

**AGENDA**  
**BENBROOK CITY COUNCIL**  
**THURSDAY, FEBRUARY 3, 2022**  
**911 WINSOTT ROAD, BENBROOK, TEXAS**  
**PRE-COUNCIL WORKSESSION 7:15 P.M.**  
Review and discuss agenda items for regular meeting.  
**REGULAR MEETING 7:30 P.M.**  
**COUNCIL CHAMBERS**  
**ALL AGENDA ITEMS ARE SUBJECT TO FINAL ACTION**

I. CALL TO ORDER

II. INVOCATION

Invocation To Be Given By Pastor Jacob Serns With Benbrook Seventh Day Adventist

PLEDGE OF ALLEGIANCE

III. CITIZEN COMMENTS ON ANY AGENDA ITEM (Citizen Comments Are Limited To 3 Minutes)

IV. MINUTES

1. Approve Minutes Of The Regular Meeting Held January 20, 2022

Documents:

[CC MINUTES-01-20-22.PDF](#)

V. PRESENTATION BY ECONOMIC DEVELOPMENT CORPORATION

EDC-2022-01 Approve A Temporary Commercial Lease Agreement Between The Benbrook Economic Development Corporation (BEDC) And Kenneth Russell

Documents:

[EDC-2022-01 KENNETH RUSSELL LEASE AGREEMENT.PDF](#)  
[EDC-2022-01 LEASE AGREEMENT KENNETH RUSSELL.PDF](#)

VI. INFORMAL CITIZEN COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in informal citizen comments. City Council may only make a statement of specific information given in response to the inquiry; recite an existing policy; or request staff place the item on an agenda for a subsequent meeting. The exception to informal comments is that once an election date has been set by City Council comments relative to elections will not be broadcast on the City's cable channel. However, a copy of the tape containing citizens' comments will be available at city hall for review or purchase by interested citizens.

(Citizen comments are limited to 3 minutes)

VII. COUNCIL MEMBER AND STAFF COMMENTS

Pursuant to the Texas Government Code, Chapter 551, Open Meetings, Section 551.0415, announcements from City Councilmembers and City Staff are limited to

expressions of thanks; congratulations; condolences; recognition of public officials, employees or citizens; information regarding holiday schedules; reminders of community events or announcements involving an imminent threat to the public health and safety of the municipality that has arisen after the posting of the agenda. No discussion or formal action may be taken on these items at this meeting.

#### VIII. ADJOURNMENT

##### **WORKSESSION**

1. Discuss renaming of South Benbrook Park to Jerry Dittrich Park (Mayor Ward)



**MINUTES  
OF THE  
MEETING OF THE  
BENBROOK CITY COUNCIL  
THURSDAY, JANUARY 20, 2022**

The regular meeting of the Benbrook City Council was held on January 20, 2022 at 7:30 p.m. in the Council Chambers with the following Council members present:

Jason Ward, Mayor  
Renee Franklin  
Larry Marshall  
Dustin Phillips

Also Present:

Andy Wayman, City Manager  
Jim Hinderaker, Assistant City Manager  
Bennett Howell, Public Service Director  
Rick Overgaard, Finance Director  
Beth Fischer, Deputy City Secretary  
Jared DeVries, Management Analyst

Others:

Pastor Todd Pylant  
Miles Terry  
Michele Wheeler  
Michael Flowers  
Josh Harville  
Greg and Donna Clem  
Linda Daniel and Mr. Daniel  
Janice Howe  
Jim Wilson  
Terri Davis  
and 1 other citizen

**I. CALL TO ORDER**

Meeting called to order at 7:30 p. m. by Mayor Ward.

**II. INVOCATION/PLEDGE OF ALEGIANCE**

Invocation was given by Pastor Todd Pylant with First Baptist Church of Benbrook. The Pledge of Allegiance was recited.

**III. CITIZEN COMMENTS ON ANY AGENDA ITEM**

#### **IV. MINUTES**

##### **1. Approve minutes of the regular meeting held January 6, 2022**

Motion by Dr. Marshall, seconded by Ms. Franklin to approve the minutes of the regular meeting held January 6, 2022.

Vote on the Motion

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Ward

Noes: None

Motion carried unanimously.

