

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: June 3, 2024

**RE: Lease Termination Agreement with Project Redfish,
LLC d/b/a The Yard on Mass**

Attached for your consideration is a Lease Termination Agreement between the Lakeland Community Redevelopment Agency ("CRA") and Project Redfish, LLC, doing business as The Yard on Mass ("Project Redfish"). The leased property consists of two (2) parcels, totaling 1.18 acres in the Midtown CRA, located at 802 N. Massachusetts Avenue and 306 E. Parker Street.

In 2018, Project Redfish entered into a lease agreement with the CRA to redevelop the property, formerly a used car sales operation, as a food truck park with 2,522 square foot building and open yard concept to accommodate indoor and outdoor entertainment. The CRA likewise made significant investments in the redevelopment and maintenance of the property. Project Redfish opened The Yard on Mass in December 2019. The lease was renewed for 5 years on July 29, 2022, with a current expiration date of November 30, 2027.

Under the attached Agreement, the CRA and Project Redfish would mutually terminate the lease effective June 30, 2024, and the CRA has agreed to pay Project Redfish a termination fee in the amount of \$250,000. Additional terms include the CRA retaining certain fixtures and improvements at the site and mutual releases resulting from the termination of the Lease.

The proposed Lease Termination Agreement was considered by the CRA Advisory Board at its May 16, 2024 meeting and received a unanimous recommendation of approval. It is recommended that the City Commission, acting as the Lakeland Community Redevelopment Agency, approve the Lease Termination Agreement and authorize the appropriate CRA officials to execute all documents necessary to finalize the transaction.

Attachment

Lease Termination Agreement

This Lease Termination Agreement ("Termination Agreement") is entered on May 20, 2024, by the **Lakeland Community Redevelopment Agency**, a public body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes ("LESSOR"), and **Project Redfish LLC**, doing business as The Yard on Mass ("LESSEE").

- I. LESSOR and LESSEE are Parties to that certain lease dated December 20, 2018, amended May 26, 2021, and renewed July 29, 2022 (collectively comprising the "Lease"), relating to the property located at 802 N Massachusetts Avenue and 306 E Parker Street, Lakeland, FL (the "Premises"), as more particularly described in the Lease. A copy of the Lease is attached as composite **Exhibit "A"**.
- II. The term of the Lease is scheduled to expire on November 30, 2027.
- III. Both Parties desire to terminate the Lease before the stated expiration date, with the LESSOR and LESSEE agreeing to the termination under the terms and conditions contained in this Termination Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Termination Agreement, and other valuable consideration, the receipt and sufficiency of which are acknowledged, LESSOR and LESSEE agree as follows:

- 1. Early Termination of Lease.** Subject to the agreements, representations, warranties, and indemnities contained in this Termination Agreement, the Lease and all obligations and liabilities of LESSOR and LESSEE under the Lease shall be terminated on **June 30, 2024** ("Early Termination Date"), with the same force and effect as if the Lease were originally scheduled to expire on the Early Termination Date.
- 2. Termination Fee.** Within ten (10) days of the Early Termination Date, and subject to any subsequent setoffs or deductions as described in this Termination Agreement, LESSOR agrees to pay LESSEE a one-time payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("Termination Fee").
- 3. Release by LESSEE.** In consideration of the Termination Fee and upon the Early Termination Date, LESSEE waives, releases, and surrenders to LESSOR all rights in the Lease and the Premises, and forever releases and discharges LESSOR from any obligations following the Early Termination Date, subject to the performance of obligations under this Termination Agreement.
- 4. Release by LESSOR.** Subject to the terms of this Termination Agreement, LESSOR accepts the surrender of the Lease and the Premises effective as of the Early Termination Date, and discharges LESSEE from liabilities under the Lease arising after the Early Termination Date, provided that all terms of this Termination Agreement are satisfied.

5. Obligations of LESSEE.

- A. Except as described in this Termination Agreement, LESSEE shall continue to comply with all terms and conditions of the Lease until the Early Termination Date.
- B. On or before the Early Termination Date, LESSEE agrees to vacate the Premises and surrender it in a clean, orderly state.
- C. As required by the terms of the Lease, Lessee shall, at its own expense and risk, make all repairs and renewals necessary to keep the Premises and all improvements in a reasonably safe condition and to keep them free from deterioration in value or condition until the Early Termination Date. In the event that Lessee fails to maintain the Premises in the condition required by Paragraph 8 of the Lease, Lessor shall have the option, at Lessee's sole cost and expense, to terminate this Termination Agreement or offset the cost for any maintenance or repairs Lessor performs necessary to bring the Premises into compliance with Paragraph 8 of the Lease. The condition of the Premises as of the effective date of this Termination Agreement shall be deemed to satisfy the requirements of this Paragraph and LESSOR shall have sole discretion of assessing the present condition of the Premises.

6. Agreement Subject to Commission Approval. This Termination Agreement, including the authorization for Termination Fee set forth above, is contingent upon the approval of the City of Lakeland's City Commission, acting as the Community Redevelopment Agency for the City of Lakeland.

