

LEASE AGREEMENT CONCERNING PATIO AREA IN GENERATIONS PLAZA

This LEASE AGREEMENT CONCERNING PATIO AREA IN GENERATIONS PLAZA (“Lease”) is entered into by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, whose address is 33 E. Broadway Avenue, Meridian, Idaho 83642 (“Lessor”), and Trax Holding, LLC, a limited liability company organized under the laws of the State of Idaho, whose address is 877 W. Main Street, Suite 700, Boise, Idaho 83702 (“Lessee”), effective the _____ day of _____, 2024 (“Effective Date”). Lessor and Lessee may be referred to individually as “Party” or collectively as “Parties.”

WHEREAS, Lessor owns Generations Plaza, a public gathering space located in Meridian, Idaho at the northeast corner of the intersection of N. Main Street and E. Idaho Avenue (“Generations Plaza”);

WHEREAS, Lessee owns Lot 4, Block 5, of the Amended Plat of the Townsite of Meridian, Ada County, Idaho (“Lessee Lot”), which is located adjacent to Generations Plaza;

WHEREAS, Lessee wishes to lease a portion of Generations Plaza (“Lease Premises”) for use as a patio area, which will be used in conjunction with café or restaurant uses;

WHEREAS, Lessor is authorized under Idaho Code section 50-1401 to manage real property owned by the Lessor in the public interest;

WHEREAS, the City Council of the City of Meridian hereby finds that leasing the Lease Premises to the Lessee serves the public interest by making Generations Plaza a more desirable place for community members to congregate;

WHEREAS, pursuant to Idaho Code section 50-1409, the Mayor and City Council hereby authorize the lease of the Lease Premises to the Lessee;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, and in consideration of the recitals above, which are incorporated herein, Lessor and Lessee agree as follows:

- I. Lease granted.** In consideration of the payment of rent to be paid by Lessee to Lessor pursuant to this Lease (“Rent”) and the performance of the other covenants, conditions and agreements in this Lease to be kept and performed by Lessee, Lessor does hereby lease and demise the Lease Premises to Lessee. The Lease Premises shall be defined as follows: That certain area commencing at the southeast corner of Lot 3, Block 5, of the Amended Plat of the Townsite of Meridian, Ada County, Idaho; thence 15 feet west along the south property line of said Lot 3; thence 52 feet due north; thence 15 feet due east to the east property line of said Lot 3; thence 52 feet south along the east property line of said Lot 3 to the point of beginning.
- II. Use of Lease Premises.** Lessee’s use and occupancy of the Lease Premises shall be limited to:
 - A. A patio area to be utilized in conjunction with café or restaurant uses associated with the Lessee Lot (“Patio Area”); and,
 - B. Landscaping that is compatible with landscaping in Generations Plaza.

Lessee shall not use or permit the use of the Lease Premises for any other purpose without the express written consent of Lessor. Lessee warrants and represents that Lessee has undertaken a complete and independent evaluation of any and all risks inherent in the execution of this Lease and the operation of the Lease Premises for its use permitted hereby, and that, based upon said independent evaluation, Lessee has elected to enter into this Lease and hereby assumes all risks with respect thereto, some of which risks may be unknown.

