

GROUND LEASE AGREEMENT

This **GROUND LEASE AGREEMENT** (“Lease”) is made and entered into as of November 10, 2014, by and between the **City of Greensboro** a body corporate and politic, with an address of 300 West Washington Street, Greensboro NC 27401, Attn: City Manager (“**Lessor**”) and **LeBauer Park, LLC** a North Carolina limited liability company with an address of 330 South Greene Street, Suite 100, Greensboro, NC 27401, Attn: Walker Sanders (“**Lessee**”).

RECITALS

A. Lessor owns a 5.38± acre tract of land (comprised of Area 1, 3.21± acres of base park; optional Areas 2A and 2B, .51± and .11± acres, which may be utilized in accordance with this Lease; and Areas 3, 4, and 5, .39±, .58± and .58± acres, being street rights-of way for the relocation work for Davie-Summit-Bellmeade Street intersection) located in and adjacent to the 200 block of North Davie Street, Greensboro, North Carolina as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Leased Premises**”).

B. Lessee has agreed to construct a 3.21± acre park upon the Leased Premises to be named The Carolyn and Maurice LeBauer City Park (the “**LeBauer Park**”), as described in, and pursuant to the terms of, this Lease.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid by each party to the other, for the mutual promises herein contained, and for other good and valuable consideration, the receipt and independent sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

SECTION 1. LEASED PREMISES

1.1 Leased Premises. Lessor leases to Lessee the Leased Premises as set forth in the attached Exhibit A.

1.2 Condition of Leased Premises. Lessee accepts the Leased Premises from Lessor in “as is” condition.

SECTION 2. TERM

2.1 Lease Term. Lessor hereby leases the Leased Premises for a term beginning on the Commencement Date (as defined in **Section 6.1**) and ending on the earlier of (i) thirty (30) days following issuance of a final certificate of occupancy and completion for LeBauer Park or (ii) three years following the Commencement Date, unless extended pursuant to **Section 3.2** or sooner terminated pursuant to this Lease (the “**Term**”).

2.2 Option to Renew. If Lessee has not completed construction of LeBauer Park within three years, Lessee may extend the Term of this Lease for up to one (1) year (but, in any event terminating on the thirtieth (30th) day following issuance of a final certificate of occupancy and completion for LeBauer Park), by delivering written notice to Lessor at least thirty (30) days before the expiration of the initial Lease Term. The same terms and conditions set forth in this Lease shall apply during the extended Term, except that Lessee shall have no further right to extend the Term of the Lease.

SECTION 3. RENT

3.1 Rent and Other Charges Payable By Lessee. Lessee shall pay Lessor, in advance, as rent for the Term, the sum of Ten Dollars (\$10.00).

SECTION 4. OTHER CHARGES

4.1 Utilities. Lessee shall pay, directly to the appropriate supplier, the cost of any natural gas, power, sewer service, water, refuse disposal and other utilities and services supplied to the Leased Premises.

4.2 Other Costs and Expenses. Lessee shall otherwise be responsible and pay all costs and expenses relating to the Leased Premises, LeBauer Park and the ownership, operation and use of the same during the Term.

SECTION 5. USE OF LEASED PREMISES

5.1 Permitted Uses. Lessee shall use the Leased Premises for the sole purpose of constructing LeBauer Park and attendant uses, including relocating the Davie-Summit-Bellmeade St. intersection. Lessee's activities shall allow reasonable access, consistent with safe construction practices, to and from City-owned buildings adjacent to the park, including the Library, Cultural Arts Center, and Greensboro Museum.

5.2 Construction of Improvements. At Lessee's sole cost and expense Lessee shall construct LeBauer Park on the Leased Premises. LeBauer Park shall be constructed in accordance with the plans approved as provided in **Section 6.1** below.

5.3 Hazardous Materials.

5.3.1 Prohibition on Hazardous Substances. Lessee agrees it will not release, discharge, place, hold or dispose of any Hazardous Material (as hereinafter defined) on, under or at the Leased Premises nor will it use the Leased Premises or any portion thereof as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material. For purposes of this Lease, "**Hazardous Material**" means and includes any hazardous or toxic substance, pollutant, contaminant, gas or petroleum product defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, as amended, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous waste, substance or material, gas or petroleum product or medical waste.

