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LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease") is made this ___day of January 2022, between the **CITY OF BOERNE**, whose address is Post Office Box 1677, Boerne, Texas, 78006-1677("Lessor"), and **DAS GREENHAUS, INC.**, a non-profit corporation incorporated under the laws of the State of Texas, whose address is 1221 S. Main Street, Boerne, Texas 78006 ("Lessee").

WHEREAS, Lessor owns land and a building located at 400 E. Blanco Road. which was formerly used as the City of Boerne Public Works Building; and

WHEREAS, the Boerne City Council recognizes the benefit to the community of using this office space for economic development purposes and now wishes to lease out the building to an entity which will utilize it for this public purpose; and

WHEREAS, the City of Boerne Incentive Policy provides that the City may consider the sale, lease or exchange of land without the necessity of accepting written bids to further economic development purposes; and

WHEREAS, Texas Local Government Code Section 253.011 provides that a city may convey an interest in real property to a Section 501(c)(3) nonprofit organization without complying with notice or bidding requirements, provided that consideration is given in the form of an agreement that requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the city and provides for automatic reversion upon failure of this consideration; and

WHEREAS, Lessee is a 501(c)(3) nonprofit organization created to encourage the growth of small businesses in the City of Boerne and Kendall County; and

WHEREAS, Lessee wishes to promote the growth of Boerne Kendall County’s Entrepreneurial Ecosystem in the City of Boerne and Kendall County by providing space for an incubator project where start-up businesses may operate in an environment with innovative, technological, and other support conducive to growth of these businesses (“the Incubator”) and has asked to lease the building for this purpose; and

WHEREAS, the Boerne City Council has determined that allowing Lessee to lease the building for the purpose of setting up and operating the Incubator serves the public economic development purpose of increasing future growth in the number and quality of viable small businesses in the City of Boerne, resulting in significant future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for Boerne citizens; and

WHEREAS, Lessor and Lessee now wish to enter into this Lease for the purpose of setting out the terms under which the building will be leased; **NOW THEREFORE:**

WITNESS, that for the consideration set forth herein, Lessor does by these presents lease and demise unto Lessee a building of approximately 6143 square feet, located at 400 E. Blanco Rd., Boerne, Texas, 78006, commonly known as the Boerne Public Works Building, with the underlying land, including landscaped area and parking immediately connected to the building, and further described in the diagram attached hereto as **Exhibit “A”** which is incorporated herein for all purposes (hereafter, the “Premises”), subject to the following terms:

1. **Initial Term and Rent.** This Lease shall be for a term of ten (10) years (“the Initial Term”), beginning on June 1, 2022 (“the Effective Date”), and ending on May 31, 2032 (“the Termination Date”), unless otherwise renewed or terminated as set forth below, and subject to the provisions of this Lease.
2. **Renewal Terms.** At the end of the Initial Term of this Lease or any renewal term this Lease may be renewed for an additional five (5) years by written agreement of the parties, provided that the total of the Initial Term of this Lease plus all renewal terms shall not exceed twenty-five (25) years. Lessee shall notify Lessor in writing two (2) years prior to the end of the Initial Term and any renewal term of Lessee’s intention to renew this Lease. If Lessor also wishes to renew this Lease, the parties shall enter into negotiations for the renewal of this Lease which shall conclude no later than one (1) year prior to the end of the then current term of this Lease. Lessor’s City Council shall either approve a final proposed renewal agreement or reject the renewal of this Lease within ninety (90) days following the end of negotiations. Lessee shall accept or reject Lessor’s proposed renewal agreement within ninety (90) days of the decision by Lessor’s governing body, the Boerne City Council.
3. **Rent.** Lessee shall pay the sum of Ten and No/100ths Dollars (\$10.00) each year as rental on the Premises (the “Rent”), with the first payment due and payable on the Effective Date in 2022, and with like annual payments due and payable on the same day of each successive year during the term of this Lease at Lessor’s address listed herein
4. **Use of Premises and Automatic Reversion.** As consideration for this Lease, in addition to the Rent and Additional Rent stated herein, Lessee shall use the Premises solely for the public purpose of providing office space, technological, and other assistance for startup entrepreneurial businesses under the Incubator program which is the purpose of this Lease. Further, Lessee’s use of the Premises shall primarily promote the City of Boerne’s public purpose of increasing the number and quality of small businesses expected to remain in the City of Boerne, providing future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for Boerne citizens. As required by Texas Local Government Code Section 253.011, if Lessee fails at any time to use the Premises for these public purposes in the manner stated herein, the leasehold interest conveyed in this Lease

shall automatically revert to the City of Boerne. Nothing herein shall limit the City's right to seek any other remedy available to it at law or in equity.

