

**MCKAY PROPERTY HOLDINGS, LLC**  
**ROOFTOP ACCESS AGREEMENT**

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This Facility License Agreement (“Agreement”) is made between the **MCKAY PROPERTY HOLDINGS, LLC**, a Michigan limited liability company, of 146 Monroe Center NW, Suite 300, Grand Rapids, Michigan 49503 (“McKay Property Holdings”) and the following party, herein called “Customer”.

Date:

Customer Name:

Address:

Telephone:

Email:

McKay Property Holdings operates the facility commonly referred to as the Rooftop Deck and Lounge (“Facility”) in the premises commonly known the McKay Tower, 146 Monroe Center N.W. Grand Rapids, MI 49503 (“McKay Tower”).

The purpose of this Agreement is for Customer to hire from McKay Property Holdings the Facility for the following purpose (“Event”):

The Event will occur on the following date(s) (“Date of Event”):

The maximum number of people attending the event (“Attendees”) shall be:

The hours of the Event will be:

**McKay Property Holdings and Customer hereby agree as follows:**

1. **License.** McKay Property Holdings will grant to Customer a license to use the Facility and Customer will hire from McKay Property Holdings the Facility for the Event on the Date of the Event.

2. **Hours.** The hours the Facility will be available for the Event are set forth above. This includes set up and tear down time. Additional set up and tear down time may be available at additional cost under an amendment to this agreement. Music must cease no later than midnight. Everyone must vacate the Facility and McKay Tower no later than the end time specified above, unless extended under a separate agreement. Customer may not obtain access to McKay Property Holdings or McKay Tower except within the hours for which Customer has paid.

3. **Price and Payment.** Customer shall pay \$250.00 (“Price”) for the license to use the Facility for the Event, plus any amount owed for additional set up and tear down time or other services provided under an amendment to this Agreement.

3.1 **Payment Schedule.** Customer will pay the full Price at the time of signing this Agreement (“Initial Payment”). In the event there are additional costs incurred following the Balance Payment, Customer will pay all such additional costs within 14 days of the invoice for

the Event. Customer shall pay a late fee in the amount of 5% for any amount not paid within 30 days after the date of the invoice.

3.2 **Manner of Payment.** Customer may make the initial payment by personal or business check, cashier's check or bank money order. Customer will make the Balance payment and pay any other amount due under the terms of this Agreement by cashier's check or bank money order. All payments will be made to McKay Property Holdings, LLC and delivered/sent to 146 Monroe Center NW, Suite 300, Grand Rapids, Michigan 49503.

4. **Vendors.** Vendors ("Vendors") include, without limitation, persons providing music, entertainment, musicians, floral decorations, other decorations, food, lighting, décor, including infrastructure, such as tables, chairs and furniture, and beverages.

4.1 Customer may not enter into any contracts or arrangements for any vendor providing lighting, décor, including infrastructure, such as tables, chairs and furniture, in connection with the Event without McKay Property Holdings' approval.

4.2 Customer must use a caterer from the approved list of caterers provided by McKay Property Holdings.

Customer will provide a written list of each Vendor at least fourteen (14) days prior to the event. Each Vendor not included on the approved vendor list must execute McKay Property Holdings' Vendor Agreement, a copy of which has been furnished to Customer. McKay Property Holdings is not responsible for any vendor or vendor services, regardless of whether McKay Property Holdings has referred Customer to the Vendor. The relationship between Customer and Vendors is strictly between them.

5. **Use.** Customer shall use the property only for the Event described above and for no other purpose and no other event, including set up and tear down. Customer's use shall comply with all provisions of this Agreement, including, without limitation those that follow:

5.1 **Number of Persons.** The maximum number of Persons in the Facility shall be as stated above and in no event greater than forty-nine (49).

5.2 **Animals Prohibited.** Absolutely no animals shall be permitted in or about the Facility or McKay Tower, except as may be necessary for the assistance of those visually or otherwise physically impaired.

5.3 **Smoking Prohibited.** Smoking in or about the Facility and McKay Tower or within fifty feet (50') of McKay Tower is strictly prohibited.

5.4 **Delivery and Pick Up.** All displays, exhibits, decorations, equipment, musicians and similar personnel must make all deliveries and pick up during the hours of the Event and so as to not interfere with tenants of McKay Tower and so as not to cause any damage to McKay Tower and in accordance with the Vendor Agreement.

5.5 **Food.** No food or beverages of any kind shall be permitted outside of the Facility. Unless otherwise agreed in writing, no food or beverages may be brought into the Facility. All food and beverages shall be furnished by the Caterer (defined below). Customer must select a caterer ("Caterer") from the list of approved caterers provided by McKay Property Holdings. Customer and Caterer shall enter a separate contract, and McKay Property Holdings shall have no responsibility with regard to food or beverages except as otherwise provided herein with respect to alcoholic beverages.