#### **V. PRESENTATION BY PLANNING AND ZONING COMMISSION**

##### **PZ-2022-01 Z-21-02/CP-21-02**

**Adopt Ordinance rezoning approximately 69 acres out of the James Cambo Survey Abstract No. 362 and John Laneri Survey Abstract No. 1964 from "F" Commercial, "G" Commerce, "H" Industrial, to "G-PD" Commerce Planned Development District, providing for supplemental regulations to the "G" Commerce zoning district regulations and uses. The applicant is also requesting to amend the Benbrook Comprehensive Plan's future land use map designations for this area, consistent with the rezoning request. The property is generally east of Winscott Road and north of I.H. 20/820. (Public Hearing)**

Jim Hinderaker gave the following report: The applicant is requesting a Future Land Use Map amendment and zoning change involving approximately 69 acres, located northeast of Winscott Road and I.H. 20/820. The property is owned by the Edwards Family and the developer is Jackson Shaw.

The applicant is requesting the rezoning of the existing F-Commercial and G-Commerce to G-PD Commerce Planned Development. The request is also to rezone the H-Industrial to G-PD Commerce Planned Development.

The proposed ordinance establishes the "G" Commerce District as the base or underlying zoning district for the entire planned development boundary area, which means that all existing use, dimensional, development, and other standards of the Benbrook Municipal Code, as may be amended, for the "G" Commerce District apply to the property. There are two additional permitted uses:

- Indoor manufacturing and production
- Limited outdoor storage (must meet screening standards)

There are also minor changes for parking, maximum height, screening and signage.

The Regional Coordination Committee serves as a recommendation body for any development occurring in the Air Installation Compatible Use Zone (AICUZ). A portion of the property lies within the Day-Night-Level (DNL) 65 noise zone and the RCC discourages any new residential development. The committee has provided staff a letter of support for the rezoning request.

Mayor Ward opened the public hearing at 7:40 p.m.

No one spoke to the item.

Mayor Ward closed the public hearing at 7:41 p.m.

Motion by Dr. Marshall, seconded by Mr. Phillips to adopt Ordinance No. 1478 rezoning approximately 69 acres out of the James Cambo Survey Abstract No. 362 and John Laneri Survey Abstract No. 1964 from "F" Commercial, "G" Commerce, "H" Industrial, to "G-PD" Commerce Planned Development District, providing for supplemental regulations to the "G" Commerce zoning district regulations and uses.

Vote on the Motion

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Ward

Noes: None

Motion carried unanimously.

**Ordinance No. 1478 being "AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, REZONING 69.394 ACRES OF LAND OUT OF THE J. CAMBO SURVEY ABSTRACT NO 362 AND J. LANERI SURVEY ABSTRACT NO 1964, CITY OF BENBROOK, TARRANT COUNTY, TEXAS, FROM "F" COMMERCIAL, "G" COMMERCE AND "H" INDUSTRIAL DISTRICTS TO "G-PD" COMMERCE PLANNED DEVELOPMENT DISTRICT; AMENDING THE OFFICIAL ZONING AND FUTURE LAND USE MAPS TO REFLECT THE CHANGE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE. "**

### **SECTION 8 PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars

(\$500.00) for all other violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

### **SECTION 13 EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and it is so ordained.

## **VI. REPORTS FROM CITY MANAGER**

### **A. GENERAL**

#### **G-2548 Accept Finance Report for period ending December 31, 2021**

Rick Overgaard gave the following report: General Fund revenues for the month of December were \$7,478,777. Major revenues collected for the month include Property taxes of \$6,874,592, Franchise taxes of \$17,988, Permits of \$59,437, Fines and Forfeitures of \$58,347, and Charges for Services of \$155,088. Sales tax collected and recognized as revenue in December was \$294,726. Fiscal year to date sales tax is \$910,543, an increase of 12.37% over last year at this time. General Fund revenues collected through the end of December were \$9,748,695 and 35.0% of the budget.

General Fund expenditures for the month of December were \$1,265,829. Fiscal year to date expenditures were \$3,991,592 and 18.7% of the adopted budget.

Total General Fund revenues of \$9,748,695 were more than total General Fund expenditures of \$3,991,592 by \$5,757,103.

Debt Service revenues for the month of December totaled \$240,118 and were all from property tax. There were no expenditures in December. The next debt service payments are due February 1<sup>st</sup>.

