

NORTH CAROLINA
JOHNSTON COUNTY

COMMERCIAL LEASE AGREEMENT
[Land only]

THIS AGREEMENT OF LEASE made and entered into this _____ day of _____, 2019, by LARC Real Estate Investments, LLC, a North Carolina Limited Liability Company (hereinafter "Landlord"); and the Town of Benson, a North Carolina Municipal Corporation (hereinafter referred to collectively as "Tenant").

WITNESSETH:

1. PREMISES

Landlord hereby leases to Tenant the real property located in the Town of Benson, North Carolina and being described as the premises known as the Old Taste Freeze Lot at the Corner of Main and Elm Streets, Benson, North Carolina; said premises being more particularly described as per the attached Exhibit "A" incorporated herein by reference as if fully set forth herein and may be referred to hereinafter as "Premises."

2. TERM

TO HAVE AND TO HOLD the same with privileges and appurtenances pertaining thereto or connected therewith unto Tenant, its successors and assigns, for and during the initial term of SIXTY (60) months from _____ until _____ notwithstanding any extensions or renewals, as provided for or set forth herein.

3. RENTAL SCHEDULE & HOLDOVER

The rent shall be payable by Tenant as follows:

Tenant shall pay: \$0.00 in cash – NO CASH RENTAL PAYMENT.

Tenant shall provide an annual gift acknowledgment/receipt to Landlord in the amount of Ten Thousand and NO/100 (\$10,000.00) in lieu of rent. Further, Tenant shall perform certain improvements set forth hereinbelow to the demised Premises which, provided this lease in effect for 120 months and ONE day, shall become the property of Landlord in lieu of rent.

4. OPTION TO RENEW or TERMINATE; RECAPTURE

The Parties may extend this lease for 60 additional months by mutual agreement prior to the expiry of the original term. Landlord may terminate this lease by delivering notice of intent to terminate one year prior to the effective date of such termination. Tenant intends to pave the demised Premises and/or otherwise make certain improvements thereto during the term of this Lease. In the event Tenant's total period of uninterrupted possessory tenancy of the demised Premises does last until 120

months plus one day from the date of inception set forth above, then in that event Landlord shall reimburse Tenant for the actual cost Tenant incurred to install or construct paving and/or other improvements on the Premises. Such costs shall include, but are not limited to: paving costs, curbing costs, costs to make driveways or aprons, and other ancillary costs thereto. Within 30-days of Tenant's receipt of Landlord's notice to terminate this Lease within the 120 months and one day term, Tenant shall provide to Landlord an invoice of the actual costs incurred by Tenant to pave and/or otherwise make improvements upon the Premises, which invoice shall be payable by Landlord to Tenant within 30-days of Landlord's receipt of same. In the event such costs are not paid within 30 days of Landlord's receipt of said invoice, such costs shall be a lien on the Premises which shall be filed with the Johnston County Register of Deeds by Tenant or an attorney representing Tenant collectable as unpaid ad-valorem real property taxes.

5. TAXES, ASSESSMENTS & INSURANCE PREMIUM

Landlord shall pay all assessed ad valorem real property taxes or assessments. Tenant shall include the demised Premises in its comprehensive general liability insurance policy.

6. INDEMNIFICATION AND LIABILITY INSURANCE

Tenant shall indemnify and save harmless Landlord, of, from and against all loss, liability or damage for injuries to or death of persons, or for property sustained in or on the leased Premises while in Tenant's use or during its period of possession, as set forth hereinabove in Clause 2. Term, or resulting from the occupancy or use thereof by Tenant.

Tenant shall maintain, during the lease term and for the mutual benefit of Tenant and Landlord:

- (a) general public liability insurance against claims for personal injuries or death; or for damage to property, occasioned by accident occurring at any time during the lease term in the leased Premises, or resulting from the occupancy or use thereof by Tenant; and

All such general public liability insurance shall name both Landlord and Tenant as insured thereunder and shall afford protection:

- (a) to a limit of not less than \$1,000,000.00 for injury or death to any one person or persons arising out of any one accident; and
- (b) Tenant agrees to comply with the Workers Compensation Laws of North Carolina.

7. OTHER INSURANCE

Tenant shall be responsible for all portions of the leased Premises including all leasehold improvements hereafter made, fixtures, trade fixtures and equipment, all contents of the leased Premises, and all personal property belonging to the Tenant kept, stored, and/or located in the leased Premises. Tenant shall maintain a casualty insurance policy listing landlord as loss payee for damage or loss to the demised Premises that arises through the acts, omissions, or negligence of the Tenant.

All insurance required to be maintained pursuant to the provisions of this Lease by Tenant shall be effectuated under valid and enforceable policies issued by insurers of recognized responsibility. Upon commencement of the lease term and also not less than ten (10) days prior to the expiration dates of the policy or policies, certificates of the initial policies or renewal policies, as the case may be, or other satisfactory evidence of such insurance shall be delivered by Tenant to Landlord upon request.