- III. Compliance with Local, State and Federal Law.** As a condition of Lessee's use and occupancy of the Lease Premises, Lessee shall obtain and maintain all required local, state and federal permits, certificates and licenses, and comply with all applicable local, state and federal laws and regulations.
- IV. Term of lease.** The term of this Lease ("Term") shall begin on the Effective Date and expire at 11:59 p.m. on September 30, 2025, unless earlier terminated by either Party by the method established herein ("Initial Lease Period"). The lease term shall automatically be renewed for a period of twelve (12) months ("Renewal Period) on a year-to-year basis, until September 30, 2035, unless written notice of termination is given by either Party to the other in the manner set forth herein. Lessee shall be deemed to have occupied the Lease Premises for purposes of commencing the Term as of the Effective Date. Time is of the essence in all matters related to this Lease.
- V. Responsibilities of Lessee.** With regard to Lessee's use and occupancy of the Lease Premises under this Lease, Lessee shall be responsible for each and all of the following.
- A. **Rent.** Lessee shall pay Rent to Lessor. Rent for the Initial Lease Period shall be one thousand eight hundred ten dollars (\$1,810.00), which shall be paid no later thirty (30) days after the Effective Date. If the Lease is subsequently renewed in accordance with Section IV, Rent shall be ten dollars (\$10.00) for each Renewal Period, which shall be paid no later than thirty (30) days after the commencement date of each Renewal Period.
- B. **Property taxes.** If applicable, Lessee shall pay, prior to delinquency, all property taxes due and payable in connection with the Lease Premises.
- C. **Repairs and Maintenance.** During the Lease term, Lessee shall be fully responsible maintaining and repairing all improvements on the Lease Premises, including, but not limited to, the concrete area, patio cover, lighting, and landscaping. Lessee may make modifications and improvements to the Lease Premises, but only if such modifications and improvements are approved in writing in advance by Lessor's Director of Parks and Recreation.
- D. **Surrender of Lease Premises; removal of property.** Subject to the provisions set forth herein regarding early termination, upon expiration of the Lease term or earlier termination of the Lease, whether by lapse of time or otherwise, Lessee, at Lessee's sole expense, shall:
1. Remove Lessee's personal property;
 2. Remove any and all real property improvements designated for removal by Lessor at Lessee's own cost; and
 3. Promptly and peacefully surrender the Lease Premises and yield possession to Lessor.

Any property left by Lessee on the Lease Premises after the expiration or termination of the Lease shall be deemed to have been abandoned and shall become the property of Lessor. Lessee shall be liable for all costs associated with the removal and/or disposal of such property. Lessee hereby waives all claims for damages that may be caused by Lessor's re-entering and taking possession of the Lease Premises or removing and storing Lessee's property. No such re-entry shall be considered or construed to be a forcible entry. Lessee shall indemnify Lessor against any loss or liability resulting from delay by Lessee in surrendering the Lease Premises, including, without limitation, any claims made by a succeeding Lessee founded on such delay.

- E. **Condition of Premises.** Lessee acknowledges that Lessee has inspected the Lease Premises and does hereby accept the Lease Premises as being in good and satisfactory order, condition, and repair. It is understood and agreed that Lessor makes no warranty or promise as to the condition, safety, usefulness or habitability of the Lease Premises, and Lessee accepts the Lease Premises "as is." In entering into this Lease, Lessee is relying on its own investigation and inspection of the Lease Premises and its own determination of the suitability of the Lease Premises, physically and legally, for its intended use.
- F. **Alterations.** Lessee shall make no additions, changes, alterations or improvements to the Lease Premises, or to any electrical, mechanical or fire protection facilities pertaining to the Lease Premises, without the prior written consent of Lessor's Director of Parks and Recreation. Lessee shall be responsible for any and all code requirements resulting from any additions, changes, alterations or improvements to the Lease Premises.
- G. **Waste.** Lessee shall not commit or allow to be committed any waste upon the Lease Premises, or any nuisance, or any act in or about the Lease Premises that disturbs the quiet enjoyment of Lessor's Generations Plaza. Lessee, at Lessee's sole expense, shall comply with all laws and regulations relating to its use and occupancy of the Lease Premises.
- H. **Limitation on assignment or subletting.** Lessee shall not, without first obtaining consent of Lessor's Director of Parks and Recreation: (1) sell, assign, mortgage, or transfer this Lease or any interest therein; (2) sublease all or any portion of the Lease Premises; or (3) allow the use or occupancy of the Lease Premises by anyone other than Lessee. No assignment or sublease shall relieve the Lessee of any liability under this Lease, unless Lessor consents in writing to accept such assignment or sublease as a whole or partial novation. Notwithstanding the foregoing, any transfer of this Lease by merger, consolidation or liquidation of Lessee shall not constitute an assignment hereunder.
- I. **Compliance with ADA.** Lessee shall not enter into any change of use of the Lease Premises, whether approved by Lessor or not, if such change in use would result in increased liability of Lessor under the Americans with Disabilities Act of 1990, Public Law No. 101-336, 42 USC 12101 *et. seq.* as it may be amended from time to time ("ADA").
- J. **No Hazardous Substances.** Lessee specifically agrees not to use, store or deposit any substance that is hazardous or dangerous to persons, property or the environment (or any similar substance) as now or hereafter defined by or determined pursuant to any applicable state or federal law or regulation in amounts exceeding legally permissible levels in, on, or about the Lease Premises.
- K. **Liens.** Lessee agrees to keep the Lease Premises free and clear of all mechanics' liens on account of work done by Lessee or persons claiming under Lessee. Lessee agrees to defend,

