

RESOLUTION NUMBER 7273

A resolution authorizing the Mayor and City Clerk to enter into a lease with JZTZRE, LLC, a Nebraska limited liability company, for the purpose of using a portion of City-owned right-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That the Mayor and City Clerk be and hereby are authorized to enter into a lease between the City of Beatrice, and JZTZRE, LLC, a Nebraska limited liability company, for the purpose of using a portion of City-owned right-of-way on real property described in said Lease Agreement, marked as Exhibit "A", attached hereto and incorporated by reference.

SECTION 2. That all resolutions or parts of resolutions in conflict are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 15th day of April, 2024.

Attest:

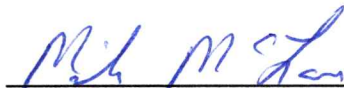

Erin Saathoff, CMC, City Clerk
Mike McLain, Acting Mayor

Exhibit "A"

LEASE

This Lease is made and entered into by and between the City of Beatrice, Nebraska, a Municipal Corporation, hereinafter referred to as "Lessor", and JZTZRE, LLC, a Nebraska limited liability company, hereinafter referred to as "Lessee".

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. LEASED PREMISES. Lessor leases to Lessee and Lessee leases from Lessor for the purpose of constructing an outdoor seating area connected to the building located at 123 North 6th Street and occupying said area for a commercial business and for no other purpose, the premises more particularly described as follows:

A section of City-owned right-of-way measuring approximately ninety (90) feet by nine (9) feet, adjacent to the North twenty-five (25) feet of Lots One (1) and (2), inclusive, Block Forty-Nine (49), Original Town, Now City of Beatrice, Gage County, Nebraska on the north side of said lot,

as shown in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Leased Premises").

2. TERM. The term of this Lease shall be for one (1) year, commencing on April 1, 2024 and ending on March 31, 2025, This Lease shall automatically renew for another one (1) year term unless the Lease is terminated pursuant to Section 16 of this Lease.

3. PAYMENT. Lessee in consideration agrees to pay to the Lessor, as rent for such premises, the amount of one dollar (\$1.00) per year due on or before the 1st day of April of each year during the term of this agreement. The initial payment is due on or before April 1, 2024. Lessee shall also pay for all utilities consumed upon the Leased Premises.

4. RIGHT TO LEASE. Lessor covenants that Lessor is seised of the Leased Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceable possession of the Leased Premises during the term hereof.

5. PURPOSE. The purpose of this Lease is for Lessee to use the Leased Premises as an outdoor seating area on City-owned right-of-way. Lessee shall not use, or permit the Leased Premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the Leased Premises are hereby leased; and no use shall be made or permitted to be made of the premises, or acts done, which would cause a cancellation of any insurance policy covering the premises, or any part thereof. In no case shall any storage, servicing, or dismantling of automobiles or other vehicles or loading or unloading operations be permitted within the Leased Premises. Lessee hereby expressly agrees that Lessor has made no warranty with respect to the project or as to its suitability or usefulness for Lessee's purposes;

and Lessee hereby expressly agrees that the Lessor shall not be liable to it for any defect in the Leased Premises.

6. UTILITIES & LIABILITY. Lessee does not require the use of water, electric, sewer, garbage, or other utility service from the Lessor for purposes of Lessee's use of the Leased Premises pursuant to this Agreement. The Lessor makes no guarantees pursuant to this agreement about their subsequent availability. Any future utility costs will be the sole obligation of the Lessee during the time period of this Lease. Should utilities later be needed, all water, sewer, electricity utility expenses, and garbage removal shall be the responsibility of and shall be paid by Lessee. Lessee hereby indemnifies, protects, holds harmless, and discharges the Lessor, its officers, directors, agents, representatives, and employees from any and all costs, fees, damages, causes of actions, claims, or other liability of any nature arising from or related in any way to the acts or omissions of the Lessee.

7. RELATIONSHIP. The parties intend, understand, and agree that the relationship between them is that of landlord and tenant under a commercial lease, and Lessee specifically acknowledges that all statutory proceedings provided by the law of the State of Nebraska applicable to the relationship of commercial landlord and tenant and the remedies accruing to the landlord on default of the tenant as to collection of rent or repossession of the Leased Premises, accrue to the Lessor hereunder, regardless of the length of the term of this Lease.