8. UTILITIES

Tenant shall be responsible for the cost associated with its required utilities, including: electric service, water, or any other services required by Tenant.

9. MAINTENANCE AND REPAIR

Tenant shall be responsible for maintenance and repair of the subject parcel as a public parking lot/public parking facility.

10. USE OF PREMISES

The use of the demised Premises shall be a public parking lot/public parking facility and as otherwise approved in writing by Landlord. Tenant shall use the leased Premises in a careful, safe and proper manner not inconsistent with such use and shall not commit or suffer any waste thereupon, excepting the contemplated use as a public parking lot/facility and paving/improvements made incidental thereto, normal wear and tear excepted. Tenant shall not use or occupy the Premises or permit its use or occupancy in any way contrary to present or future laws or ordinances, rules, regulations, requirements or orders of any public or governmental authority having jurisdiction with respect to the use and occupancy thereof.

11. TENANT'S IMPROVEMENTS

Landlord shall allow tenant to pave, install curbing, gutters, create aprons or entrances to adjacent rights-of-way, and perform any actions deemed necessary or related to the Tenant's use of the Premises as a public parking lot/facility, as improvements to the demised Premises. All such alterations and improvements shall be in conformity with applicable rules, regulations, ordinances.

12. ASSIGNMENT AND SUBLETTING

Landlord shall not assign this Lease or any interest herein or in the leased Premises. Tenant may not sublet any part of the leased Premises without prior written consent of Landlord.

13. REMOVAL OF PERSONAL PROPERTY

Tenant shall have the right to remove from the Premises upon termination of this Lease all equipment, materials, and personal property of any character which belong to Tenant.

14. ACCESS TO PREMISES

Landlord may have access to the leased Premises at all reasonable times:

- (a) for the purpose of examining the same;
- (b) At any time after a material breach of this Lease occurs.

15. LIENS AND CLAIMS

Tenant shall at all times keep the leased Premises and Landlord's estate or interest therein free and clear from all claims, liens, and encumbrances caused by or through Tenant or by or through the occupancy of the leased Premises by Tenant or occurring as a result of the construction work, repairs, alterations, additions, and restoration work required or permitted to be done by Tenant pursuant to the terms of this lease. Tenant shall indemnify and save Landlord harmless from and against all loss, costs, expenses and attorney's fees incurred or expended in connection with such claim, lien or encumbrance or the prosecution or defense of any such suit, action or proceeding relating to the same. Landlord shall at all times keep the demised Premises free and clear of any lien which would jeopardize or adversely affect Tenant's rights hereunder.

16. GOODS AND PROPERTY OF TENANT

All goods, equipment, fixtures and other personal property of Tenant stored or kept or maintained in or on the leased Premises shall be at the sole risk of Tenant, and Landlord shall not be responsible in any way for any loss to or damage to the same.

17. CONDITION OF PREMISES

Tenant agrees to accept the leased Premises "AS IS" and certifies that Landlord has made no express or implied warranties or representations regarding the condition of the Premises. Tenant has had an opportunity to inspect the Premises prior to the execution of

this lease and has no objections to the condition of the Premises. Landlord certifies the title to the Premises is free of any conditions which would frustrate Tenant's contemplated use of the Premises set forth herein.

18. DEFAULT

If either party fails to keep and perform any of the covenants, agreements, conditions, duties and obligations required to be kept and performed by it pursuant to the provisions of this Lease, and such failure continues for a period of 30 days after written notice thereof is given by the other, such party shall be deemed in default hereof.

19. EMINENT DOMAIN

If all or any portion the leased Premises is taken by any condemning authority under the power of eminent domain or by any purchase or the acquisition in lieu of condemnation, this lease may, at the option of either party hereto, be terminated as of the date possession is required by any condemning authority. In the event of such termination, rental, if any, shall be apportioned as of the termination date. In the event of any such taking, purchase or other acquisition in lieu of condemnation, Landlord shall be entitled to the entire award or consideration paid therefore by the condemning authority, however, in such event occurs within 120 months and 1 day of the inception date hereof, Tenant shall be reimbursed by Landlord for costs incurred for improvements on the Premises as provided in Section 4, above.

20. SIGNS

All signs placed on the demised Premises shall be in accordance with the Town of Benson Unified Development Ordinance.

21. SURRENDER AT END OF TERM

Tenant will surrender and deliver up the leased Premises at the end of said term or any renewal thereof in as good order and condition as at the commencement date of the lease, reasonable use, natural wear and tear, and contemplated paving and similar improvements expressly excepted.

22. REMEDIES CUMULATIVE

All rights and remedies enumerated shall be cumulative, none shall exclude any other right or remedy allowed by law or in equity, and said rights or remedies may be exercised and enforced concurrently. No waiver of any covenant or condition or the breach of any covenant or condition of this lease shall constitute a waiver of any subsequent breach of such covenant or condition or authorize breach or non-observance on any other occasion of the same or any other covenant or condition of this lease.