5. Performance Measures. Lessee shall meet the performance measures listed in this Section over the periods of time indicated. Any failure of Lessee to meet any of these performance measures may result in the City's termination of this Lease following notice and a cure period as provided below. For purposes of this Lease "priority start-up business" means a business, other than automotive or fast-food related business, which is expected to remain in the City of Boerne, providing future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for Boerne citizens.

A. Lessee shall make improvements to the Premises worth at least \$500,000 within 24 months of the Effective Date of this Lease, shall provide documentation of payments made for these improvements to the City within 30 months of the Effective Date of this Lease; and

B. Lessee shall have the Premises open and ready for occupancy by at least 2 "priority start-up entrepreneurial businesses" within 24 months of the Effective Date of this Lease and shall provide documentation to the City of same on or before 30 months after the Effective Date of this Lease ("the Occupancy Date"); and Lessee shall have at least 2 "priority start-up entrepreneurial businesses" located in and operating out of the Premises for the majority of each year of this Lease following the Occupancy Date.

C. Lessee shall acknowledge the City of Boerne's contribution to the Incubator project in marketing materials and signs in the following manner:

a. Use of City of Boerne logo in all marketing materials as well as on interior signage. Use of the City's logo shall be pre-approved by the City Manager or his designee prior to printing or publication of any material or sign containing the logo.

D. On or before May 31st of each year of this Lease Lessee shall present a status report to the Boerne City Council reporting:

- a. The total number and types of priority start-up entrepreneurial businesses located in and utilizing the Premises;
- b. The support, assistance, and other programs being offered at the Premises;
- c. A list of any physical improvements made to the Premises during the year;
- d. The proposed physical improvements and programs for the next year;
- e. The annual budget for Lessee; and
- f. Additional information regarding status of compliance with this Lease and the operation of the Premises that may be reasonably necessary for Lessor to perform its fiduciary duties for the citizens of Boerne.

6. Lessee's Right to Collect Charges. Lessee shall be entitled to collect use charges for participants in its business incubator program to make use of the Premises, subject to the funds collected being used for the operation and maintenance of the Premises and the business incubator program which are the purpose of this Lease. Lessor, at its sole

discretion, reserves the right to audit the expenditure of funds to verify appropriate uses per the purpose of this Agreement, and, upon request of the City Council or City Manager, Lessee shall make records relating to the revenues and expenditures relevant to this Agreement available for inspection and review.

7. **Utilities.** Lessor will pay the cost of normal utility use for the Premises for three (3) years after the Effective Date of this Lease. This obligation shall not include any costs due to installation of new utility infrastructure, equipment, or lines, unusual or unapproved utility use, or the installation or operation of equipment or appliances with unusually high utility needs or the monthly payment of any and all expenses for utilities for the Premises following the initial three (3) year period paid by Lessor ("Utility Expense").
8. **Ownership.** Lessor retains ownership of the Premises, including any permanent improvements to and/or fixtures located thereon. Lessor has not delegated its governmental responsibility or authority to Lessee. Nothing herein shall be construed to give Lessee authority to overrule decisions of the City Council or other appropriate authority of the City of Boerne.
9. **Return of Premises.** Upon expiration of the Lease term, Lessee shall deliver the Premises with all improvements and fixtures, whether made by Lessee or Lessor, to Lessor in the same condition as they were received or installed, reasonable wear and tear excepted.
10. **Subleasing.** Lessee shall not sublet the Premises, or any part thereof, to any person or persons whatsoever, without prior written authorization from Lessor. Any lease or attempt to sublet shall be considered null and void, *ab initio*. Lease of space within the Premises to start-up businesses for the Incubator purpose contemplated in this Lease shall not be considered a sublet.
11. **Improvements, Maintenance, and Repair.**
 - Lessee shall have the right to make such improvements to the Premises as it deems necessary and shall be solely responsible for payment of all amounts related to or arising out of such work ("Improvement Expense"). Plans for such improvements shall initially be approved by the City Manager or his designee. Following such initial approval, Lessee shall have no further obligation to seek Lessor's approval outside of compliance with applicable law. Nothing herein shall waive any permitting requirements of the City of Boerne and Lessee shall follow all requirements of the City of Boerne Unified Development Code and all other City of Boerne requirements applicable to the Improvements. In the event Lessee alters the plans for the Improvements after review by the City Manager or his designee, Lessee shall obtain consent from the City Manager or his designee for any such alterations.

- Lessee shall, at its sole cost and expense, repair and maintain the grounds, building, and all of the Premises in good condition and in clean and sanitary condition at all times during the Initial Term and any renewal term of this Lease ("Maintenance Expense"). In the event the Premises shall fall into a state of disrepair such that Lessor becomes reasonably concerned with the condition or maintenance of the Premises, Lessor may terminate this Lease after first giving Lessee notice, and an opportunity to cure, in accordance with the provisions of paragraph 22 below.