EDC revenues through December 31, 2021, were \$472,148. EDC expenditures through the end of December were \$96,989. Total revenues exceeded total expenditures by \$375,159.

Total revenues received through December 31, 2021 were \$216,749 from stormwater utility fees, mineral lease revenue, and interest earnings. Total expenditures for the Capital Projects Fund were \$36,496 through the end of December. Total revenues exceeded total expenditures by \$180,253. Sufficient funds are available in the current fund balances of the Capital Projects Fund. This fund operates on a project basis rather than a specific fiscal year.

On December 31, 2021, the City had \$47,850,513 invested at varying interest rates; the EDC had \$5,519,012 available.

Motion by Ms. Franklin, seconded by Mr. Phillips to accept the finance report for the period ending December 31, 2021

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Ward

Noes: None

Motion unanimously.

**G-2549      Accept Investment Report for period ending December 31, 2021**

Rick Overgaard gave the following report: The Public Funds Investment Act (PFIA), Texas Government Code and the City's Investment Policy require that an Investment Report be presented to City Council.

The Investment Committee met on January 12, 2022, to review the report and ensure compliance with the City's investment policy. A copy of the Investment Report is attached and highlights are presented below.

- The total portfolio for the City and EDC on December 31, 2021 is \$53,369,525, with 90% or \$47,850,513 belonging to the City, and 10% or \$5,519,012 to the EDC. The City's portion includes the \$22,000,000 in bond proceeds received in September.
- 78% of the combined portfolio is in bank accounts, with 11% in local government investment pools, 10% in certificates of deposit, and 1% in agency notes.
- The weighted average maturity on the combined portfolio is 70 days with a .14% average yield to maturity. In comparison, the 90-day T-Bill benchmark rate is .06%.

The average yield to maturity still remains low because of continued low market interest rates, decreased yield in local government investment pools, and previously owned higher yielding CD's that have matured. With a relatively short 70-day weighted average maturity, the City is well positioned to take advantage of rising interest rates in 2022.

Motion by Mr. Phillips, seconded by Dr. Marshall to accept the investment report for the period ending December 31, 2021

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Ward

Noes: None

Motion unanimously.

## **B. CONTRACT**

### **C-348 Award Floodplain Study Contract to Halff Associates**

Bennett Howell gave the following report: The proposed contract with Halff Associates will study the effects of non-regulatory (10-year, 25-year and 50-year) rain events within Benbrook's floodplain. The study will merge the latest Light Detection and Ranging (LiDAR) topographical data with existing floodplain data from the City of Benbrook, Texas Natural Resources Information System (TNRIS), and the North Central Texas Council of Governments (NCTCOG) to create a GIS-based Digital Elevation Model (DEM) for non-regulatory rain events, in addition to the FEMA required regulatory modeling for 100-year and 500-year rain events. The citywide floodplain study is included in the Capital Improvement Program approved by the City Council.

The study will enable the staff to review the City's flood prone areas at a more granular level, which in turn will guide best floodplain management practices and allocation of mitigation dollars.

The study will also earn additional points toward improving the City's Community Rating System (CRS) program score.

The City has contracted with Halff Associates for past floodplain studies.

The Stormwater Utility Fund will fund the project.

Motion by Dr. Marshall, seconded by Ms. Franklin to award the Floodplain Study contract to Halff Associates for \$75,000.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Ward

Noes: None

Motion unanimously.

### **C-349 Award Paving Contract to Texas Bit**

Bennett Howell gave the following report: For many years, the City of Benbrook has collaborated with Tarrant County to complete the City's annual asphalt street overlay program (program). This year's Interlocal Agreement with Tarrant County was approved by the City Council on November 18, 2021.

While the annual program has been a great benefit to Benbrook, Tarrant County is unable to complete the entire list of streets included in this year's program due to COVID and a backlog of projects. The proposed contract with Texas Bit completes the balance of the program at rates established via our existing



Interlocal Agreement with Ellis County. The annual overlay program is included in the Capital Improvement Program approved by City Council.

Texas Bit has done an excellent job for the City in the past, most recently completing the City's 2021 Overlay Program.

For fiscal year 2021/2022, \$1 million was budgeted for the entire program. This portion of the program will reclaim approximately 14,322 linear feet of roadway, as detailed in Table 1 below, at a total cost of \$858,591.