7. Improvements, Fixtures, Tangible/Intangible Property.

- A. The following equipment, building improvements, facilities, and other tangible property located at the Premises, including any assets purchased by LESSEE in making any capital improvements, shall be conveyed to the LESSOR on the Early Termination Date free and clear of all liens and other encumbrances and shall remain on the Premises ("Conveyed Property"):
 - i. Walk-in Cooler
 - ii. Bar taps and related systems
 - iii. Lighting fixtures
 - iv. Sinks
 - v. Exterior decking
 - vi. Canopies
 - vii. Shade Structures

If any of the above is secured or encumbered as collateral to any third party, the LESSOR will not accept ownership of that item without a release and waiver from the creditor and, in the event LESSEE is unable to secure such release and waiver, the total Termination Fee shall be reduced by the replacement value of such property, as determined by an MAI appraiser retained by the City at LESSEE's sole cost.

- B. Excluding the Conveyed Property described above, LESSEE will retain ownership of all other tangible personal property on the Premises and intangible personal property associated with LESSEE's business, including any licenses or permits, and will remove all such property on or prior to the Early Termination Date.
- C. No later than five (5) days prior to the Early Termination Date, LESSEE will provide all waivers and releases necessary to transfer the Conveyed Property to LESSOR free and clear of all liens and other encumbrances.

8. No Assignment. LESSEE is prohibited from assigning either the Lease or this Termination Agreement to any third party without LESSOR's prior written consent, which may be granted or denied in LESSOR's sole discretion.

9. No Agency, Partnership, or Joint Venture.

- A. This Termination Agreement shall not constitute, and shall not in any way be construed as forming or creating, an agency, partnership, or joint venture between the LESSOR and LESSEE.
- B. LESSOR shall not take ownership of, or have any ownership interest in, LESSEE, which shall retain all responsibility for any outstanding debt or obligations LESSEE may have with third parties.

10. No Assumption of Debts, Liabilities, or Encumbrances.

- A. LESSEE shall return the Premises to LESSOR free and clear of any and all debts, liens, or encumbrances.
- B. LESSOR shall not assume any debts, liens, claims, liabilities, taxes, encumbrances, payroll/salaries, or any other financial obligations of LESSEE, including, without limitation, any secured transactions or contracts with vendors, contractors, suppliers, employees, creditors, claimants, or any other third party.

11. Default; Breach.

- A. If, at any time prior to the Early Termination Date, the LESSEE has breached its representations, warranties, covenants, or any other obligation arising under this Termination Agreement, or is in default with respect to the terms and conditions stated in this Termination Agreement, the LESSOR shall notify LESSEE of such default or breach in writing, although LESSOR's failure to

provide notice of such default or breach to LESSEE shall not relieve LESSEE of the obligation to cure such default or breach.

- B. If LESSEE fails to cure such default or breach prior to the Early Termination Date, LESSOR reserves the right to immediately terminate this Termination Agreement and the Lease shall remain in effect, or LESSOR, in its sole discretion, may withhold remitting the Termination Fee until LESSEE complies with the terms of this Termination Agreement.

- 12. Notices.** All notices hereunder will be in writing and may be delivered by United States Mail, postage prepaid, registered or certified mail, return receipt requested; national overnight courier; or electronic mail; provided, in the case of electronic mail, notice shall be simultaneously sent by one of the other permitted means. The Parties agree to send all notices to addresses as specified in the Lease.
- 13. Integration.** This Agreement is entered into by each of the Parties without reliance upon any statement, representation, promise, inducement or agreement not expressly contained within this Agreement.
- 14. Authority.** Each Party warrants that the execution of this Agreement by the individual executing this Agreement on their behalf, and the performance of their respective obligations, have been duly authorized and approved by all necessary action.
- 15. Materiality.** Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement.
- 16. Waiver of Breach.** Either Party's failure to enforce any provision of this agreement shall not be deemed a waiver of such provision or a modification of this agreement. A waiver of any breach of a provision of this agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.
- 17. Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a right or claim against either of Party based upon this Agreement.
- 18. Compliance with Laws.** The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations when performing their respective duties, responsibilities, and obligations under this Agreement.
- 19. Governing Law.** This Agreement shall be interpreted and construed with and in accordance with the laws of the State of Florida, and all obligations of the Parties created hereunder are to be litigated, if applicable, in Polk County, Florida.

- 20. Attorney's Fees.** If any Party takes any steps to enforce or interpret this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees, costs and expenses in addition to any other relief to which it may be entitled.
- 21. Severability.** In the event any portion of this Agreement shall be declared invalid, then the remaining portions of the Agreement shall survive such invalidity and be valid and enforceable; provided, however, in the event of such invalidity, the Parties shall negotiate in good faith a valid and binding provision to replace such invalid provision so that neither Party is materially prejudiced by such finding of invalidity.
- 22. Headings.** The headings in this Agreement have been inserted solely for ease of reference and should not be considered in the interpretation or construction of this Agreement.
- 23. Counterparts.** This Agreement may be executed in counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument.
- 24. Amendments.** This Agreement cannot be modified, altered or otherwise amended except by an agreement in writing signed by all of the Parties. At any time from and after their execution of this Agreement, the Parties shall promptly execute and deliver such further documents and instruments and take such other actions as may be reasonable to carry out the purpose and intent of this Agreement.
- 25. Entire Agreement.** This Agreement represents the entire understanding and agreement between the Parties respecting the subject matter hereof, and supersedes all other negotiations, understandings, and representations made between the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Project Redfish LLC

By: _____
[Authorized Representative]

ATTEST:

**LAKELAND COMMUNITY
REDEVELOPMENT AGENCY**

By: _____
Kelly Koos, City Clerk

By: _____
H. William Mutz, CRA Chairman

Approved as to Form and Correctness:

By: _____
Palmer Davis, City Attorney