indemnify and save Lessor free and harmless against liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under Lessee. If Lessee shall desire to contest any claim of lien, it shall furnish Lessor adequate security for the value or in the amount of the claim, plus estimated costs and interest, or a bond of responsible corporate surety in such amount conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of lien for any amount is entered, Lessee shall pay and satisfy the same at once. If Lessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose has been filed and Lessee shall not have furnished Lessor adequate security as more particularly provided above, then, in order to protect the Lease Premises and Lessor against such claim of lien, Lessor may, but shall not be required to, pay the claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to Lessor, and Lessee agrees to and shall pay the same. Should any claims of lien be filed against the Lease Premises or any action affecting the Lease Premises be commenced, the Party receiving notice of such lien or action shall forthwith give the other Party written notice thereof.

L. **Indemnification.** Lessee specifically indemnifies Lessor and holds Lessor harmless from any loss, liability, claim, judgment, or action for damages or injury to Lessee, to Lessee's personal property or equipment, and to Lessee's employees, agents, guests or invitees arising out of or resulting from the condition of the Lease Premises or any lack of maintenance or repair thereon and not caused by or arising out of the tortious conduct of Lessor or its employees. Lessee further agrees to indemnify and hold Lessor harmless from any loss, liability, claim or action from damages or injuries to persons or property in any way arising out of or resulting from the use and occupancy of the Lease Premises by Lessee or by Lessee's tenants, agents, employees, guests or business invitees and not caused by or arising out of the tortious conduct of Lessor or its employees. If any claim, suit or action is filed against Lessor for any loss or claim described in this paragraph, Lessee, at Lessor's option, shall defend Lessor and assume all costs, including attorney's fees, associated with the defense or resolution thereof, or indemnify Lessor for all such costs and fees incurred by Lessor in the defense or resolution thereof.

M. **Insurance.** Lessee shall purchase and maintain insurance, as follows:

1. **Comprehensive Liability Insurance.** Lessee shall purchase and maintain in force throughout the term of this Lease in force with an insurance carrier acceptable to Lessor a policy of commercial general liability insurance covering the activities of Lessee in connection with the Lease Premises, having a combined single limit of one million dollars (\$1,000,000.00) per person and per occurrence and property damage liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per accident or occurrence. The insurance shall insure against any and all liability of Lessee with respect to the Lease Premises.
2. **Worker's Compensation Insurance.** Lessee shall purchase and maintain in force throughout the term of this Lease workers' compensation insurance on any and all persons in Lessee's employ, in the minimum amount(s) as required by Idaho law.
3. **Policy Form.** All policies of insurance provided for herein shall be issued by insurance companies rated A, Class VI, or better in Best's Key Rating Guide and qualified to do business in the State of Idaho. All insurance required to be furnished by Lessee shall be on

forms and with loss payable clauses satisfactory to Lessor naming Lessor as additional insured and copies of policies of such insurance or certificates issued by the insurance company evidencing the existence and amounts of such insurance shall be delivered to Lessor. Failure of Lessee to renew or replace such insurance at least thirty (30) days prior to the expiration date of such policy shall constitute a material default under the terms of this Lease. All policies of insurance provided by Lessee may be provided within the coverage of a blanket policy(s) of insurance carried and maintained by Lessee.

