

OFFICE LEASE AGREEMENT

THIS OFFICE LEASE AGREEMENT (the "Lease") is made and entered into as of this ____ day of _____, 2021 (Lease Commencement Date), by and between THE CITY OF BRIGHTON, a municipal corporation of the State of Colorado (the "City" or "Lessor") and **Colorado Thoroughbred Breeders Association** (the "Lessee"). The Lessor and the Lessee may be referred to individually as a "Party" and collectively as the "Parties".

RECITAL

WHEREAS, the City owns the Historic City Hall at 22 South 4th Avenue, in Brighton, Colorado, including an existing office building with appurtenances and common areas (the "Property"), and the Parties desire to enter into this Lease for a portion of the Property described herein as the "Premises;" and

WHEREAS, this Lease is subject to the terms and conditions of the Ordinance approving a Facilities Lease (Historic City Hall) between the City of Brighton and the Brighton Public Facilities Leasing Trust, which was approved by City Council on March 1, 2016 (Ordinance No. 2228 dated March 1, 2016).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties have entered into this Lease.

1.0 The Premises. The City hereby leases, demises and lets to Lessee, and Lessee hereby accepts the right to possession and use of the space at **Suite 303** ("Premises") in Historic City Hall, 22 South 4th Avenue, Brighton, Colorado. Exhibit A attached to this Lease shows the location of the Premises.

1.1 Lessee shall use the Premises for general office business use and for any lawful purpose reasonably related to Lessee's business. Prior to any occupancy and at all times during the Term, Lessee shall obtain and maintain any and all permits, licenses and other approvals required for Lessee's business, occupancy, and/or use of the Premises, including but not limited to business licenses, sales tax licenses, special events permits and licenses, etc.

2.0 Term. The term of this Lease shall be for ten months, commencing on the Commencement Date and terminating at 5:00 p.m. on December 31, 2021 ("Initial Term"). Upon written notice to the Lessee at least 90 days prior to the expiration of the Initial Term or any extension thereof, the City may offer to extend this Lease for an additional Term, Terms or continue on a month-to-month basis. Such extension may be granted at the City's sole discretion, and may include revisions to the terms and conditions thereof ("Renewal Term"). The Initial Term and any Renewal Term or Terms may be referred to as the "Term".

- 3.0 Rent. Monthly rent for the Term shall be calculated on the basis of \$5.71 per square foot of leasable space in the Premises, which the Parties agree contains 640 square feet. Based on such calculation, Lessee shall pay rent to the City in the amount of \$305 per month (“rent”) for the Term, payable starting on March 3, 2021, and payable on the first day of each month thereafter.
- 3.1 Utility Service. As used in this Lease, “Utility Service” shall include natural gas, water, electric, and sanitary sewer service. City shall be responsible for providing Utility Service to the Property and Leased Premises at no additional cost to Lessee.
- 3.2 Maintenance Service. As used in this Lease, “Maintenance Service” shall mean repairs, replacements, alterations, trash service, snow removal, irrigation, debris removal, upkeep of lighting, upkeep of concrete and other hard surfaces, living and non-living landscape areas, and custodial services. City shall be responsible for providing Maintenance Service to the Property and Leased Premises at no additional cost to Lessee.
- 3.3 Additional Obligations. The rental amount set forth above shall be in addition to Lessee’s obligations with respect to the payment of personal property taxes, if any, insurance premiums, and repairs of the Premises, as well as telephone and internet services. The Lessee shall be responsible for payment of taxes, if any are assessed by reason of Lessee’s use of the Premises on the real property and Lessee’s permanent improvements during the Term. Lessee shall pay directly all charges for telephone, internet systems and services, and other communication services used or rendered upon the Premises during the Term.
- 3.4 Late Fee. The City will provide a ten (10) day grace period for receiving rent. Any amount payable by Lessee under this Section 3.0 not paid within ten (10) days after it is due shall be subject to a late charge of ten percent (10%) of the amount unpaid.
- 3.5 Inability to Pay Rent by Due Date. If Lessee finds that it is financially unable to pay the monthly rent on time, the Lessee shall provide the City with written notice at least five (5) days before the day the rent is due. The City may choose to waive the late fee if the Lessee agrees to pay the full amount of rent due by the end of the month. The Lessee can exercise this waiver only once per the lease term. If the Lessee is unable to pay the Lease by the end of the month the City will follow the default remedy procedures in Section 14.3.
- 4.0 Security Deposit. The City acknowledges the prior receipt of a Security Deposit in the amount of \$1,200 (“Deposit”) to be held for performance by Lessee of all the obligations under this Lease required by the Lessee. The Deposit shall not be considered an advance payment of rent or a measure of the City’s damage in case of default by Lessee. If, at any time during the Term, Lessee shall be in default under this Lease, the City shall have the right to apply the Deposit, or so much of it as necessary, in payment of any rent, reimbursement of any expense incurred by the City, and for payment, in whole or in part,

