

CITY OF PFLUGERVILLE TRADEMARK PERMIT AND LICENSE AGREEMENT:

“Between a Rock and a Weird Place”

THIS TRADEMARK PERMIT AND LICENSE AGREEMENT ("Agreement"), made effective on the date signed below by the Licensee (“Effective Date”), is between Licensee and City of Pflugerville, a home rule municipal corporation (hereinafter referred to as “City” or "Licensor").

WITNESSETH:

WHEREAS, Licensee desires to acquire a non-exclusive permit and license to use the above trademark “Between a Rock and a Weird Place” which was registered with the United States Patent and Trademark Office on August 22, 2011 (Registration No. 85404072) ("Trademark") published for opposition on May 29, 2012 and registered on August 12, 2012.

WHEREAS the Trademark is to be used solely by Licensee for flyers, brochures, posters, websites, social media sites, retail merchandise and for the promoting of the City of Pflugerville ("Licensee's Business"); and

WHEREAS, Licensor desires to grant, for a fee, such a license to use the “Between a Rock and a Weird Place” Trademark as provided herein.

NOW, THEREFORE, in consideration of the sum of TWENTY FIVE (\$25.00) DOLLARS in hand paid by each of the parties hereto to the other, the receipt, adequacy and sufficiency of which are hereby acknowledged and in further consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. LICENSE OF TRADEMARK

(a) Licensor hereby grants to Licensee the non-exclusive right and license to use the Trade Trademark only in connection with the operation of Licensee's Business, for the one-year period beginning on the Effective Date, unless sooner terminated as provided herein. So long as Licensee is not in default under this Agreement then it shall have the option to renew this Agreement for an additional period of one-year, and for each consecutive year that the Licensee is in good-standing and maintaining the Trademark in strict accordance with this Agreement and Texas and federal law.

(b) Licensee acknowledges that all right, title and interest in and to the “Between a Rock and a Weird Place” Trademark is and shall remain the exclusive property of Licensor. Notwithstanding the foregoing, during the term of this Agreement, Licensor agrees that so long as Licensee is not in default hereunder, Licensee shall have the right and license to use the Trademark in the United States.

(c) Licensee shall provide Licensor a copy of the Trademark as its being used with the Licensee’s Business within thirty (30) days of the Effective Date.

(d) Licensee agrees Licensor has furnished all information and materials which Licensor determines in its reasonable discretion is necessary for Licensee to sign this Agreement and use the Trademark. The cost of all sales, promotional and advertising materials used by Licensee at

or for the Licensee's Business shall be borne by the Licensee. Licensee expressly acknowledges and agrees that Licensor shall not be required to create or publish sales, promotional or advertising material specifically for Licensee.

(e) Should this Agreement be renewed each year as outlined in Section 1(a), Licensee agrees to pay to Licensor an annual fee equal to TWENTY FIVE (\$25.00) DOLLARS per year. This fee shall be due and payable on or before the anniversary of each year commencing one-year from the Effective Date (hereafter the "Renewal Due Date").

(f) Licensee further agrees that Licensee will pay to Licensor a late fee in an amount equal to one dollar (\$1.00) per day for each day past the first day of the month the above fee is not paid after the expiration of thirty (30) days after the Renewal Due Date.

(g) If Licensee's right to use the Trademark is terminated or expires for any reason, Licensee agrees to immediately (i) pay all fees and charges due and payable to Licensor, (ii) discontinue use of the Trademark, (iii) discontinue use of any flyers, brochures, posters, websites, social media sites, retail merchandise, furniture, fixtures, decor, interior or exterior decoration, signs, displays, advertising or promotional material and the like that contain the Trademark (iv) cancel any fictitious business name or equivalent registrations or listings indicating that Licensee is in any way affiliated with the Licensor and the Trademark and (v) notify all of Licensee's suppliers, utilities, landlords, creditors and concerned others that Licensee has no contractual or other arrangement with the Licensor or rights to the Trademark.

(h) Licensee agrees to identify any present or future store or business Licensee knows the Trademark to be used or displayed with Licensee's Business following termination of this Agreement.

(i) The Trademark may only be used in conjunction with the Licensee's business and not separately therefrom.