Reclaimed Streets

Street	From Cross Street	To Cross Street	Length (ft)	Width (ft)
Jogging Track at Dutch Branch Park	NA	NA	1,800	12
Park Dept Drive	NA	NA	1,431	12
Lake Shore	NA	NA	5,362	20
Cary Conklin Drive	Winscott Road	Near Concession Stand	955	35
John Reagan	Cozby N	Darnell	1,638	30
Childers	Bryant	Cozby N	822	30
Mildred	Bryant	Sproles	1,200	30
Mildred	Paul	Cozby S	1,114	30

The paving contract will be funded by the Public Works operating budget.

Motion by Ms. Franklin, seconded by Mr. Phillips to approve the paving contract with Texas Bit for \$858,591.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Ward

Noes: None

Motion unanimously.

## VII. INFORMAL CITIZEN COMMENTS

Greg Clem, Donna Clem, and Linda Daniel all spoke of their concern regarding the plans of a new subdivision south of Trinity Estates and the infrastructure of the sewage and drainage.

**VIII. COUNCIL MEMBER AND STAFF COMMENTS**

Dr. Marshall announced the passing of former Councilmember, Charlie Anderson, December 27, 2021 and expressed appreciation for his many years of service.

Mayor Ward explained the absence of Councilmembers Addison, Mackey, and Tiner.

**IX. ADJOURNMENT**

Meeting adjourned at 8:05 p.m.

**APPROVED:**

\_\_\_\_\_  
**Jason Ward, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Joanna King, City Secretary**



# City of Benbrook

## CITY COUNCIL COMMUNICATION

DATE:	REFERENCE NUMBER:	SUBJECT:	PAGE:
02/03/2022	EDC-2022-01	Approve a Temporary Commercial Lease Agreement between the Benbrook Economic Development Corporation (BEDC) and Kenneth Russell	1 of 2

### BACKGROUND

Kenneth Russell, owner of several Russell Feed & Supply stores in the area, has continually operated his first store located at 8704 Benbrook Boulevard in Benbrook since 1997. For the past couple of years, Mr. Russell has worked with the Benbrook Economic Development Corporation (BEDC) and the City on plans to replace the Benbrook store with a new, larger building.

To avoid closure of the Benbrook store during construction of the new building, Mr. Russell and BEDC (approved by City Council) entered into a one-year, no cost lease agreement (with a three-month extension option) to allow Mr. Russell to temporarily relocate the Benbrook store to the BEDC owned 8,000 SF building located at 9331 Westpark Drive. The three-month extension will expire on March 31, 2022.

Due to the pandemic and construction delays, Mr. Russell has not completed construction of the new building and is requesting a new lease that will start on April 1, 2022 and run through June 30, 2022. The lease agreement includes a six-month extension option that expires on December 30, 2022. Mr. Russell has the option to terminate the lease at any time (two-week notice required) without penalty.

BEDC unanimously approved the new lease agreement with Mr. Russell during the January 18, 2022, Board meeting.

The City has issued a building permit for the new building, which is currently under construction.

### LEASE AGREEMENT

The Agreement outlines the obligations of each party, term of three months with a possible six-month extension, and the discount rental rate of \$6,000 per month, if performance measures are met by February 15, 2022. The performance measures include:

- All required engineering and construction plans for the Russell Feed Store located at 8704 Benbrook Boulevard must be approved, and
- Vertical construction must have commenced on the building, or

SUBMITTED BY:	DISPOSITION BY COUNCIL: Y APPROVED    Y OTHER (DESCRIBE)	PROCESSED BY:
CITY MANAGER		CITY SECRETARY
		DATE:

DATE: 02/03/2022	REFERENCE NUMBER: EDC-2022-01	SUBJECT: Approve a Temporary Commercial Lease Agreement between the Benbrook Economic Development Corporation (BEDC) and Kenneth Russell	PAGE:  2 of 2
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- Mr. Russell must provide the receipt showing the building package has been ordered by February 15, 2022.

If the performance measures are not met by February 15, 2022, the monthly rental rate for the property will be \$7,746. Other than the term, rental rate, and performance measures, the obligations in the agreement are the same as the prior lease.

**RECOMMENDATION**

The BEDC Board of Directors recommends that the City Council approve the Lease Agreement between the Benbrook Economic Development Corporation and Kenneth Russell.