5.4 Quiet Enjoyment. If Lessee pays the Rent and complies with all other terms of this Lease, Lessee may occupy and enjoy the Leased Premises thereon for the full Term without molestation or disturbance by or from Lessor, subject, however, to all laws, ordinances, orders, rules and regulations of any governmental authority.

5.5 Protection from Claims or Damages. Except to the extent of Lessor's own negligent acts or omissions or willful misconduct (or of Lessor's agents, employees, contractors, licensees, or invitees) (collectively, "**Lessor Parties**"), Lessee, from and after the date of the commencement of the term of this Lease, will hold Lessor harmless against any and all claims, suits, damages or causes of action for bodily injury or property damages, arising out of the negligent acts or omissions or willful misconduct of Lessee, its agents, employees, contractors, licensees, or invitees (collectively, the "**Lessee Parties**") in or about the Leased Premises during the Term, to the extent of the liability insurance of Lessee Parties.

5.6 Lessee to Discharge Claims Involving the Leased Premises. If any claims or orders for the payment of money shall be filed against the Leased Premises or any improvement thereon by reason of, or

arising out of, any labor or material furnished to or for Lessee at the Leased Premises or for or by reason of any change, alteration or addition, by Lessee, or the cost or expense thereof, or any contract relating thereto, or against Lessor as fee owner thereof by reason of such work or contract relating thereto, Lessee shall defend on behalf of Lessor, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or to the extent Lessor is named, and Lessee will pay any damages and discharge any judgment entered therein and hold harmless Lessor from any claim or damage resulting therefrom.

SECTION 6. CONSTRUCTION OF IMPROVEMENTS

6.1 Design and Approval of LeBauer Park. Lessee shall develop plans for the construction of LeBauer Park, and shall submit the same to Lessor for its review and approval (the "**Park Plans**"). Lessee agrees to keep Lessor fully and timely informed of all changes to the Park Plans and agrees not to materially modify, alter, or amend all or any portion of the Park Plans after the same have been approved or construct all or any portion of LeBauer Park in a manner materially different than or inconsistent with the Park Plans, unless Lessor gives its prior written consent to such change.

6.2 Commencement and Prosecution of Construction. The Term of this Lease shall commence upon the date the Park Plans are approved (the "Commencement Date"). Lessee covenants and agrees to commence construction of LeBauer Park no later than 30 days after all required permits have been obtained. Construction of LeBauer Park shall be prosecuted with all reasonable diligence and completed in a good and workmanlike manner, in accordance with the Park Plans.

6.3 Permits. Lessee, at its sole cost and expense, shall promptly make application and diligently pursue same to obtain all necessary permits, consents, certificates and approvals for the construction of LeBauer Park from all applicable governmental authorities having jurisdiction over the Leased Premises. Upon Lessee's request, Lessor shall, without cost to Lessee, promptly join in and execute any instrument, document, agreement, certificate, or filing (or amendment of any of the foregoing): (a) necessary or appropriate for any construction work this Lease allows, including any application for any utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or such other instruments as Lessee may from time to time request in connection with such construction work; or (b) enabling Lessee from time to time to seek any approval or to use and operate the Leased Premises in accordance with this Lease.

6.4 MWBE Participation. Lessee will endeavor, in good faith, to achieve the goal of 20% MWBE participation on eligible contracts and is committed to providing opportunities to local firms in the design and construction process.

6.5 Conditions During Construction. Lessee agrees that throughout the course of construction of LeBauer Park Lessee shall, and shall cause its construction manager (CM) and any subcontractors, to: (a) maintain a reasonably clean, securely enclosed construction site on the Leased Premises with fencing and promptly remove all refuse and construction debris from the Leased Premises; (b) store all equipment within such construction site unless otherwise reasonably approved by Lessor; (c) refill and restore as soon as feasible any ground, streets or other existing facilities on or about the Leased Premises which Lessee, its general contractor or any subcontractor has disturbed; and (d) comply with all applicable laws, rules and regulations.

6.6 Obligations During Construction. Lessor reserves the right to maintain City personnel or other designees from time to time on the Leased Premises to observe the construction of LeBauer Park and to the extent necessary, Lessee grants any and all such personnel or designees a continuing easement and right of access and entry upon the Leased Premises to accomplish such purpose. Upon prior notice to Lessee, Lessor shall be entitled to have such personnel or other designees attend Lessee's construction progress meetings, if any, regarding the construction of LeBauer Park.