12. Insurance.

- A. Lessee shall procure, at its own expense, liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) and building contents insurance to cover Lessee's contents and equipment at the Premises. Lessee acknowledges that over the period of this Lease, the liability limit may become inadequate. Lessor may, with good cause, require Lessee to maintain a higher coverage limit. In such event, Lessor shall provide Lessee with written notice of any coverage limit change reasonably required to increase insurance coverage on the Premises. Lessee shall obtain such coverage within thirty (30) days of its receipt of such notice from Lessor. Unless required by applicable law, the coverage limit required will not exceed three million dollars (\$3,000,000). With good cause, Lessor may require additional insurance coverage to protect Lessor's interest. The same notice and execution provisions shall apply. Lessee shall be responsible for insuring its own leasehold interest (collectively, "Insurance Expense").
- B. Lessor will maintain property insurance through a commercial carrier or self-insurance arrangement on the Premises to secure Lessor's interest in the Premises. Lessor shall have no obligation to expend funds in excess of the insurance proceeds to repair the Premises. In the event of a loss causing a lack of use of the Premises for its intended purposes, in the parties' reasonable judgment, for a period exceeding six (6) months, Lessor shall have no obligation to rebuild or repair the Premises and may elect instead to terminate this Lease upon ninety-days written notice to Lessee. Lessor shall have no obligation to Lessee for any loss of use of the building to Lessee or any limitations on performance of Lessor under this Lease resulting from any such property loss.
- C. Liability insurance required hereunder shall name Lessor as an additional insured. In addition, Lessee shall provide Lessor with a copy of each insurance policy required hereunder along with proof that all premiums for each such policy or policies shall have been paid by Lessee.

13. INDEMNIFICATION BY LESSEE. LESSOR SHALL NOT BE LIABLE TO

LESSEE'S EMPLOYEES, AGENTS, INVITEES, LICENSEES OR VISITORS, OR TO ANY OTHER PERSON, FOR ANY INJURY TO SUCH PERSON OR DAMAGE TO PROPERTY ON OR ABOUT THE PREMISES CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF LESSEE, ITS AGENTS, SERVANTS OR EMPLOYEES, OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES UNDER THE EXPRESS OR IMPLIED INVITATION OF LESSEE OR CAUSED BY STRUCTURES, BUILDINGS, SIGNS, ADDITIONS, IMPROVEMENTS, DISPLAYS AND OTHER ITEMS BECOMING OUT OF REPAIR, OR THE FAILURE OR CESSATION OF ANY SERVICE PROVIDED BY LESSOR. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR OF AND FROM ANY LOSS, EXPENSE OR CLAIM ARISING OUT OF ANY SUCH DAMAGE OR INJURY, INCLUDING LESSOR'S REASONABLE ATTORNEYS' FEES INCURRED THEREBY.

14. **Consent of City Required for Modification of Premises.** Lessee shall not build or add any permanent structure, addition, or item that materially changes the size, accessibility or use of the Premises without the prior written consent of the City Manager or his designee. This provision does not prohibit ordinary and customary maintenance, repair of existing facilities, or addition of internal fixtures otherwise consistent with the parties' intent expressed herein. Rather, it is the parties' intention that Lessee will make many changes and improvements to the Premises to make it more useful and desirable for its intended purposes. Any and all fixtures whether put in by Lessor or Lessee are and become on installation part of the Premises and the property of Lessor and may not be removed from the Premises without prior written agreement from Lessor. Lessee shall have 30 days from the date of termination of this Lease to notify Lessor in writing of its wish to keep any particular fixture which have been installed by Lessee on the Premises. Landlord and Lessee shall engage in good faith negotiations regarding whether any such fixtures may be removed and the terms of any such removal. Any fixtures for which no agreement has been reached with Lessor by the 60th day after termination of this Lease shall remain the property of Lessor and remain with the Premises.
15. **Compliance with UDC and other City Regulations.** Lessee shall comply with the City of Boerne Unified Development Code, environmental laws, and all other City regulations and permit requirements applicable to its use of, modifications to, or occupancy of the Premises. Nothing herein shall be construed as advance approval of or any waiver of any permit requirement of the City.
16. **Lessee Responsible for Investigation, "As Is. Where Is."** Lessor makes no warranty as to the suitability of the Premises for the use to which Lessee wishes to put the Premises nor any other warranty. Lessee acknowledges it has had an opportunity to inspect the Premises and do its own investigation of the status of the Premises with regard to any Historic designation, flood plain, or drainageway location or other factor which would affect the use of the Premises or the regulations applicable to the Premises. Lessee accepts the leased

Premises "As Is. Where Is."