2. OWNERSHIP OF TRADEMARK

(a) The Licensee acknowledges the Licensor's right, title and interest in and to the Trademark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. In connection with the use of the Trademark, Licensee shall not in any manner represent that it has any ownership in the Trademark or registration thereof, and Licensee acknowledges that use of the Trademark shall inure to the sole benefit of the Licensor. Any rights not expressly granted to Licensee under this Agreement shall be reserved for Licensor.

(b) On termination of this Agreement for any reason, the Licensee will cease and desist from all use of the Trademark in any way, and will deliver up to the Licensor, or its duly authorized representatives, all material and papers upon which the Trademark appears. Furthermore, Licensee will not at any time adopt or use without the Licensor's prior written consent, any name, work or mark which is likely to be similar to or confused with the Trademark.

3. USE OF TRADEMARK, PRE-APPROVAL & DISAPPROVAL

The use of the Trademarks is not an endorsement by the Licensor of the Licensee's Business or goods and services sold by Licensee and Licensee shall not advertise such an endorsement. Licensee shall provide the Licensor with samples of all flyers, brochures, posters, websites,

social media sites, retail merchandise, literature, signs and advertising material prepared by the Licensee, and Licensee shall obtain the written approval of Licensor with respect to all such brochures, signs and advertising material bearing the Trademark prior to the use thereof. When using the Trademark under this Agreement, the Licensee undertakes to comply substantially with all laws pertaining to trademarks in force at any time in the state of use. This provision includes compliance with marking requirements. Licensor shall be the sole judge of whether or not the Licensee has met or is meeting the standards of quality so established and whether or not the Licensee is in default of the usage of the Trademark herein. Licensee is strictly forbidden from making any alterations to any of the Trademark's colors, letters, designs, size ratios, layout, artwork, text, symbols, and/or wording.

4. PURCHASE OF GOODS AND QUALITY OF GOODS SOLD

Licensee may purchase goods and use Trademark only in connection with Licensee's Business in accordance with the guidance and directions, if any, furnished to the Licensee by the Licensor, or its representatives or agents, from time to time. In any event, the quality of goods sold shall be satisfactory to the Licensor in its sole and absolute discretion or as specified by Licensor.

5. INDEMNITY

The Licensor assumes no liability to the Licensee or third parties with respect to the quality of goods sold or Licensee's Business by the Licensor under the Trademark, and the Licensee will indemnify the Licensor and hold it harmless against any losses incurred by reason of claims of third persons against the Licensor involving sale of the Licensee's goods. Licensee also indemnifies Licensor for any and all claims, debts, actions, suits, proceedings, demands, assessments, judgments, liabilities, costs and legal and other expenses to any person in connection with or arising out of Licensee's Business and/or use of the Trademark and/or arising from Licensee's conducting its business. The foregoing indemnity shall include all costs, including reasonable attorneys' fees. THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF LICENSEE PURSUANT TO THIS AGREEMENT. LICENSEE HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. LICENSEE DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEY'S FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM LICENSEE'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF LICENSEE, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES,

DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OF THE CITY). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY AND LICENSEE, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, LICENSEE SHALL BE REQUIRED, ON NOTICE FROM CITY, TO DEFEND SUCH ACTION OR PROCEEDINGS AT LICENSEE'S EXPENSE, BY OR THROUGH ATTORNEY'S REASONABLY SATISFACTORY TO THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY

6. INSPECTION

The Licensee will permit duly authorized representatives of the Licensor to inspect the premises of the Licensee at all reasonable times, and the Licensee shall, upon request of the Licensor, submit to the Licensor, or to its duly authorized representatives, samples of the manner in which it sells its goods under the Trademark for the purpose of ascertaining or determining compliance with this Agreement.