# **TEMPORARY COMMERCIAL LEASE AGREEMENT**

For good and valuable consideration, the parties to this Temporary Commercial Lease Agreement (the "**Lease**") agree as follows:

## **ARTICLE ONE**

### **DEFINED TERMS**

As used in this Lease, the terms set forth in this Article One have the following meanings:

- 1.01 Effective Date:** April 1, 2022
  
- 1.02 Landlord:** **Benbrook Economic Development Corporation**,  
a Texas economic development corporation  
  
**Address:** attn: Jessica James  
Economic Development and Marketing Director  
911 Winscott Road, Benbrook, Texas 76126  
**Phone:** 817-249-6092  
**Email:** jjames@benbrook-tx.gov
  
- 1.03 Tenant:** **[Kenneth Russell]**  
  
**Address:** 5710 Jacksboro Hwy, Fort Worth, TX 76114  
**Phone:** 817-624-6224  
**Email:** krussell57fish@aol.com
  
- 1.04 Premises:** **Block C, Lots 2R and 3R1 of the Westpark Addition to the City of Benbrook, Tarrant County, Texas, commonly known by the street addresses of 9331 and 9351, Westpark Drive, Benbrook, Texas 76126**
  
- 1.05 Term:** From the Effective Date until June 30, 2022, (the "**Expiration Date**") as may be shortened or extended by agreement of the parties. Landlord agrees that it shall extend this Lease, for a reasonable period of time not to exceed six (6) months, in the event the Tenant, upon the exercise of due diligence, is unable to complete the construction of its intended new location by the expiration date. Tenant can cancel the lease anytime with a two week notice without penalty.
  
- 1.06 Base Rent:** **\$6,000 monthly, due upon the 1<sup>st</sup> day of each month if performance measures are met as specified in Article Two, Section 2.02. If performance measures are not met as specified, base rent will be \$7,746 monthly, due upon the 1<sup>st</sup> day of each month. If rent is not received by the Landlord by the 15<sup>th</sup> day of the month an additional \$100 per day late fee will be assessed to the Tenant.**
  
- 1.07 Security Deposit:** **None**
  
- 1.08 Permitted Use:** Russell Feed & Supply Retail Operations.

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## ARTICLE TWO

### LEASE AND PERFORMANCE MEASURES

**2.01 Lease:** Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term stated in Section 1.05 and the Base Rent stated in Section 1.06.

**2.02 Performance Measures:** The following requirements must be complete in order to receive the discounted rent rate of \$6,000 monthly by February 15, 2022.

- All required engineering and construction plans for the Russell Feed Store located at 8700 Benbrook Blvd., in Benbrook, Texas must be approved, and
- vertical construction must have commenced on the building, or
- Mr. Russell must provide a receipt showing the building package has been ordered.

## ARTICLE THREE

### INSURANCE AND INDEMNITY

**3.01 Property Insurance.** Landlord shall not be required to maintain insurance policies covering damage to the Premises. Tenant may, at Tenant's sole expense, obtain and maintain insurance on Tenant's fixtures, equipment and improvements in or on the Premises as Tenant reasonably deems necessary to protect Tenant's interest. Any property insurance carried by Landlord or Tenant will be for the sole benefit of the party carrying the insurance and under its sole control.

**3.02 Liability Insurance.** During the Term, Tenant shall maintain a commercial general liability insurance policy, at Tenant's expense, insuring Tenant against liability arising out of the use or occupancy of the Premises, and naming Landlord as an additional insured. The initial amounts of the insurance must be at least \$1,000,000.00 for Each Occurrence, \$2,000,000.00 General Aggregate per policy year, and \$500,000.00 Medical Expense. The coverage amounts will be subject to periodic increases as Landlord may reasonably determine from time to time. The amounts of the insurance will not limit Tenant's liability or relieve Tenant of any obligation under this Lease. The policies must contain cross-liability endorsements and must insure Tenant's performance of the indemnity provisions of Section 3.03. The policies must contain a provision that prohibits cancellation or modification of the policy except upon thirty (30) days' prior written notice to Landlord. Tenant shall deliver a copy of the policy or certificate of insurance to Landlord before the Commencement Date and before the expiration of the policy during the Term. If Tenant fails to maintain the policy, Landlord may elect to maintain the insurance at Tenant's expense or terminate the Lease immediately.