17. **Compliance with Employment Laws.** Lessee shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Lessee hereby certifies to Lessor that it is and shall be in compliance with all such regulations, laws and requirements. Failure to comply with this clause, following notice and an opportunity to cure, shall constitute a default on the part of Lessee and shall entitle Lessor to terminate this Lease and take possession of the Premises.
18. **Signs.** Any sign placed on the Premises shall be in conformance with the conditions set out in the ordinances of the City of Boerne.
19. **Lessor's Right of Access.** Lessor shall have the full right of access to the Premises for purposes of insuring compliance with this Lease and the condition of the Premises. Lessor agrees to make reasonable attempts to exercise the right of access to the Premises at such times as are the least disruptive to Lessee's use and enjoyment of the Premises.
20. **Taxes.** Lessee shall be liable for any and all taxes levied against the leasehold interest, the personal property, the trade fixtures, or other improvements placed on the Premises by Lessee, if any ("Tax Expense").
21. **Additional Rent.** Each Overage Fee, Utility Expense, Improvement Expense, Maintenance Expense, Insurance Expense, Tax Expense, and other amounts payable by Lessee herein are collectively referred to as "Additional Rent." In the event that Additional Rent of any kind or nature is not timely paid (i.e., monthly as may be owed to Lessor, according to any taxing entity schedule or as is otherwise required) by Lessee shall constitute a material default.
22. **Termination.** Upon Lessee's breach of any covenant set forth in this Lease or upon any material violation by Lessee of any performance measure requirement or regulation or ordinance of the City of Boerne Lessor may terminate this Lease in accordance with Section 18 below. In the event of a material default under this Lease by Lessor, Lessor shall have 30 days to cure such material default and, if such default cannot reasonably be cured in 30 days, Lessor shall have such period as is reasonably necessary under the circumstances so long as it continues to exercise diligence to effect cure of such default. If Lessor elects to pay any amount owed by Lessee herein, Lessee shall within 30 days reimburse Lessor, upon Lessor's written demand, the funds for payments made on Lessee's behalf for losses sustained because of Lessee's failure to pay such amounts, including Lessor's reasonable attorneys' fees incurred thereby.
23. **Remedies.** Following an uncured material default of the Lease, Lessor or its agents, or assigns shall have the option to pursue any one or more of the remedies, without making

notice of demand on Lessee, as follows: (1) to enter upon and take possession of the Premises, by any means whatsoever, without being liable for any claim of damages, (2) to terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, (3) to seek any other remedies at law or in equity, including, but not limited to, the filing of a lawsuit for monetary damages sustained by Lessor occasioned by Lessee's breach of this Lease, (4) to prosecute Lessee for any violation by Lessee or its employees, agents, invitees, licensees, and/or visitors of any applicable ordinance, regulation or statute of any governmental authority. Termination of this Lease, pursuant to the Subsection (2) of this Paragraph, shall be effective upon Lessor's providing written notification of such to Lessee, at Lessee's address listed herein, by certified mail, return receipt requested, and deposited in an official depository in the care and custody of the United States Postal Service. The notice and cure requirements set forth herein shall not apply to an automatic reversion as set forth above.

24. **Governing Law.** The construction and validity of this Lease shall be governed by the laws of the State of Texas without regard to any conflict of laws provisions. Venue for any legal action commenced hereunder shall be in a court of appropriate jurisdiction in Kendall County, Texas.
25. **Severability.** In the event any portion of this Lease is deemed illegal, invalid, or unenforceable, then the remainder of this Lease shall not in any way be affected thereby and may be enforced to the greatest extent permitted by applicable law.
26. **Compliance with Law.** Lessee shall be responsible for complying with all provisions of city, state and federal law in its use of the Premises.
27. **Non-discrimination.** Lessee hereby agrees to refrain from any activity in the performance of this Lease or the use of the Premises that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex in accordance with present federal and state laws.
28. **No Amendment without City Approval.** All of the terms of the agreement between the parties regarding this Lease are contained herein and the parties acknowledge that no verbal promises or agreements modify this Lease. No amendment or modification of this Lease shall be in effect unless it shall be in writing, signed by both parties.
29. **No Assignment by Lessee.** Lessee shall not assign or convey any rights or interest in this Lease or the leasehold interest conveyed herein without the express written consent of Lessor's City Manager.

Agreed and executed in duplicate originals this ____ day of _____, 2022.

LESSOR: CITY OF BOERNE

By: _____
Ben Thatcher
City Manager

ATTEST:

Lori Carroll
City Secretary

LESSEE: DAS GREENHAUS, INC., a Texas non-profit corporation

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, a Notary Public, on this day personally appeared _____ of **Das Greenhaus, Inc.**, a Texas non-profit corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes of consideration therein expressed.

GIVEN under my hand and seal of office this: ____ day of _____, 2022.

Notary Public in and for the State of Texas

EXHIBIT A

Property description as defined on a survey plat.

Exhibit A
The Premises



Legend

 The Premises