8. LIENS. Lessee will not permit any mechanic's or other liens for work, services or materials, to attach to the Leased Premises or to any portion thereof; and if any such liens shall be filed or shall attach, Lessee will pay and satisfy the same or get the liens canceled in such manner as may be prescribed by law at the time of such filing or attachment.

9. CONDITION AND REPAIR. Lessee shall at all times keep the Leased Premises in good condition, order, and repair; Lessee shall commit no waste on the premises and Lessee shall not allow any nuisance to exist on the premises.

10. REGULATIONS. The use by Lessee of the Leased Premises shall observe the City of Beatrice's municipal code and zoning regulations regarding odor, fumes, dust, hazards and other potential nuisances.

11. SAFE CONDITION. Lessee shall at all times keep the Leased Premises in a safe, clean, nuisance-free condition to comply in all respects with all government, health, fire and police requirements and regulations. In addition to the foregoing, the use and building regulations now or hereafter imposed by the provisions of the zoning and building ordinances of the City of Beatrice shall apply except as such may be modified by duly constituted authority.

12. WAIVER, RELEASE, & INDEMNIFICATION. Lessee and its successors, heirs, personal representatives, and assigns, shall indemnify Lessor and shall save and hold Lessor and Lessor's employees, officers, elected officials, and agents harmless from all liability, loss, damage, death, injury, cost or expense, including, but not limited to, the cost or expense of defending any legal

action, which may be occasioned by, or attributable to, or arise out of or incurred in any activity, operations, acts or omissions of Lessee or any third party on or about the Leased Premises, and the Lessee shall at its own expense defend any such suit or action, which may be brought against the Lessor, its tenants, successors or assigns. Lessee shall also provide and pay for policies of insurance against such liabilities, loss, damage or injury as public liability, landlord/tenant, and others necessary to help fund this indemnification to the extent of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for claim or damages from any single occurrence and to the extent not less than One Million and 00/100 Dollars (\$1,000,000.00) to cover the aggregate of any occurrences to the policy together with an insurance certificate listing the City of Beatrice as an additional insured prior to the commencement of this Lease. Said policy shall be taken only with the insurance companies that are duly authorized to do business in the State of Nebraska. If Lessee fails to provide that insurance (or proof thereof to Lessor upon request), Lessor may, after five (5) calendar days' written notice to Lessee, at Lessor's option, procure or renew the insurance. The premiums paid by Lessor plus interest on the amount paid at the rate of 12% per annum, shall constitute rent hereunder, and Lessee's failure to make reimbursement within thirty (30) calendar days of demand therefore shall constitute a default under this Lease.

Lessee further releases for itself and for its (if any) officers, shareholders, managers, members, employees, agents, attorneys, and assigns, jointly and severally, hereby absolutely and unconditionally release and forever discharge the City, its elected officials, employees, attorneys and assigns from any and all claims, demands, causes of action, liabilities, obligations and damages of any and every kind or nature whatsoever, in law, in equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, which they or any one of them has, has had or may hereafter have arising directly or indirectly out of or in any way connected with Lessee's use of the Leased Premises pursuant to this Lease and/or any interruption or disruption of this Lease pursuant to Section 14 of this Lease, which may be based upon or connected with any of the matters of law or fact raised in regard thereto, including all claims for court costs and attorney's fees arising directly or indirectly out of or in any way connected with Lessee's use of the Leased Premises pursuant to this Lease, any interruption or disruption of this Lease pursuant to Section 14 of this Lease, or other matters related to thereto prior to the date of execution of this agreement or any claim released hereby.

Lessee agrees to provide this waiver of rights and indemnification in consideration of the Lessor's agreement to lease the Leased Premises to Lessee.

13. INSPECTION. Lessee shall permit Lessor to inspect the Leased Premises at a mutually convenient time for both the Lessee and the Lessor during usual business hours for the purposes of inspections which may reasonably be necessary for the protection of the Lessor's interest in the Leased Premises.

14. INTERRUPTION OR DISRUPTION OF LEASE. In the event Lessor determines, in its sole discretion, that utility work, street maintenance, or general repairs on the Leased Premises is required, or in cases of emergency, as determine at Lessor's sole discretion, this Lease and all obligations herein shall become null and void for the duration of such work, maintenance, or

repairs. Upon completion of such work, maintenance, or repairs, this Lease shall recommence and resume as though the interruption never occurred, having no effect on the term of this Lease.