6.7 Insurance and Bonds by CM and Subcontractors. In addition to the insurance required in **Section 7**, below, Lessee shall require that its CM to carry liability and property damage insurance with coverage as reasonably required by Lessee in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000.00) in the aggregate, to include completed operations coverage; that Lessor, Lessee, and their officers, employees, and agents, shall be additional insureds on such policies with endorsements acceptable to Lessee; and that such insurance shall be primary to any insurance carried by Lessor or Lessee. Lessee shall also require that its CM provide performance and payment bonds for the full amount of the construction contract price, and with Lessor and Lessee as dual obligees.

6.8 Lessor's Warranty of Title. Lessor hereby represents and warrants that it is the owner of the Leased Premises, free and clear of any liens, mortgages or other encumbrances. Lessor shall deliver exclusive possession of the Leased Premises to Lessee on the Effective Date, free and clear of all tenancies and occupancies. Lessee shall own the improvements, subject to the reversion contained herein.

6.9 Lessor's Responsibility for Subsurface Conditions. Lessor shall be responsible for, and shall pay for, costs to remove, relocate, or remediate, subsurface tanks, utility lines and pipes, unsuitable soil, and contaminated soil ("Conditions").

6.10 Lessor's Responsibility for Bellmeade/Summit/Davie Street Intersection Relocation and Pedestrian Access Improvements. Lessor shall be responsible for, and shall reimburse Lessee for, Lessee's costs and expenses incurred in performing the Davie-Summit-Belmeade St. intersection relocation and related street/streetscape improvements in an amount not to exceed \$1,748,826.00. This intersection relocation and related street/streetscape improvements include but are not limited to paving, curb and gutter, sidewalks, lighting and plantings. Lessor shall have approval rights over the final design, construction plans and specifications of the intersection relocation and related street/streetscape improvements.

SECTION 7. CASUALTY, INSURANCE AND INDEMNIFICATION

7.1 Fire or Other Casualty.

7.1.1 Major Casualty. If the Property is damaged by fire or other casualty to the extent of fifty percent (50%) or more of the value thereof in the reasonable opinion of Lessee, then Lessee may, at its sole and exclusive option, by written notice to Lessor given not later than ninety (90) days after the date of fire or other casualty, terminate this Lease effective to the date of such fire or other casualty. If the Lease is not so terminated as provided in this **Section 7.1.1**, then Lessee shall proceed with diligence to rebuild and restore LeBauer Park.

7.1.2 Non-Major Casualty. If the Property is damaged by fire or other casualty to the extent of less than fifty percent (50%) of the value thereof in the reasonable opinion of Lessee, then Lessee shall, except as otherwise provided herein, proceed with diligence to rebuild and restore the Property so damaged substantially to the condition thereof existing immediately prior to such damage or destruction subject to the availability of insurance proceeds.

7.2 Insurance Policies.

7.2.1 Liability Insurance. During the term of the Lease, Lessee shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Lessee against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the construction of LeBauer Park. Lessee shall name

Lessor as an additional insured under such policy. The amount of such insurance shall be Two Million Dollars (\$2,000,000.00) per occurrence with a Four Million Dollar (\$4,000,000.00) aggregate.

7.2.2 Workers' Compensation Insurance. Lessee shall carry workers' compensation insurance to the extent required by North Carolina law. Lessee shall require all contractors Lessee contracts with in connection with the construction of LeBauer Park to carry workers' compensation insurance in amounts not less than the amount required by law covering all persons employed by the contractor in connection with the construction of LeBauer Park and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Lessor or Lessee.

7.2.3 Builders' Risk Insurance. During the course of any alteration, construction, or reconstruction, Lessee shall provide or cause to be provided builders' risk insurance (All Risks subject to normal exclusions), naming as their interests may appear Lessee, Lessor, and Lessee's general contractor.

7.2.4 General Insurance Provisions. (a) Lessee shall pay all premiums for the insurance policies described herein no later than the due date. Lessee shall deliver to Lessor a certificate form which provides evidence of all policies of insurance which Lessee is required to maintain under this Lease on and as of the Commencement Date. To the extent of the proceeds of insurance paid with respect to a claim of loss or damage, Lessor and Lessee each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Lessor and Lessee shall give notice to the insurance carriers of this mutual waiver of subrogation.

