

EXHIBIT

"A"

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement is made and entered into by and between Lessor, CITY OF ROUND ROCK, TEXAS, a Texas home rule city, (hereinafter referred to as "City") and Lessee, KR Acquisitions LLC, a Delaware limited liability company (hereinafter referred to as "KR Acquisitions").

Date: October __, 2019

Lessor: CITY OF ROUND ROCK, TEXAS, a municipal corporation

Lessor's Address: 221 East Main Street
Round Rock, Texas 78664

Lessee: KR Acquisitions LLC, a Delaware limited liability company

Lessee's Address: P.O. Box 590
1305 Kalahari Drive
Wisconsin Dells, WI 53965

Lease Space: The building located at 2008 Enterprise in Round Rock, Williamson County, Texas (the "Primary Building") and a smaller building located in the parking lot of the Primary Building (the "Second Building"; hereinafter the Primary Building and the Second Building are referred to as the "Lease Space"), along with appurtenant parking facilities.

Lease Commencement

Date (Initial Term): December 1, 2019 or such earlier date agreed to by the City and KR Acquisitions; provided that the lease shall not commence with respect to the Second Building until February 1, 2020 or such earlier date agreed to by the City and KR Acquisitions in writing

Lease Expiration

Date (Initial Term): December 31, 2020

Lease Term: From the Lease Commencement Date (Initial Term) through the Lease Expiration Date

Lease Rent: Monthly Lease Rent \$ 1.00.

Permitted Uses: Office use and storage space for items associated with the Kalahari Resort being built in Round Rock

ARTICLE I

Consideration. The parties hereto expressly stipulate that this Commercial Lease Agreement is entered into in consideration of the sums of money recited herein, the use of the Lease Space as recited herein, the value to City of ensuring occupancy and use of its property inventory, and other good and valuable consideration given, the receipt and sufficiency all of which is hereby acknowledged.

Leasing of Premises. Subject to and upon the terms and conditions herein set forth, and each in consideration of the duties, covenants and obligations of the other hereunder, City hereby leases to, and KR Acquisitions hereby leases from City, the Lease Space. The parties hereto expressly stipulate that the Lease Space is not a dwelling as defined in V.T.C.A., Property Code §92.001(1).

KR Acquisitions understands that the Lease Space does not include a computer server room located in the interior of the building. Authorized city employees shall have access to the computer server room on a 24/7 basis. Notwithstanding the foregoing, KR Acquisitions shall also have access to the computer room, including all access to the IT infrastructure of the Primary Building and the Second Building.

Furnishings. The City will be vacating the Lease Space and moving its employees to a new building with new furniture. The furniture that is not being moved to the new building or elsewhere by the City will remain in the Lease Space for use by KR Acquisitions. However, the furniture will remain the property of the City.

ARTICLE II

Performance Representations by Lessee KR Acquisitions. KR Acquisitions hereby covenants and agrees to do the following:

1. Lease the premises for the Lease Term, on the terms and conditions enumerated herein, beginning on the Lease Commencement Date and ending on the Lease Expiration Date (which may include extensions of the Lease Expiration Date (Initial Term), as provided for in Article III).
2. Pay the Lease Rent per month to City at its offices in Round Rock, Texas, or elsewhere within the United States as City may from time to time designate in

writing, payable in advance no later than the first day of each full calendar month, in legal tender for the payment of public and private debts, without set-off or deduction, the sum of One Dollar and No/100 (\$1.00) per month. All payments of Lease Rent and other amounts becoming due and payable from KR Acquisitions to City under and in connection with this lease may be made by delivering to City, at the then-applicable address provided for herein, KR Acquisitions' check in the amount of such payment, on or before the due date thereof under the terms of this lease.

