

CITY OF PALM DESERT
LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into as of this **14th** day of **December 2023**, by and between the City of Palm Desert, a Municipal Corporation (Landlord) and **Adam Drake** ("Tenant") with a principal place of business at **35003 Nicklaus Nook, Beaumont, CA 92223**, with reference to the following facts:

1. **Description of the Leased Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, for the term and upon the terms and conditions in this Lease, the Premises (Exhibit A).

2. **Term.** The term of this Lease shall be for one (1) year, commencing on December 14, 2023 (the "Term Commencement Date"). The term will be automatically extended for an additional one (1) year unless either party gives thirty (30) days written notice of termination prior to the expiration of the then current term.

3. **Date of Lease and Legal Effect.** The terms, covenants and conditions of this Lease shall become legally binding on the Term Commencement Date.

4. **Rent.** During the term of this Lease and any extension thereof, Tenant shall pay Landlord one dollar (\$1.00) per year as minimum yearly rent.

5. **Utilities & Maintenance: Improvements: Condition of Premises.**

A. **Provided by Landlord.** Landlord shall provide neither services nor maintenance for the Premises. Landlord shall pay for and provide water utility service to the Premises. This water utility service shall be limited to reasonable water usage in connection to the Premises only. Tenant take all necessary actions to transfer water utility services provided to Premises from Tenant to Landlord. Notwithstanding the foregoing, Landlord shall provide no other service or maintenance for the Premises.

B. **Provided by Tenant.** Except as otherwise provided in this Lease, Tenant shall pay any and all expenses required and keep and maintain the Premises and every part thereof in and about the Premises in good order, condition and repair, normal wear and tear excepted. Tenant shall be responsible for general upkeep of the Premises and shall provide service therefore. Tenant shall also inspect and provide reasonable upkeep for the grounds of which the Premises are a part, to the extent that such areas are used by Tenant. Tenant shall not make or cause to be made any alterations, additions, or improvements to or of the Premises or any part thereof without the prior written consent of Landlord. Tenant shall keep the Premises free and clear of any liens or encumbrances which may arise from such work, materials furnished or obligates incurred by or for Tenant.

C. **As-Is Condition.** Tenant warrants and agrees that Tenant has inspected the Premises. Tenant agrees to take possession of the Premises in an **AS-IS** condition (which exists on the Term Commencement Date) and Tenant further agrees that Landlord shall have no responsibility for any repairs or improvements to the Premises, prior to, or as a condition of, Tenant's occupation of the Premises. Landlord makes no representations regarding the condition, status, compliance with laws or suitability for a particular purpose for Tenant's use.

D. **Condition Upon Surrender**. Upon expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition as when received, ordinary wear and tear and damage by fire, earthquake, or act of God excepted, and including any repairs or improvements made by Tenant. The Tenant shall, at its sole cost and expense, remove from the Premises all of its movable trade fixtures and equipment, and such other items the Tenant has installed or placed on the Premises, and the Tenant shall repair all damage to the improvements resulting from such removal. If Tenant fails to maintain the Premises in good order and repair, after thirty (30) days prior written notice, Landlord may, at its option, make such repairs, and Tenant shall pay the reasonable cost thereof additional rent hereunder within ten (10) days after receipt of a written statement therefor. In the event the giving of thirty (30) days prior notice may result in additional damage to the Premises, Landlord may make such repairs, at Tenant's expense, within thirty (30) days prior written notice.

6. **Taxes**.

A. **Landlord Taxes**. Landlord shall have no responsibility for payment of any real property taxes and assessments levied and assessed against the land of which the Premises are a part.

B. **Tenant Taxes**. Tenant agrees to pay, before delinquent, all real and personal property taxes levied or assessed on Tenant's property located on the Premises, at Tenant's sole cost and expenses, if any.

C. **Revenue & Taxation Code Section 107.6, Possessory Interest Tax**. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxes and that, in the event that a possessory interest is created, Tenant shall be responsible for payment of any taxes levied against such possessory interest.

7. **Insurance and Indemnification**.

A. **Landlord's Insurance**. Landlord shall obtain and maintain, at Landlord's sole cost and expense, insurance in such coverages and in such amounts as Landlord determines, in Landlord's sole discretion.

B. **Tenant's Insurance**. Tenant shall obtain and maintain, at Tenant's sole cost and expense, broad-form comprehensive public liability insurance with limits not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) each occurrence, insuring any and all liability of Tenant with respect to the Premises, and property damage liability insurance with a limit not less than One Million Dollars (\$1,000,000) each accident or Two Million Dollars (\$2,000,000) combined single limit, Tenant shall name Landlord as an additional insured, at Tenant's sole cost and expense.

C. **Indemnification**. Except for the sole negligence of Landlord, Tenant shall defend, indemnify and keep and hold Landlord, including Landlord's officers, officials, agents, employees and volunteers, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of Tenant, sustained in, on or about the Premises or arising out of Tenant's use or occupancy thereof.

D. **Assumption of Risk**. To the extent permitted by law, Tenant assumes any and all risk of loss, damage or injury of any kind to any person or property which is in, on or about the Premises.

Tenant's assumption of risk shall include without limitation loss or damage caused by defects within the Premises or any fixture therein, accident, fire or other casualty on the Premises. To the extent permitted by law, Tenant hereby waives all claims and demands against Landlord, its respective officials, officers, employees, volunteers and agents for injury to persons or damage to property arising for any reason.

- E. **Waiver of Claims.** Tenant has been advised by its legal counsel concerning the content and effect of California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Tenant hereby waives the benefit of California Civil Code Section 1542 and all other State or federal statutes or judicial decisions of similar effect. The provisions of this Section shall survive the termination of this Lease.