of any damages suffered by City as a result of such default by Lessee. Thereafter, if either Party has not elected to terminate this Lease, Lessee shall forthwith restore the Deposit to the original amount. The amount of the Deposit held by the City and not applied by the City as set forth herein, shall be held by the City and returned to Lessee, as required by law upon full performance of this Lease by Lessee.

5.0 Use of Property. Lessee shall not use or permit the Premises to be used for any purpose prohibited by any applicable law, ordinance, or regulation.

5.1 Lessee and its invitees may use the public parking spaces adjacent to the Property on a first-come, first-served basis.

5.2 Lessee shall escort their guests to and from the Premises and Heritage Room to the building entrance/exit when the building doors are locked.

5.3 Subject to advance scheduling on a first-come, first-served basis, the Lessee shall have the right to use the Heritage Meeting Room for meetings at no additional cost during the Term. This room shall only be reserved and used for the Lessee's business and the Lessee shall not host other events in this space.

6.0 "As-Is" Nature of Lease. It is expressly agreed by the Parties that the City is leasing the Premises to Lessee, and Lessee accepts the Premises in its "AS IS" condition and basis with all faults. Lessee fully and irrevocably releases the City from any and all claims for any costs, loss, liability or claims of any kind for any defects or other conditions, including environmental matters affecting the Premises. The City represents to the best of its knowledge that there are no material defects or other conditions, including environmental matters affecting the Premises. The Parties agree that the rent payable to the City has been established in consideration of this section.

7.0 Furniture in Suite. Any furniture previously owned by the City and left in the suite upon signing of this agreement can be used by the Lessee. It is the intent of the City to donate that furniture to the Lessee.

8.0 Improvements and Maintenance by the Parties. Lessee shall make any and all tenant improvements that it requires for its use of the Premises at its sole cost and expense in compliance with all applicable laws, ordinances, and historic regulations. Lessee shall keep, repair, and maintain the leased space at its sole cost and expense. The City shall maintain the exterior walls, foundation and roof of the building, plumbing, electrical, elevator, and the heating and air conditioning system located on the Property according to local standards for buildings of a similar type and use. Lessee shall return possession of the Premises to the City upon termination of this Lease in substantially the condition of the Premises on the date of this Lease, ordinary wear and deterioration, and approved cosmetic changes excepted.

8.1 Alterations. Historic City Hall is designated as a national, state, and local historic property. Any physical changes to the building must follow national standards for

rehabilitation, preservation, and restoration as well as City Code on historic properties. Therefore, Lessee must notify the City about any desired physical changes to the existing Premises, including, without limitation, changes to walls, windows, floors, wiring, plumbing, and request approval of desired changes. Lessee will request written approval from the City Manager and, if necessary, complete an application of Certificate of Appropriateness and submit to the City. Lessee shall be responsible for any changes to the Premises required for its intended use and occupancy as approved by the City Manager, and/or her/his designee.