7.3 Indemnification. To the fullest extent permitted by applicable law, Lessee hereby agrees to indemnify and hold harmless Lessor, and the officers, employees, and agents of Lessor (each an "**Indemnitee**" and collectively, the "**Indemnitees**") from and against any claims or loss, liabilities, suits, obligations, penalties, damages, costs, charges and expenses including reasonable attorneys' fees any Indemnitee may pay out, by reason of, or in connection with, the following, whether or not foreseeable, up to the extent of the liability insurance of Lessee Parties, except to the extent attributable to Indemnitee's negligence: (a) any failure of Lessee to cause the Leased Premises to be and remain free and clear of all liens; (b) any bodily injury, sickness, disease or death of or to any person or persons occurring in connection with (or arising out of, or resulting from) the work relating to construction of LeBauer Park; (c) any failure of Lessee to comply with all applicable laws, policies of required insurance or any other requirements contained herein.

SECTION 8. ASSIGNMENT AND SUBLETTING

8.1 Assignment and Subletting. Lessor has entered into this Lease with Lessee based on Lessee's experience, financial strength and reputation. Accordingly, except as otherwise expressly and specifically provided in this Lease, neither Lessee nor any trustee in bankruptcy, nor Lessee, as a debtor-in-possession, without the prior written consent of Lessor, which may be denied, granted or conditioned in Lessor's sole and absolute discretion, shall, directly or indirectly, sell, assign, sublet, transfer, license, permit, give, grant, devise, let or dispose of all or any of its or their rights or interests under this Lease or delegate all or any of its or their obligations and duties under this Lease without the prior written consent of Lessor.

SECTION 9. DEFAULT; REMEDIES

9.1 Lessee's Default. Lessee shall be in material default under this Lease if Lessee shall default in the performance of any covenant or condition which Lessee is required to observe and to

perform under this Lease and such default shall continue for ninety (90) days after written notice to Lessee. Thereupon, at Lessor's option and as its sole right and remedy, Lessor may terminate this Lease and repossess the Leased Premises.

SECTION 10. MISCELLANEOUS

10.1 Severability. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect. If the removal of any such illegal or unenforceable provision would have the practical effect of materially reducing the benefit of the bargain of either party, the parties hereto shall negotiate in good faith to seek to amend this Lease to provide such adversely-affected party with rights and remedies most closely resembling the illegal or unenforceable provision.

10.2 Interpretation; Business Days. The captions of the Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. The term "**business days**" when used herein shall mean and include all days other than those recognized by the United States of America or the State of North Carolina as legal government holidays.

10.3 Notices. All notices require or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or sent for overnight delivery by a nationally recognized courier such as Federal Express. Notices to the parties shall be delivered to the address specified in the first paragraph of this Lease. All notices shall be effective upon delivery or delivery refused. Either party may change its notice address upon written notice to the other party. Notices provided by legal counsel to a party shall be deemed to be a notice properly provided by such party.

10.4 No Recordation. Neither party shall record this Lease without prior written consent from the other.

10.5 Binding Effect; Choice of Law; Time is of the Essence. This Lease binds any party who legally acquires any rights or interest in this Lease from Lessor or Lessee. However, Lessor shall have no obligation to Lessee's successor unless the rights or interests of Lessee's successor are acquired in accordance with the terms of this Lease. The laws of the State of North Carolina shall govern this Lease. Time is of the essence with respect to all parties' performance hereunder.

10.6 Execution of Lease. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Lessor's delivery of this Lease to Lessee shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

10.7 Ownership of Improvements During Term; Expiration of Term. During the Term, title to the Improvements located on the Leased Premises shall vest in Lessee. Upon the Termination Date (a) all improvements (specifically including without limitation any lighting, landscaping, statuary) constituting part of LeBauer Park shall become Lessor's property; (b) Lessee shall deliver the Leased Premises free and clear of all subleases and liens; (c) Lessee shall assign to Lessor, without recourse, and give Lessor copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Leased Premises; and (d) the parties shall cooperate to achieve an orderly transition of LeBauer Park.

(Signatures Contained On Next Page)

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written, intending to be legally bound by the same.

LESSOR:

THE CITY OF GREENSBORO

By: _____

Name: _____

Title: _____

Attest: _____

City Clerk

LESSEE:

**LEBAUER PARK, LLC,
a North Carolina limited liability company**

By: _____

Name: _____

Title: Manager

EXHIBIT A
Leased Premises