8. **Permitted Use; Compliance with Laws.**

A. Tenant shall use the Premises solely for the purpose of operating a remote controlled car racetrack. Tenant is responsible for compliance with all local, State, and Federal laws. The only vehicles permitted on the site are small remote controlled vehicles on the racetrack. Tenant will take necessary measures to ensure that dust is not generated on the site that is blown onto adjoining property.

B. Tenant is responsible for compliance with all local, State, and Federal laws.

C. Tenant shall cause the Premises to be open a minimum of fifteen (15) hours per month and produce a minimum of one (1) signature event per year.

9. **Hazardous Materials.** Tenant shall not cause or permit any Hazardous Materials, as defined below to be brought upon, kept, used, discharged, deposited or leaked in or about the Premises by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees, or contractors). If Tenant breaches the obligations stated in this preceding sentence, or if the presence of any Hazardous Material on the Premises caused or suffered or permitted by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees, or contractors) results in contamination of the Premises, or if contamination of the Premises by any Hazardous Material otherwise occurs for which Tenant is equally liable, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, damages, costs, liabilities and expenses (including, without limitation, diminution in value or use of the Premises, attorney's fees, consultant fees and expert fees) which arise during or after the term as a result of such contamination. This indemnification shall include, without limitation costs incurred in connection with any investigation of site conditions or any clean-up remedial, removal or restoration work on or under the Premises. "Hazardous Material" means any material or waste which is or becomes regulated by any State or Federal governmental authority or by common law decisions, including without limitation (i) all chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

10. **Landlord's Right to Enter Premises.** Landlord reserves, and shall at any and all times have, the right to enter the Premises upon reasonable notice to Tenant to inspect same, to submit the Premises to prospective tenants, to post notices of non-responsibility, and to repair the Premises.

11. **Assignment and Subleasing.** Tenant shall not assign, mortgage, or hypothecate this Lease in whole or in part, nor sublet all or any part of the Premises, without the prior written consent of Landlord in each instance, which consent may be withheld, reasonably or otherwise, in Landlord's sole and absolute discretion.

12. **Termination.** Either party hereto may terminate this Lease at any time upon thirty (30) days prior written notice to the other party.

13. **Reporting and Accounting Requirements.** At all times during the term of this lease, Tenant shall maintain books and records sufficient to evaluate the revenue generation of the facility, Tenant shall make available to City such books and records upon request.

14. **No Waiver of Breach.** No failure of either Landlord or Tenant to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

15. **Time is of the Essence.** Time is of the essence of this Lease and of each provision.

16. **Notices.** All notices and other communication hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid commercial overnight courier (Such as Express Mail, Federal Express, etc.) with written verification of receipt or by facsimile or email. A notice shall be deemed given: (a) when delivered by personal delivery (as evidenced by the receipt); (b) three (3) days after deposit in the mail if sent by registered or certified mail; (c) one (1) business day after having sent by commercial overnight courier mail; (c) one business day after having been sent by commercial overnight courier as evidenced by the written verification of receipt; (d) on the date of confirmation if faxed or emailed.

If to Landlord: City of Palm Desert
Attention: City Manager
73510 Fred Waring Drive
Palm Desert, CA 92260

If to Tenant: Adam Drake
35003 Nicklaus Nook
Beaumont, CA 92223

Any party may change its address for receiving notice by written notice given to the other named above.

17. **Entire Agreement/Amendment.** This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and not other agreements, statements, or promise made by any party, or to any employee, officer, or agent of any party, which is not

contained in this Lease shall be binding or valid. This Lease may not be modified except by written instrument duly executed by the parties hereto or their successors in interest.

18. **Survival of Indemnities.** The obligations of the indemnifying party under each and every indemnification and hold harmless provision contained in this Lease shall survive the expiration or earlier termination of this Lease to and until the last to occur of (a) the last date permitted by law for the bringing of any claim or action with respect to which indemnification may be claimed by the indemnifying party against the indemnifying party under such provision or (b) the date on which any claim or action of or which indemnification may be claimed under such provision is fully and finally resolved, and if applicable, any compromise thereof or judgment or award thereon is paid in full by the indemnifying party and the indemnified party in compromise thereof or upon judgment or award thereon and in defense of such action or claim, including reasonable attorney's fees incurred.

19. **Heading.** The subject headings of the section and paragraphs of this Lease are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

20. **Attorney's Fees.** Should either party commence any legal action or proceeding against the other based on this Lease, the prevailing party shall be entitled to an award of attorney's fees.

21. **Counterparts.** This Agreement may be executed in any one or more counterparts, and all so executed shall constitute one and the same instrument.

22. **Governing Law. Venue.** This agreement shall be construed and governed by the laws of the State of California. If any action is brought to interpret or enforce any term of this Lease, the action shall be brought in a state or federal court situation in the County of Riverside, State of California.

[SIGNATURES ON NEXT PAGE]

In **WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

LANDLORD:

Dated: _____ By: _____

Name: L. Todd Hileman

Its: City Manager

TENANT:

Dated: _____ By: _____

Name: Adam Drake

Its: _____

Approved as to form:

By: _____

Best Best & Krieger LLP
City Attorney

QC: _____

Insurance:

Initial Review

Final Approval

Exhibit A

DESCRIPTION OF PREMISES

APN No. 640-091-010, vacant property behind the Desert Crossings Shopping Center on Painters Path as delineated below on the map, but excluding that portion of the property indicated by the shaded area designated as "Project Location" on the map.