3. Independently arrange to have any utilities needed by KR Acquisitions to be provided by utility service providers, and KR Acquisitions shall pay for all such utility services used by KR Acquisitions which are not provided by City.
4. Pay all operating expenses for the Lease Space, including cleaning and "ordinary course of business" maintenance of the building consistent with obligations of a tenant in a short-term lease, maintaining landscaping and repair and "ordinary course of business" maintenance of the parking lot consistent with obligations of a tenant in a short-term lease.
5. Pay any and all property taxes assessed against the Lease Space and personal property owned by KR Acquisitions.
6. Obey all laws, rules, regulations, and terms of the lease and of the use, condition, and occupancy of the Lease Space, including the rules and regulations of the building, if any, adopted by City from time to time.
7. Vacate the Lease Space upon termination of this lease, and surrender all key cards to the Lease Space.
8. Allow City to enter the premises to perform City's obligations, or to reasonably inspect the premises, or at reasonable times to show the premises to prospective purchasers or tenants.
9. Submit written notifications and/or requests to City relative to any events of consequence involving the premises.
10. Maintain general liability insurance for the Lease Space, with City named as additional insured, in the amount of \$2,000,000, and provide the City with an Insurance Certificate.
11. Maintain appropriate insurance on KR Acquisitions' personal property located within the Lease Space.

12. Deliver certificates of insurance to City.
13. Indemnify, defend, and hold City harmless from any loss or claim arising out of KR Acquisitions' use of the Lease Space or resulting from KR Acquisitions' failure to comply with applicable provisions of the lease.
14. Upon request of City, execute an estoppel certificate stating the commencement and expiration dates of the lease, identifying any amendments to the lease, describing any rights to extend the lease term, listing defaults, and providing any other related information reasonably requested.

Prohibition Representations by Lessee KR Acquisitions. KR Acquisitions hereby covenants and agrees not to do the following:

1. Use the Lease Space for purposes other than the Permitted Lease Use.
2. Create a nuisance.
3. Interfere with City's ownership or management of the building.
4. Permit any waste.
5. Use the Lease Space in a way that is extra-hazardous, that would increase insurance premiums, or that would void insurance on the building.
6. Change City's lock system, except as permitted in writing.
7. Alter the Lease Space, except as provided herein for statutorily-mandated alterations, or place any exterior sign on the premises unless such exterior sign complies with all applicable laws, ordinances, orders, rules and regulations or is otherwise approved by the City.
8. Allow a lien to be placed on the Lease Space.
9. Assign this lease or sublet any portion of the Lease Space without City's prior written consent.

ARTICLE III

Performance Representations by Lessor City. City hereby covenants and agrees to do the following:

1. Lease the Lease Space to KR Acquisitions for the Lease Initial Term, on the terms and conditions enumerated herein, beginning on the Lease Commencement Date (Initial Term) and ending on the Lease Expiration Date (Initial Term), or ending on the last day of any allowed month-to-month tenancy after the Lease Expiration Date (Initial Term).
2. Adequately insure the building and parking facilities against risks of direct physical loss. The parties agree that KR Acquisitions shall have no claim to any proceeds of City's insurance policy.

Prohibition Representations by Lessor City. City hereby covenants and agrees not to interfere with KR Acquisitions' possession of the premises so long as KR Acquisitions is not in default.

ARTICLE IV

Default by KR Acquisitions.

1. Default by KR Acquisitions shall be defined as KR Acquisitions failing to begin a reasonable attempt to comply, within ten (10) days of receiving written notice from City, with any substantive provision of this lease.
2. City's remedies for KR Acquisitions' default are to (a) enter and take possession of the Lease Space, after which City may relet the Lease Space and receive the Lease Rent directly by reason of the reletting; or (b) enter the Lease Space and perform KR Acquisitions' obligations; or (c) terminate this lease by proper written notice and sue for damages.

Default by City

1. Default by City shall be defined as City failing to begin a reasonable attempt to comply with any substantive provision of this lease within ten (10) days of receiving proper written notice.

2. KR Acquisitions' remedies for City's default is limited to only terminating this lease.

It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or as provided by law. City and KR Acquisitions have a duty to mitigate damages.

ARTICLE V

Keys. City will provide KR Acquisitions with an adequate number of key cards to the Lease Space. No additional locks shall be allowed in the premises without City's consent. Upon termination of this lease, KR Acquisitions shall surrender to City all key cards to the Lease Space.

ARTICLE VI

Abatement. KR Acquisitions' covenant to pay rent and City's covenants hereunder are independent of each other. Except as otherwise provided herein or by law, KR Acquisitions shall not be entitled to abate rent for any reason.

ARTICLE VII

Use. KR Acquisitions will use the premises only for office and storage purposes which are consistent with such reasonable rules and regulations as are imposed from time to time by City with respect to the space leased. Any use of the premises which will affect the appearance of the building, exceed structural loads of floors or walls, affect the mechanical, plumbing or electrical systems of the building, affect ventilation in other areas of the building, or interfere with other tenants of the building must have City's prior written approval.