7. DEFAULT; CURES, TERMINATION AND REMEDIES

(a) Licensee agrees that, except as otherwise required by applicable law, the occurrence of any of the following events or conditions will entitle Licensor to immediately terminate this Agreement without an opportunity for Licensee to correct or cure any such events or conditions:

- 1) If Licensee is declared bankrupt or judicially determined to be insolvent, or all or a substantial part of the assets of the Licensee's Business are assigned to or for the benefit of any creditor, or if Licensee admits his inability to pay his debts as they become due;
- 2) If Licensee abandons the Licensee's Business by failing to operate it for at least 180 consecutive days or for any shorter period after which it is not unreasonable under the facts and circumstances for Licensor to conclude that Licensee does not intend to continue to operate the Licensee's Business, unless such failure is due to delays resulting from fire or other casualty, war, act of God, governmental act, dispute or other extraordinary events, except financial conditions, outside the control of Licensee ("Unavoidable Delay");
- 3) If Licensee and Licensor agree in writing to terminate this Agreement;
- 4) If Licensee makes any material misrepresentation relating to the acquisition of the license granted hereunder;
- 5) If Licensee fails, for a period of thirty (30) days after notification of non-compliance, to comply with any material federal, state or local law or regulation applicable to the operation of the Licensee's Business, or fails to commence compliance within said thirty-day period if a cure, by its nature, cannot be accomplished within the specified period;

- 6) If Licensee repeatedly fails to comply with one or more material requirements of this Agreement;
- 7) If the Licensee's Business or any material portion of the property or assets of the Licensee is seized, taken over or foreclosed by a creditor, lienholder or lessor or sublessor of Licensee, provided that a final judgment against Licensee remains unsatisfied for thirty (30) days (unless a supersedeas bond or other appeal has been filed); or a levy of execution has been made upon the Licensee's Business or upon a material portion of the property used in the Licensee's Business and it is not discharged within sixty (60) days of such levy;
- 8) If Licensee, its officers, directors or members commits a felony or any act constituting common law fraud in connection with the business or operation of the Licensee's Business;
- 9) If Licensor elects to terminate this Agreement under any provisions of this Agreement giving Licensor such termination rights;
- 10) If the Licensee dies or is incapacitated; or,
- 11) If the Licensee fails to pay all or any part of the payments due Licensor under this Agreement, it shall be deemed a default under this Agreement. In the event of any such default, Licensor shall have the right to terminate this Agreement without notice to Licensee.

(b) Licensee agrees it is liable to Licensor any and all damages, trademark infringement, trademark destruction, and agrees Licensor is entitled to immediate injunctive relief without bond for any of Licensee's violations herein.

8. PROHIBITED USES

A Licensee who uses the Trademark in a business related to or in connection with the following commits violation of this Agreement and subject to liquidated damages in the amount of \$250.00 per day:

- (a) criminal behavior
- (b) sale, marketing, and/or manufacturing of tobacco products
- (c) sexually oriented products or services
- (d) undergarments
- (e) political parties, political advertising or organizations
- (f) obscene or profane acts, gestures, or words
- (g) sale or use of illegal drugs or paraphernalia
- (h) any illegal act unless depicted in a Public Service Announcement for health, safety, or welfare of the community
- (i) online gambling or games of chance
- (j) firearms or weapons of any kind
- (k) deceptive or misleading advertising
- (l) In any manner which may be interpreted as an endorsement by the Licensor of the Licensee's business or goods and services.

9. PARTIES

This Agreement and the various rights and obligations arising hereunder shall inure only to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

10. NON-ASSIGNABILITY

Licensee agrees that the right, duties and/or obligations provided herein shall not be assignable or delegable by Licensee to any party without the prior written consent of Licensor.

11. INVALIDITY

The invalidity or unenforceability of any term or provision of this Agreement or the application of such term or provision to any person or circumstances shall not impair or affect the remainder of this Agreement and its application to other persons and circumstances, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

12. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and in Travis County, Texas.

13. COUNTERPARTS

When Licensee has executed and delivered to Licensor a counterpart of this Agreement and Licensor has executed and delivered to Licensee a counterpart of this Agreement, it shall be binding upon Licensor and Licensee.

SIGNATURE ON NEXT PAGE

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first-above written.

LICENSEE:

BUSINESS NAME / INDIVIDUAL NAME

BUSINESS ADDRESS

By: _____

SIGNATURE PRESIDENT/AUTHORIZED AGENT

Effective Date: _____

PLEASE PROVIDE BELOW: (1) all locations and addresses the Trademark is going to be used; (2) the materials, products or items the Trademark will be placed upon; (3) whether or not Licensee is going to be selling products with the Trademark; and (4) a statement of what documentation you will be providing the City within thirty (30) days of today's date as "copies" and "evidence" of the Trademark being used in accordance with this Agreement.