- 8.2 Ownership of Improvements. At the end of the Term, all fixtures, equipment, additions and alterations, except trade fixtures, equipment, and other specified items of Lessee, shall be and remain the property of the City.
- 9.0 Indemnification/Governmental Immunity. The Lessee shall defend, indemnify, assume all responsibility for and hold the City, its officers, agents, attorneys and employees harmless (including, without limitation, for attorney fees and costs of legal counsel acceptable to the City) from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by or claimed to be caused by or related to Lessee's use or occupancy of the Premises during the Term(s), or caused by anyone directly or indirectly employed by, or under contract to the Lessee and whether such damage shall accrue or be discovered before or after termination of this Lease. The Lessee is relying on, and does not waive nor intend to waive by any provision of this Lease, any monetary limitation or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-20-101, et seq., as amended from time to time, or any other limitation, immunity or defense available to City under Colorado law.
- 10.0 Insurance. At all times during the Term Lessee shall at its expense obtain and maintain the following minimum insurance coverage:
- 10.1 Comprehensive general liability, bodily injury and property damage coverage insuring against injury, death and property damage, with combined single limits of not less than \$1,000,000.00 per occurrence;
- 10.2 Fire Legal Liability coverage to cover the Lessee for damage by fire to the rented premises in the amount of \$100,000;
- 10.3 Any insurance required by any lender or mortgagee of the Property;
- 10.4 All policies shall contain policy endorsements designating the City as an additional insured, also as loss payee. No policy may be canceled or amended without 60 days advance written notice to City. All policies of insurance shall be primary and not contributing;
- 10.5 Lessee shall upon demand provide the City proof of insurance demonstrating that all such policies are current, valid and premiums paid in advance. All policies shall acknowledge and allow the Parties to waive rights of subrogation, and the insurer's

obligation to provide coverage shall remain enforceable notwithstanding any such waiver. To that extent, the Parties hereby waive rights of recovery against the other to the extent of any insured and covered loss; and

- 10.6 All insurance policies must be written by a reputable insurance company with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state of Colorado.
- 11.0 Other Insurance. Besides general liability insurance on the Premises occupied, the Lessee will be responsible for any insurance that the Lessee deems important for doing business, including, but not limited to, business interruption insurance.
- 12.0 Subletting and Assignment. The Lessee covenants and agrees that it will not assign this Lease, any interest or any part thereof, any right or privilege appurtenant thereto, nor mortgage or hypothecate the leasehold without obtaining written consent of the City first.
- 13.0 Total or Partial Destruction. If, during the Term, the Premises or any part thereof shall be destroyed or shall be so damaged by fire or other casualty so as to become unusable, then, the Term shall cease, and this Lease shall become null and void from the date of such damage or destruction and the proceeds of any casualty insurance covering the Premises shall be paid to the City, and the Lessee's obligation to pay rent shall be equitably abated in proportion to the extent that Lessee is unable to conduct its normal business in the Premises. If the Premises shall be injured by fire or the elements as covered by Lessee's Commercial General Liability Policy so as to not render the same untenable and unfit for occupancy by Lessee, then Lessee shall repair the same with all reasonable speed to the condition the Premises were in prior to such damage or injury. Any and all insurance proceeds related to such event shall be retained by Lessee and used to repair the Premises.
- 14.0 Default of Lessee. The following shall be considered "Events of Default" under this Lease.
- 14.1 Payments. Lessee shall default if the due and punctual payment of any amounts required to be paid hereunder and such default shall continue for 30 days after the payment is due; or
- 14.2 Other Covenants. Lessee neglects to or fails to perform or observe any of the other covenants herein contained, and fail to remedy the same within the time period defined in the written notice from the City specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such Event of Default if it is of such nature that it cannot be cured within said time period, provided that Lessee shall be diligently pursuing such cure within said time period);
- 14.3 Remedies. Then, and in any one or more such Events of Default, the City shall, while such Event of Default continues, give the Lessee written notice to remedy the violation and of the City's intention to terminate this Lease on the date listed in the notice if the Lessee fails to remedy the violation. The City's notice will provide at least ten (10) days to the Lessee to remedy the violation, if within the lease term. If

the Parties are operating by month-to-month, the City will provide at least three (3) days to remedy the situation. If the violation has not been resolved within the remedy period granted, the Lessee shall have at least 15 days and not more than 30 days to vacate the Premises after the last day of the remedy period; and this Lease shall thereupon be terminated.

- 15.0 Holding Over. If Lessee holds over after the end of the Initial Term or Renewal Term without a written agreement providing for a Renewal Term, Lessee shall be deemed to be a tenant from month-to-month, at a monthly rent, payable in advance, equal to the monthly rent identified in section 3.0. Lessee shall be bound by all of the other provisions of this Lease as the same may apply to a month-to-month tenancy.