Access. KR Acquisitions and its employees shall have access to the premises at all times. KR Acquisitions' invitees and customers and the general public shall have access to the premises during normal business hours and, at KR Acquisitions' election, after business hours if they shall comply with such security procedures as City shall reasonably promulgate from time to time.

The City shall also have access to the premises at all times.

ARTICLE VIII

Lessee KR Acquisitions' Obligations. KR Acquisitions covenants and agrees that it will not injure the building or the premises but will take the same care thereof which a reasonably

prudent person would take of his/her own property, and upon termination of this lease, KR Acquisitions will surrender and deliver up the premises to City in as nearly identical condition the premises were in on the commencement date of this lease; subject, however, and except for ordinary wear and tear and damage arising from fire or other casualty. KR Acquisitions agrees, at its cost and expense, to repair or replace any part of the premises damaged as a proximate result of negligent or wrongful acts or omissions of KR Acquisitions or its agents, employees, representatives, invitees, licensees or visitors and to repair damage to the building proximately caused by the negligence or wrongdoing of KR Acquisitions or its agents, employees or representatives acting within the scope of their agency, employment or representation; provided, however, that if KR Acquisitions should fail or refuse to make such repairs or replacements with reasonable promptness after written notice from City (having due regard to the nature of the required repairs or replacements and the effect of delay in making same on the appearance of the building or danger of injury to or interferences with others), then City may, at its option but without any obligation to do so, enter the premises and make such repairs or replacements on the premises, should they be required, and KR Acquisitions shall repay the actual and reasonable costs thereof upon demand.

ARTICLE IX

Alterations by Lessee KR Acquisitions. KR Acquisitions shall not make any alterations to or additions to the building or premises without City's prior written consent to and approval thereof.

City's Rights Upon Termination of Lease. All of KR Acquisitions' improvements, fixtures and equipment of every description (unless such improvements, fixtures and equipment are removable without damage to the premises), any alterations or additions to the premises including those made with written consent, and any other article incorporated in or permanently affixed to the floor, wall or ceiling of the premises, shall become the property of City and shall be and remain upon and be surrendered with the premises as a part thereof at the termination of this lease, KR Acquisitions hereby waiving all rights to any payment or compensation therefor. In the event City requests that KR Acquisitions remove any of KR Acquisitions' removable fixtures, equipment or property located in or about the premises or the building at the termination of this lease, KR Acquisitions shall promptly remove same at its sole risk, cost and expense, and upon KR Acquisitions' failure to remove same, City may remove same at KR Acquisitions' expense.

ARTICLE X

Lessee KR Acquisitions' Compliance With Laws. KR Acquisitions will at its own cost and expense comply with all laws, ordinances, orders, rules and regulations (state, federal, municipal or promulgated by other agencies or bodies having jurisdiction thereof) relating to the

use, condition or occupancy of the premises, excluding having any responsibility or liability for making improvements to the building which make it ADA compliant; will install, remove or alter such of KR Acquisitions' fixtures, equipment and facilities in the premises as may be necessary so to comply; and will not engage in any activity which would cause City's fire and extended coverage insurance to be canceled or the rate therefor to be increased over the rate which would have been charged had such activity not been engaged in by KR Acquisitions (or in such event, at KR Acquisitions' option, KR Acquisitions will pay the amount of any such increase).

ARTICLE XI

Release of Claims/Subrogation. City and KR Acquisitions hereby release each other from any claim, by subrogation or otherwise, for any damage to the premises, the building, the parking facilities, or personal property within the building, by reason of fire or the elements, regardless of cause, including negligence of either party. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.

Notice to Insurance Companies. City and KR Acquisitions shall notify the issuing insurance companies of the release set forth in the first paragraph of this Article XI, and shall have the insurance policies endorsed, if necessary, to prevent invalidation of coverage.

ARTICLE XII

Casualty/Total or Partial Destruction. If the premises are damaged by casualty, the City may, at its sole option, choose not to restore the premises. In that case, this lease agreement will terminate or, if practical, remain in effect with respect to the premises that have not been damaged by casualty.