15. BREACH & CURE. Failure of either party to this Lease to abide by any provision set forth herein shall constitute a breach of this Agreement. In such event, the non-breaching party may provide written notice to the breaching party describing the breach. The breaching party shall rectify, cure, or refute within thirty (30) calendar days. If the breaching party fails to rectify, cure, or refute within thirty (30) calendar days, the non-breaching party may terminate this agreement without notice.

16. TERMINATION. In addition to the termination proceedings set forth in Section 15 above, either party shall have the right to terminate this Lease for any reason upon thirty (30) calendar days written notice to the other party. Upon damage to the Leased Premises to such an extent that the premises are no longer usable for the purposes intended, this Lease may be immediately terminated by either party.

17. FILING FEES: Lessee shall pay all filing fees associated with the filing of any notice of this Lease.

18. SUBLEASES. The Leased Premises, in whole nor in part, may not be subleased by the Lessee without written permission from Lessor. The right to receive rents under this Lease shall be freely assignable by the Lessor.

19. ASSIGNMENT. Any sale or mortgage of Lessor's interest in the leased premises shall not be subject to this Lease, and the existence of this Lease. Lessee may not assign or pledge this Lease or any interest thereon without the prior express written approval of the Lessor, which consent shall not be unreasonably withheld.

20. SALE. Any sale or mortgage of Lessor's interest in the Leased Premises shall not be subject to this Lease, and the existence of this Lease. Lessee may not assign or pledge this Lease nor any interest thereon without the express written approval of the Lessor.

21. REMOVAL OF ALTERATIONS OR IMPROVEMENTS UPON TERMINATION. On the expiration of this Lease, or sooner termination thereof, Lessee shall, at its own expense, remove all alterations and other improvements and to restore the Leased Premises to the condition they were in prior to the making or installation of the alterations and other improvements unless Lessor waives this requirement in writing.

22. NOTICES. Any Notice provided for or concerning this Lease shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth below:

Lessor: City of Beatrice
ATTN: City Attorney
400 Ella Street
Beatrice, NE 68310

Lessee: JZTZRE, LLC
c/o Jason J. Zoellner
4115 North 6th Street
Beatrice, NE 68310

22. COVENANTS. The terms, promises and conditions of this Lease are covenants running with the land leased herein and shall inure to the benefit of and shall bind and be obligatory upon the successors and assigns of the Lessor and the Lessee.

23. WAIVER. No forbearance to enforce the breach of any of the promises or covenants of this Lease shall be construed as a waiver of any succeeding breach of the same or any other covenant hereof.

24. WRITTEN MODIFICATION, RELEASE, DISCHARGE, OR WAIVER REQUIRED. No modification, release, discharge, or waiver of any provision hereof shall be of any force or effect unless signed by the party against whom it is claimed or that party's duly authorized agent.

25. TIME IS OF THE ESSENCE. Time is of the essence of every term, condition, promise or covenant of this Lease.

26. SAVINGS CLAUSE. If any paragraph or part thereof of this Lease shall be invalid, illegal or inoperative for any reason, the remaining parts, so far as possible, shall be effective and fully operative.

27. ENTIRE AGREEMENT. This instrument contains the entire agreement of the parties as of this date, and the execution hereof has not been induced by either party by any representations, promises or understandings not expressed herein. There are no collateral agreements, stipulations, promises or undertakings that are not expressly contained herein or incorporated herein by specific reference.

28. TAXES. Lessee shall pay all taxes and assessments with respect to the Leased Premises of any sort whatsoever that shall become due and payable or assessed, including all real estate taxes and all personal property taxes for the year 2022 and thereafter. Lessor shall forward to Lessee any notice, bill or other document received by Lessor concerning any such imposition.

29. CAPTIONS. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

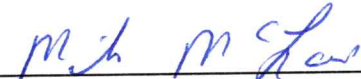
30. GOVERNING LAW. The laws of the State of Nebraska shall govern this Lease.

Dated this 15th day of April, 2024.

Attest:


Erin Saathoff, City Clerk

CITY OF BEATRICE, NEBRASKA,
a Municipal Corporation,
Lessor

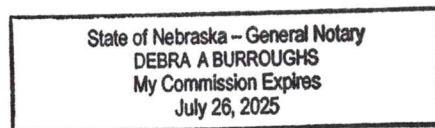
By: 
~~Robert Morgan, Mayor~~ Mike McLain, Acting Mayor

JZTZRE, LLC, Lessee


Teresa Zoellner, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF GAGE)

The foregoing instrument ^{Teresa} was acknowledged before me on this 5 day of April, 2024 by ~~Jason J.~~ Zoellner, Member and authorized signatory on behalf of JZTZRE, LLC, to be her voluntary act and deed on behalf of said limited liability company.