4. **Failure of Lessee to Insure.** In the event Lessee shall fail to purchase and keep in force any of the insurance required of the Lessee, Lessor has the right to terminate the Lease. Lessor may, but shall not be required to, purchase and keep in force insurance, in which event the Lessee shall pay to the Lessor the full amount of the Lessor's expenses with respect thereto, said payment to be made within ten (10) days after demand for such payment by the Lessor.

VI. Responsibilities of Lessor. During the Lease term, Lessor shall be responsible for each and all of the following.

- A. **Maintenance of Generations Plaza.** Lessor shall be responsible for maintaining the portion of Generations Plaza not subject to this Lease.
- B. **Entry to inspect, maintain, or repair.** Lessor, at all reasonable times, and at any time in case of an emergency, may enter the Lease Premises for the purpose of inspecting, maintaining, or repairing the Lease Premises. Lessor shall provide reasonable advance notice to Lessee when practicable.

VII. General Provisions.

- A. **No agency; independent contractor.** It is understood and agreed Lessee shall not be considered an agent of Lessor in any manner or for any purpose whatsoever in Lessee's use and occupancy of the Lease Premises. In all matters pertaining to this Lease, Lessee shall be acting as an independent contractor, and neither Lessee nor any officer, employee or agent of Lessee shall be deemed an employee of Lessor. Lessee shall have no authority or responsibility to exercise any rights or power vested in Lessor.
- B. **Notices.** All notices to be provided under this Agreement shall be in writing and addressed as set forth above. Notices shall be either personally delivered or sent by U.S. mail, postage prepaid. Notice shall be deemed to have been given upon deposit in the U.S. mail, or upon personal delivery, to the Party specified.
- C. **Default or breach; cure; termination.** If Lessee is in breach or default of any of the terms, covenants or conditions of this Lease and Lessee fails or refuses to cure such breach or default within fourteen (14) days of written notice thereof, this Lease, and all rights of Lessee in and to the Lease Premises, at Lessor's option, may be deemed terminated and forfeited without further notice or demand. In the event of any default or breach of this Lease and Lessee's failure or refusal to cure as hereinbefore provided, Lessor may, upon three (3) days' notice, enter into and upon the premises, take possession thereof and expel Lessee therefrom, with or without process of law, and without being guilty of trespass, and without prejudice to any and all other rights and remedies Lessor may have. Lessee shall be liable for any damages and any costs, including legal expenses and attorneys' fees, incurred by Lessor in recovering the Lease Premises. The rights,

privileges, elections and remedies of Lessor set forth in this Lease or allowed by law or equity are cumulative, and the enforcement by Lessor of a specific remedy shall not constitute an election of remedies or a waiver of other available remedies.

- D. **No waiver.** Lessor's waiver on one or more occasion of any breach or default of any term, covenant or condition of this Lease shall not be construed as a waiver of any subsequent breach or default of the same or a different term, covenant or condition, nor shall such waiver operate to prejudice, waive, or affect any right or remedy Lessor may have under this Agreement with respect to such subsequent default or breach by Lessee. The acceptance of any Rent by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent.
- E. **No warranty concerning use.** By the granting of this Lease, Lessor does not in any way convey any warranty concerning Lessee's ability to use the Lease Premises for any particular purpose.
- F. **No third-party beneficiaries.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person or entity not a Party hereto.
- G. **Nondiscrimination.** The Parties warrant and agree that there shall be no discrimination against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, use, occupancy, tenure, or enjoyment of the Lease Premises.
- H. **Attorney fees.** Lessee shall be liable to Lessor for all damages and costs, including legal expenses and attorneys' fees, suffered or incurred by Lessor in the enforcement of any of the terms, covenants or conditions of this Agreement.
- I. **Nonappropriation of funds.** This Lease shall be governed by and construed in accordance with the statutes and constitution of the State of Idaho, including, without limitation, Article VIII, Section 3, of the Idaho Constitution. Lessee acknowledges that Lessor is a governmental entity, and the validity of this Lease is based upon the availability of public funding under the authority of its statutory mandate. Notwithstanding anything in this Lease to the contrary, Lessor's obligations under this Lease are subject to and dependent upon appropriations being made by City Council for such purpose.
- J. **Compliance with law.** Throughout the course of this Lease, Lessee and each and all of Lessee's employees, guests, invitees, and agents shall comply with any and all applicable federal, state, and local laws.
- K. **Agreement governed by Idaho law.** The validity, interpretation, performance and enforcement of this Lease shall be governed by the laws of the State of Idaho. Venue shall be in the courts of Ada County, Idaho.