ARTICLE XIII

Condemnation/Substantial or Partial Taking. If the premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, then this lease will terminate. KR Acquisitions shall have no claim to the condemnation award or proceeds in lieu of condemnation.

ARTICLE XIV

No Arbitration. In the event of any dispute regarding terms or performance of terms of this lease, it is agreed by all parties that such dispute shall not be subject to arbitration.

ARTICLE XV

As Is, Where Is. KR Acquisitions acknowledges that it has been provided sufficient opportunity to inspect, examine, and investigate the Lease Space. KR Acquisitions warrants, acknowledges, and agrees that it is relying solely on its own inspections, examinations, and investigations of the property in making the decision to lease the property and is accepting the property in its “as is, where is” condition “with all faults” and defects and specifically and expressly without any warranties, representations, or guarantees, either express or implied, as to its condition, fitness for any particular purpose, or any other warranty of any kind, nature, or type whatsoever from or on behalf of City. City specifically disclaims any warranty, guaranty, or representation, oral or written, past or present, express or implied, concerning (a) the nature, quality, or condition of the property, including without limitation, structural integrity; (b) the suitability of the property for any and all activities and uses which KR Acquisitions may conduct on the property; (c) the habitability, or fitness for a particular purpose of the property; (d) the manner or quality of the construction or materials, if any, incorporated into the property, (e) the manner, quality, state of repair or lack of repair of the property, (f) the presence or absence of hazardous materials at, on, under, or adjacent to the property or any other environmental matter or condition of the property, or (g) any other matter with respect to the property. KR Acquisitions further acknowledges that it is a sophisticated and experienced lessee of properties such as the property.

ARTICLE XVI

Abandoned Property. City may retain, destroy, or dispose of any property left and abandoned on the premises at the end of the lease term and any renewals.

ARTICLE XVII

Severability Clause. If any term, covenant, condition or provision of this lease, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this lease or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than such as to which it shall have been invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted

by law.

ARTICLE XVIII

Notices. Any notice or communication to parties required or permitted to be given under this lease shall be effectively given only if in writing and such notice shall be considered received three (3) days after depositing such notice in the U.S. registered or certified mails, postage prepaid, return receipt requested, or by commercial overnight courier service, addressed as follows:

- (a) If addressed to Lessor City:

City of Round Rock, Texas
221 East Main Street
Round Rock, TX 78664
Attention: City Manager

With a copy to:

Stephan L. Sheets
Sheets & Crossfield, PLLC
309 East Main Street
Round Rock, TX 78664

- (b) If addressed to Lessee KR Acquisitions:

KR Acquisitions LLC
P.O. Box 590
Wisconsin Dells, WI 53965
Attention: Ralph Gundrum

provided, however, that any party shall have the right to change the address to which notices shall thereafter be sent by giving notice to the other party as aforesaid, but not more than two addresses shall be in effect at any given time for City and KR Acquisitions hereunder.

ARTICLE XIX

Attorneys' Fees. In the event of litigation between City and KR Acquisitions wherein one or both parties is seeking to enforce any right or remedy hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred in connection with such litigation from the other party.

ARTICLE XX

Applicable Law. This lease shall be governed by and construed in accordance with the laws of the state of Texas, and venue shall lie in Williamson County, Texas.

ARTICLE XXI

Miscellaneous Provisions. The parties hereto agree as follows:

(a) Binding Effect. The covenants and agreements herein contained shall inure to and be binding upon City, its successors and assigns, and KR Acquisitions, its successors and assigns; provided such reference to assigns is not intended to imply or grant any right on the part of either party to assign this lease.

(b) Entire Agreement. This lease constitutes the entire agreement of the parties with respect to the subject matter hereof, and all prior correspondence, memoranda, agreements or understandings (written or oral) with respect hereto are merged into and superseded by this lease.

This lease is executed and delivered effective as of the date and year first above written.

LESSOR
CITY OF ROUND ROCK, TEXAS
a municipal corporation

By: _____
Craig Morgan, Mayor

Date: _____

ATTEST:

Sara White, City Clerk

APPROVED AS TO FORM:

Stephan L. Sheets, City Attorney

LESSEE

KR ACQUISITIONS LLC

By: 

Name: Mary Bonte Spath

Title: Secretary and Treasurer

Date: October 4, 2019