16.0 Environmental Matters.

16.1 Definitions.

- A. Hazardous Material. Hazardous Material means any substance:
- (1) the presence and amount or volume of which at the Premises requires investigation, notice or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
 - (2) which is now or becomes during the Term, defined as "hazardous material," "hazardous waste," "hazardous substance," "regulated substance," "pollutant" or "contaminant" under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Colorado Underground Storage Tank Act (Colo. Rev. Stat. §25-18-101 et seq.), and/or the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.); or
 - (3) which is now or becomes during the Term, regulated as Hazardous Material by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of Colorado or any political subdivision thereof.

16.2 Negative Covenants.

- A. No Hazardous Material on Premises. Except in strict compliance with all environmental laws and regulations, Lessee shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Premises or Property by Lessee, its agents, employees, contractors, subcontractors, guests, licensees or invitees.

No Violations. Lessee shall not cause, permit or suffer the existence or the commission by Lessee, its agents, employees, contractors, subcontractors or guests, licensees or invitees, of any violation of any environmental law or regulation upon, about or beneath the Premises, Property or any portion thereof.

- B. No Environmental or Other Liens. Lessee shall not create or suffer or permit to exist with respect to the Premises, any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. section 9607(1) or any similar state statute, to the extent that such lien arises out of the actions or omissions of Lessee, its agents, employees, contractors, subcontractors or guests, licensees or invitees in the Premises or Property.

- 16.3 City's Right to Remediate. Should Lessee fail to perform or observe any of its obligations or agreements pertaining to Hazardous Materials, then City shall have the right, but not the duty, without limitation upon any of the rights of City pursuant to this Lease, to enter the Premises personally or through its agents, consultants or contractors and perform the same, and Lessee agrees to indemnify and reimburse City for the costs thereof.
- 17.0 Subordination and Estoppel. This Lease is and shall be subject and subordinate to the lien of any deed of trust, mortgage, master lease, financing instrument, or other security instrument affecting the Property and intended for the benefit of any lender(s) for the Property, and subject and subordinate to any modification, renewal, replacement or extension thereof. Lessee shall within ten (10) calendar days after City's request, execute and deliver to City or City's lender, written agreements of subordination, non-disturbance and attornment ("SNDA") in the form acceptable to City and customary for commercial lending institutions in Colorado, as well as tenant estoppel certificates confirming: (i) that this Lease is in effect as drafted (or stating any modification); (ii) that there is no uncured Default (or specifying Default if any is claimed); (iii) the Commencement Date, Term, Rent, and other business terms; and (iv) that the information is true and accurate and may be relied upon by City, City's lender, or any prospective lender for the Property.
- 18.0 Notices. Any formal or other communication given by either Party to the other relating to this Lease shall be hand delivered, emailed, sent by registered or certified mail, return receipt requested, or nationally-recognized overnight courier service, addressed to such other Party at the respective addresses set forth below; and such notice or other communication shall be deemed given when so delivered, emailed, mailed, or sent to:

Lessee: Colorado Thoroughbred Breeders Association
Attention: LarriLou Kallsen
22 South 4th Avenue, Suite 303
Brighton, CO 80601
ctba@cotba.com

Lessor: City of Brighton
Attention: Finance Department
500 S 4th Avenue
Brighton, CO 80601
nsamson@brightonco.gov

- 19.0 Lessor's Right of Entry. During the Term of this Lease, the City reserves the right at all reasonable times and with reasonable notice, and at all times during emergencies, to enter the Premises for the purpose of inspecting and examining the same, to show the same to prospective purchasers or lessees, or to make repairs to the building or systems.
- 20.0 Covenant of Title and Quiet Enjoyment. The City will defend Lessee's right to possession and quiet enjoyment of the Leased Premises, provided that Lessee is not in default under this Sublease.
- 21.0 Conditional Authorization for Pet. The City hereby authorizes Lessee to keep the following pet on the Premises in accordance with this Lease and Lessee agrees to abide by the rules and obligations of this Lease: (description and name of the pet):

The pet(s) must be listed in this Lease. No other pets are allowed on the Premises without the prior consent of the City. Any pet may be rejected by the City for any reason the City deems appropriate. Authorization may be terminated at any time if the Lessee's right of occupancy is lawfully terminated or if the pet rules listed below are violated in any way by the Lessee or Lessee's guests or occupants.