L. **State of Idaho requirements.** The following provisions are required by the State of Idaho. The inclusion of these provisions in this Lease does not indicate that these clauses are necessarily relevant to the subject matter of this Lease; rather, these provisions are included to comply with the laws of the State of Idaho.

- i. **Anti-Boycott Against Israel Act.** Pursuant to Idaho Code § 67-2346, as applicable, Lessee certifies that Lessee is not currently engaged in, and will not for the duration of this Lease engage in, a boycott of goods or services from Israel or territories under Israel's control. The terms "company" and "boycott Israel" shall have the meanings ascribed to them in Idaho Code § 67-2346.
- ii. **No Public Funds for Abortion Act.** Pursuant to Idaho Code § 18-8703, as applicable, Lessee certifies that Lessee is not, and will not for the duration of this Lease, become an abortion provider or an affiliate of an abortion provider, as those terms are defined in the "No Public Funds for Abortion Act," Idaho Code §§ 18-8701 *et seq.*
- iii. **Contract with company owned or operated by the government of China prohibited.** Pursuant to Idaho Code § 67-2359, as applicable, Lessee certifies that Lessee is not a company currently owned or operated by the government of China and will not for the duration of this Lease be owned or operated by the government of China. The terms "company" and "government of China" shall have the meanings ascribed to them in Idaho Code § 67-2359.

M. **Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease shall not be affected.

N. **Entire agreement.** This Lease contains the entire agreement of the parties and supersedes any and all other agreements, leases, or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. No oral or written inducements to execute this Lease have been made to Lessee. In entering into this Lease, Lessee relies upon no statement, fact, promise or representation, whether express or implied, written or oral, not specifically set forth herein in writing.

O. **City Council approval required.** The validity of this Lease shall be expressly conditioned upon City Council action approving the same.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers to be effective as of the day and year first above written.

[END OF TEXT; SIGNATURES ON FOLLOWING PAGE]

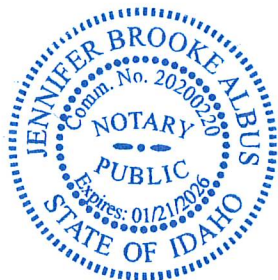
LESSEE:
TRAX HOLDING, LLC

[Signature]

Jeremy Malone, Agent

STATE OF IDAHO)
) ss:
County of Ada)

I HEREBY CERTIFY that on this 29th day of August, 2024, before the undersigned, a Notary Public in the State of Idaho, personally appeared Jeremy Malone in his capacity as Agent of Trax Holding, LLC, proven to me to be the person who executed said instrument, and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho
Residing at Bose/Ada, Idaho

My Commission Expires: 1/21/2026

LESSOR:
CITY OF MERIDIAN

Attest:

Robert E. Simison, Mayor

Chris Johnson, City Clerk

STATE OF IDAHO)
) ss:
County of Ada)

On this ___ day of _____, 2024, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, known or identified to me to be the Mayor and City Clerk, respectively, of the City of Meridian, who executed the instrument on behalf of said City, and acknowledged to me that such City executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____, Idaho
My Commission Expires: _____