**3.03 Indemnity.** Landlord will not be liable to Tenant or to Tenant's employees, agents, invitees or visitors, or to any other person, for any injury to persons or damage to property on or about the Premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, subtenants, agents, licensees or concessionaires or any other person entering the Premises under express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of Tenant's business, or arising out of any breach or default by Tenant in the performance of Tenant's obligations under this Lease. Tenant hereby agrees to defend, indemnify and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury.

**3.04 Waiver of Subrogation.** Each party to this Lease waives any and every claim that arises or may arise in its favor against the other party during the Term of this Lease for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, to the extent the loss or damage is covered by and recoverable under valid and collectible insurance policies. These mutual waivers are in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties. Inasmuch as these mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party agrees to immediately give to each insurance company that has issued

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an insurance policy to such party written notice of the terms of such mutual waivers, and to cause the policies to be endorsed to prevent the invalidation of the insurance coverage by reason of these waivers.

## ARTICLE FOUR

### USE OF PREMISES

**4.01 Permitted Use.** Tenant may use the Premises only for the Permitted Use stated in Section 1.08. Tenant has independently investigated and verified to Tenant's satisfaction the extent of any limitations or non-conforming uses of the Premises and Tenant is not relying upon any representations of Landlord with respect to any such matters.

**4.02 Compliance with Laws.** Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances and other activities in or upon, or connected with the Premises, all at Tenant's sole expense.

**4.03 Utility Services.** Tenant shall pay the cost of all utility services used for the Premises, including, but not limited to, initial connection charges and all charges for electricity, gas, water, sewer, storm water disposal, trash removal, telephone, Internet access and other communication services, and any other services that are commonly understood to be utilities, and the cost of replacing light bulbs and tubes.

**4.04 Landlord's Access.** Landlord and Landlord's agents will have the right to, upon reasonable advance notice, and without unreasonably interfering with Tenant's business, enter the Premises: (a) to inspect the general condition and state of repair of the Premises, (b) to make any repairs required or permitted under this Lease, (c) to show the Premises or the Property to any prospective tenant or purchaser, and (d) for any other reasonable purpose. If Tenant changes the locks on the Premises, Tenant must provide Landlord with a copy of each separate key.

**4.05 Exemptions from Liability.** Landlord will not be liable for any damage to the business (including any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant's employees, invitees or customers, or for any injury to Tenant or Tenant's employees, invitees, customers or any other person in or about the Premises, whether the damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or wind; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising on or about the Premises or other portions of the Property, or from other sources or places; or (d) any act or omission of any other occupant of the Property.

## ARTICLE FIVE

### PROPERTY CONDITION, MAINTENANCE, REPAIRS AND ALTERATIONS

**5.01 Property Condition/Acceptance of Premises.** Tenant has inspected, or has had an opportunity to inspect, the Premises, before the execution of this Lease. Tenant has determined that the Premises may be used for the Permitted Use. Tenant agrees to accept the Premises in "AS IS" condition and with all faults. Tenant waives any implied warranties of Landlord as to the quality or condition of the Premises or the Property, or as to the fitness or suitability of the Premises or the Property for any particular use.

**5.02 Maintenance and Repairs.** Landlord will not be required to perform any capital expenditure, replacement, maintenance or repairs, to the Premises whatsoever. Tenant will be fully responsible, at Tenant's expense, for any and all needed maintenance and repairs.

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## ARTICLE SIX

### DAMAGE OR DESTRUCTION

In the event of any damage or destruction of the Premises, Landlord shall not have any obligation to rebuild, repair or replace any part of the Premises. In such event, Tenant's only right shall be to terminate the Lease and vacate the Premises.

## ARTICLE SEVEN

### ASSIGNMENT AND SUBLETTING

Tenant may not assign this Lease or sublet the Premises or any portion thereof. Landlord may assign this Lease to any purchaser of the Property.

## ARTICLE EIGHT

### ENVIRONMENTAL REPRESENTATIONS AND INDEMNITY

**8.01 Tenant's Compliance with Environmental Laws.** Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of Federal, State, county and municipal authorities pertaining to Tenant's use of the Property and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable Federal, State and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and with any direction of any public officer or officers, pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupancy of the Property.