- 21.1 Only one (1) dog will be allowed as a pet on the Premises. Dogs must be spayed or neutered. Lessee must comply with all local pet ordinances and tag requirements. Veterinary proof may be required. No puppies (six (6) months or less) are allowed.
- 21.2 Pets must stay inside the Premises, and are not allowed to wander the common areas or other areas of the Property. Pets must be supervised at all times when indoors or outdoors. The Lessee is responsible to immediately clean up after pet waste.
- 21.3 Pets shall not be a nuisance or disturb other tenants. If another tenant(s) in the building issues a complaint, the Lessee may be asked to no longer keep the pet(s) on the Premises. If a Lessee's pet has been neglected, poses a threat to other tenants, or has repeatedly violated these pet provisions, the City has the right remove a pet from the Premises.
- 21.4 Lessee is responsible for any costs incurred as a result of their pet being allowed on the Premises, including but not limited to, property damages, cleaning, deodorization, de-flea treatment of space, and/or personal injuries.

22.0 Miscellaneous.

- 22.1 End of Term. Upon the expiration or earlier termination of this Lease, Lessee shall (i) surrender the Premises to the City in at least their condition as of the commencement of the tenancy, except for ordinary wear and tear, casualty and condemnation; (ii) provide the City with all keys for the Premises; (iii) remove from the Premises all property owned by Lessee; and (iv) leave the Premises in a broom-clean condition. Property not so removed shall become the property of the City, and the City may thereafter cause such property to be removed from the Premises.
- 22.2 Early Termination of Lease. If the Lessee becomes aware of its inability to pay the rent due for the current month or future months of the lease term, the Lessee must notify the City in writing at least 30 days prior to the day the next rent payment is due of its intention to terminate the Lease. The Lessee may request in writing that the City use some or all of the Security Deposit for unpaid rent. In the event the Security Deposit does not cover the amount due, or the City does not agree to the use of the Security Deposit to cover the unpaid rent, the Lessee shall pay all remaining amounts owed to the City within 30 days.
- 22.3 Liens. Lessee shall not cause or permit to be recorded, filed, claimed, or asserted against the Premises any mechanic's lien for supplies, machinery, tools, equipment, labor, or material contracted for by, through, or under such party, and furnished or used in connection with work performed on the Premises. If Lessee causes or permits any such lien to be so recorded, filed, claimed or asserted, Lessee shall cause the same to be released or discharged within 30 days thereafter. If Lessee breaches the foregoing covenant, then the City may cause any such claimed lien to be released of record by bonding or payment or any other means available. Lessee shall pay to the City on demand all sums paid and costs, including reasonable attorneys' fees, incurred by the City in connection therewith.
- 22.4 Governing Laws; Venue. This Lease is subject to and is to be construed under the laws of the local jurisdiction, the County and the State of Colorado, including all ordinances, rules and regulations enacted or promulgated pursuant to these state and local provisions. The aforementioned provisions are incorporated into this Lease by this reference. Venue for any action arising out of this Lease shall be in the District Court in Adams, County Colorado.
- 22.5 Parties not Partners. Nothing contained herein shall be deemed or construed by the Parties nor by any third party as creating the relationship of principal and agent or a partnership or a joint venture between the Parties, it being agreed that none of the provisions set forth herein nor any acts of the Parties herein shall be deemed to create a relationship between the Parties other than the relationship of the City and Lessee.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed the day and year above written.

LESSEE: COLORADO THOROUGHBRED BREEDERS ASSOCIATION

Signature: _____

Name: _____

Title: _____

LESSOR: THE CITY OF BRIGHTON, a Colorado municipal corporation

Ordinance #:

Signature: _____

Name: _____

Title: _____

APPROVED AS TO FORM: City Attorney's Office

Signature: _____

Name: _____

Title: _____

ATTEST: City Clerk's Office

Signature: _____

Name: _____

Title: _____

Date: _____