest.** This Lease is subject to the provisions of A.R.S. §38-511.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

“CITY”

City of Douglas

By:_____

Its:_____

“TENANT”

By: _____

Its: _____

EXHIBIT "A"

Depiction of Premises