**8.02 Tenant's Indemnification.** Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Property by Tenant, or Tenant's agents, employees, contractors or invitees without the prior written consent of Landlord. If the presence of Hazardous Materials on the Property caused or permitted by Tenant results in contamination of the Property or any other property, or if contamination of the Property or any other property by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or unusable space or of any amenity or appurtenance of the Property, damages arising from any adverse impact on marketing of building space or land area, sums paid in settlement of claims, reasonable attorneys' fees, court costs, consultant fees and expert fees) that arise during or after the Term as a result of the contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial work, removal or restoration work required by any Federal, State or local government agency because of Hazardous Materials present in the soil or ground water on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property (or any other property) caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials, provided that Landlord's approval of such actions is first obtained.

**8.03 Definition.** For purposes of this Lease, the term "**Hazardous Materials**" means any one or more pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent or oil as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, the Water Pollution Control Act, as amended, the Solid Waste Disposal Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, or rule, whether existing as of the date of this Lease or subsequently enacted.

**8.04 Survival.** The representations and indemnities contained in this Article Eight will survive the expiration or termination of this Lease.

LANDLORD'S INITIALS \_\_\_\_\_ TENANT'S INITIALS \_\_\_\_\_



**ARTICLE NINE**

**MISCELLANEOUS AND ADDITIONAL PROVISIONS**

**9.01 Amendments or Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective unless made a part of this Lease. All amendments to this Lease must be in writing and signed by all parties.

**9.02 Notices.** All notices and other communications required or permitted under this Lease must be in writing and will be deemed delivered, whether actually received or not, on the earlier of: (i) actual receipt if delivered in person or by messenger with evidence of delivery; or (ii) receipt of an electronic facsimile transmission ("Fax") or email ("Email") with confirmation of delivery; or (iii) upon deposit in the United States Mail as required below. Notices may be transmitted by Fax or Email to the Fax telephone number or email address specified in Article One of this Lease, if any. Notices delivered by mail must be deposited in the U.S. Postal Service, certified mail, return receipt requested, postage prepaid, and properly addressed to the intended recipient as set forth in Article One. Notices sent by any other means will be deemed delivered when actually received, with proof of delivery. After possession of the Premises by Tenant, Tenant's address for notice purposes will be the address of the Premises unless Tenant notifies Landlord in writing of a different address to be used for that purpose. Any party may change its address for notice by delivering written notice of its new address to all other parties in the manner set forth above.

**9.03 Attorneys' Fees.** If, on account of any breach or default by Tenant under this Lease, it becomes necessary for Landlord to employ an attorney to enforce or defend any of its rights or remedies under this Lease, Lessee agrees to pay Landlord its reasonable attorneys' fees and court costs, if any, whether or not suit is instituted in connection with the enforcement or defense.

**9.04 Venue.** All obligations under this Lease will be performed, payable and enforceable exclusively in Tarrant County, Texas. The laws of the State of Texas will govern this Lease.

**9.05 Survival.** All obligations of any party to this Lease that are not fulfilled at the expiration or the termination of this Lease will survive such expiration or termination as continuing obligations of the party.

**9.06 Binding Effect.** This Lease will inure to the benefit of, and be binding upon, each of the parties to this Lease and their respective heirs, representatives, successors and assigns. However, Landlord will not have any obligation to Tenant's successors or assigns unless the rights or interests of the successors or assigns are acquired in accordance with the terms of this Lease.

**9.07 Patriot Act Representation.** Landlord and Tenant each represent to the other that: (1) its property interests are not blocked by Executive Order No. 13224, 66 Fed. Reg. 49079; (2) it is not a person listed on the Specially Designated Nationals and Blocked Persons list of the Office of Foreign Assets Control of the United States Department of the Treasury; and (3) it is not acting for or on behalf of any person on that list.

**LANDLORD EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATIONS HEREUNDER ARE NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ANY OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PERFORM ITS OBLIGATIONS, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.**

LANDLORD'S INITIALS \_\_\_\_\_ TENANT'S INITIALS \_\_\_\_\_

This Lease shall be effective as of the Effective Date.

**LANDLORD:**

**Benbrook Economic Development Corporation**

By (Signature): \_\_\_\_\_

Name: Kent Williams

Title: President

Date of Execution: \_\_\_\_\_

**TENANT:**

**[Kenneth Russell]** \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: [Kenneth Russell]

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

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LANDLORD'S INITIALS \_\_\_\_\_ TENANT'S INITIALS \_\_\_\_\_