23. NOTICES

Any notice provided herein, except as otherwise expressly provided herein, shall be in writing and shall be deemed to have been given, delivered, or served when delivered personally to the other party or mailed by United States registered or certified mail, return-receipt requested, postage prepaid, to the other party.

To the Landlord by addressing the same to:

Town of Benson
Attention: Town Manager
PO Box 69
Benson, North Carolina 27504

To Tenant:

LARC Real Estate Investments, LLC
Attention: Luby E. Wood, Member-Manager & Registered Agent
4030 Cardinal at North Hills St., Apt. 128
Raleigh, NC 27609

24. SUCCESSORS AND ASSIGNS

This lease shall inure to the benefit of and be binding upon the respective parties hereto and their respective heirs, devisees, personal representatives, successors and assigns, and all covenants contained herein shall be construed as covenants running with the land.

25. ENFORCEMENT OF ATTORNEY'S FEES

The laws of North Carolina shall govern this Lease Agreement. Any action filed on this lease shall be filed in District or Superior Court in Johnston County, North Carolina. The prevailing party in such litigation shall be reimbursed reasonable attorney's fees and Court costs, as by law provided.

26. TITLES OF ARTICLES

The titles of various articles of this lease have been inserted only as a matter of convenience and for reference and in no way affects, defines, limits or describes the scope or intent of this lease or any of its conditions.

27. INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this lease or the application thereof to any person or circumstance shall to any extent be unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to

which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this lease shall be valid and enforced to the fullest extent permitted by law.

28. ENTIRE AGREEMENT

This lease contains the entire agreement between the parties and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

29. INTERPRETATION

Wherever either the word "Landlord" or "Tenant" is used in this lease, it shall be considered as meaning "Landlords" or "Tenants" respectively, whenever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as Landlord or Tenant in the heading of this instrument wherever the context requires.

30. MEMORANDUM OF LEASE

The Parties agree to execute an appropriate memorandum of lease document and cause same to be recorded with the Johnston County Register of Deeds, if required by law.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]
[SIGNATURE PAGES FOLLOW]

*The Parties hereby acknowledge execution of this Agreement after the effective date of same and hereby waive any claim against one another related to the ex post execution of said Agreement. (IF APPLICABLE)

Initialed: Tenant _____ Landlord _____

EXECUTED by Landlord as of the _____ of _____, 2019.

LARC Real Estate Investments, LLC, a North Carolina Limited Liability Company:

By: _____ (SEAL)
Luby E. Wood, Member Manager

EXECUTED by Tenant as of the _____ of _____, 2019.

Town of Benson, a North Carolina Municipal Corporation:

By: _____ (SEAL)
Jerry M. Medlin, Mayor

ATTEST:

Terry Hobgood, Town Clerk

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[NOTARY PAGES FOLLOW]

NORTH CAROLINA
JOHNSTON COUNTY

I, _____, a Notary Public in and for said County and State, do hereby certify that Luby E. Wood as Member-Manager of LARC Real Estate Investments, LLC a North Carolina Limited Liability Company, personally appeared before me this date and acknowledged the due execution of the foregoing instrument for the purposes therein expressed as an act and on behalf of the Corporation.

Witness my hand and notarial seal/stamp, this ____ day of _____, 2019.

Notary Public

My commission expires:

NORTH CAROLINA
JOHNSTON COUNTY

I, _____, a Notary Public in and for said County and State, do hereby certify that Jerry M. Medlin as Mayor of the Town of Benson, North Carolina personally appeared before me this date and acknowledged the due execution of the foregoing instrument for the purposes therein expressed as an act and on behalf of the Town.

Witness my hand and notarial seal/stamp, this ____ day of _____, 2019.

Notary Public

My commission expires:

Exhibit "A"

Being the entire lot, parcel, or tract of land described as follows:

BEGINNING at an existing iron pipe at a point where the Southern right of way of Main Street in the Town of Benson intersects the Eastern right of way of Elm Street and runs thence as the Southern right of way of Main Street South 52 degrees 09 minutes 57 seconds East 75.0 feet to an existing iron stake, a corner with Hardee's; thence as the line of Hardee's South 37 degrees 47 minutes 50 seconds West 100.22 feet to a stake, a corner with Royster; thence as the line of Royster North 52 degrees 20 minutes 14 seconds West 75.0 feet to an existing iron stake in the Eastern right of way of Elm Street; thence as the Eastern right of way of Elm Street North 37 degrees 48 minutes 06 seconds East 100.22 feet to the point of BEGINNING and contains 0.17 acre according to a map entitled "Property of G. Loyce Smith and wife, Aleda M. Smith" prepared by W. Stanton Massengill, RLS, dated 2/8/96.