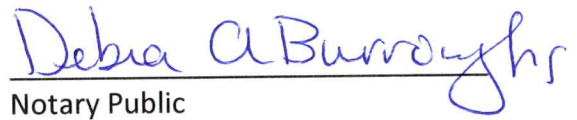

Notary Public

EXHIBIT "A"

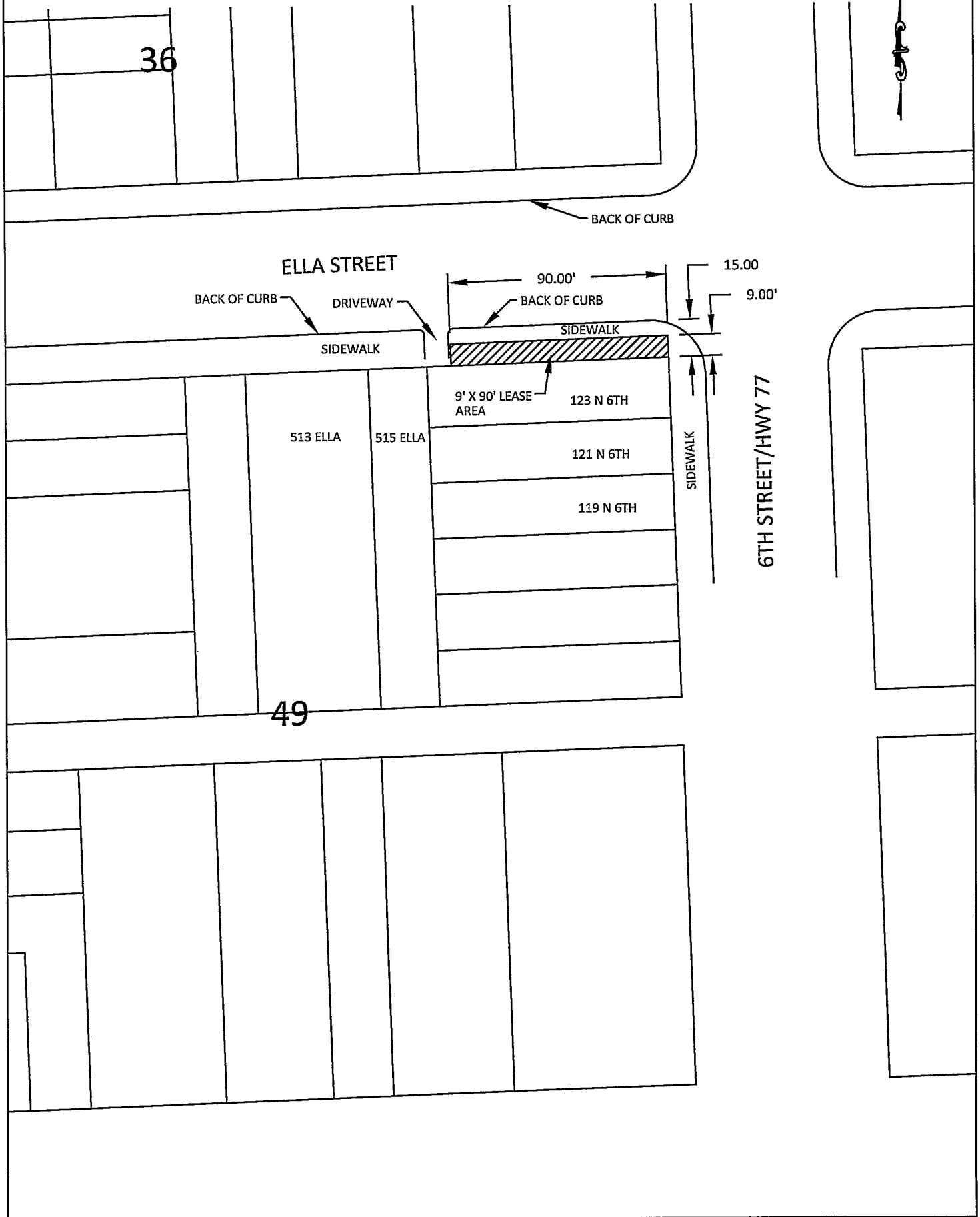


EXHIBIT "A"