5.6 **Beverages**. All liquor, beer, wine and beverages must be supplied and served by McKay Property Holdings. McKay Property Holdings, as the licensee, is responsible for the administration of the sale and service of alcoholic beverages. Absolutely no alcoholic beverage shall be served to any person under the age of 21, to any person visibly intoxicated, mentally incompetent or otherwise unsuited for consumption of alcohol. McKay Property Holdings and its representatives reserve the right to refuse to serve alcoholic beverages to any person and reserve the right to require photo identification to substantiate the age of any person before serving. If underage alcoholic beverage consumption is discovered or suspected, McKay Property Holdings reserves the right to discontinue service of alcoholic beverages. Prices are subject to change.

5.7 **Decorations**. Customer shall obtain prior written approval from McKay Property Holdings for all decorations brought to or utilized in the Facility and for their manner of use. Glitter, confetti, rice and birdseed are prohibited. Only flameless candles and candles with enclosed flame will be permitted. Sparklers, fire crackers and all similar items are prohibited. All flower petals used on flooring must be white if real. If colored or pigmented, they must be silk. All decorations must be removed from the Facility within the hours of the Event.

5.8 **Signs**. Customer shall place no signs anywhere in or out of McKay Tower, other than in the Rooftop Deck and Lounge, without the express written permission of McKay Property Holdings and, in the event of such permission, only in strict accordance with the terms of such permission.

5.9 **Music/Noise/Entertainment**. All music and entertainment must be conducted in such a way as to not be obnoxious or objectionable or a nuisance to any other occupant of McKay Tower. McKay Property Holdings reserves the right to require a reduction in volume of any music or other noise. No music shall be made or played in the Facility after 12 midnight.

5.10 **Prohibited Items**. In addition to any other item prohibited by this Agreement, Customer shall not permit any illegal, controlled or dangerous substance to be brought to the Facility or McKay Tower.

5.11 **Cleanup**. McKay Property Holdings is responsible for ordinary and reasonable janitorial services. Any extraordinary cleanup will be at the expense of Customer and Customer shall immediately reimburse McKay Property Holdings for any such expense. Customer will insure that all items brought to the Facility, whether by Customer, Vendors, guests or others will be removed no later than 1 a.m. All garbage shall be placed in the dumpster in the Ellis parking lot adjacent to McKay Tower.

5.12 **Safety**. Customer is responsible to use the Facility safely and will insure that all persons utilizing the Facility or otherwise connected to the Event conduct themselves so as to be safe for themselves and others.

5.13 **Compliance With Laws**. Customer, its vendors, attendees, guests, invitees, employees, and all parties in the Facility shall comply in all respects with all laws, rules and regulations that apply to the Facility and Event, including, without limitation, any law, rule or code regarding fire or safety.

6. **Insurance**. Customer shall maintain in full force a policy of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Michigan which will insure (and name as insured parties) Customer, McKay Property Holdings and Steadfast Property Holdings, LLC (or any subsequent owner of McKay Tower)

(and such other persons as are designated by McKay Property Holdings) against liability for injury to any person and/or property and the death of any person occurring in or about the Facility or McKay Tower in any way connected to the Event. Such policy shall be approved as to form and insurance company by McKay Property Holdings. The liability under such insurance shall not be less than \$1,000,000. Customer shall provide McKay Property Holdings with copies or certificates of such policy, including an endorsement providing that such policy shall not be canceled except after thirty (30) days notice in writing to McKay Property Holdings.

7. **Force Majeure/Limitation**. If for any reason beyond McKay Property Holdings' reasonable control (including without limitation strikes; labor disputes; acts, regulations or orders of governmental authorities; civil disorder; disasters; acts of war; acts of God; acts of terrorism; fires, flood or other emergency conditions; any delay in necessary and essential repairs of the Facility or McKay Tower) it is impossible for McKay Property Holdings to perform its obligations under this Agreement, such non-performance is excused and McKay Property Holdings may terminate this Agreement without further liability of any nature, upon return of amounts paid to McKay Property Holdings by Customer.

8. **Damage**. Customer will not cause or permit any nails, screws tacks, pins or any other thing to be pushed or driven into any wall, ceiling, post, pillar, floor, door or other component of the Facility. Customer will not place tape, adhesive, plastic tack or any other similar substance on any surface of the Facility without express written permission from McKay Property Holdings. Customer will not cause or permit any changes, alterations, painting, repairs, staining or other modification of any kind to any portion of the Facility or any Equipment. Customer will not cause or permit anything that will cause any damage to the Facility or any Equipment.

9. **Access by McKay Property Holdings**. McKay Property Holdings shall have access to the Facility at all times and for all purposes. McKay Property Holdings reserves the right, to remove or instruct Security Personnel to remove, from the Facility any person or property to which McKay Property Holdings objects.

10. **Limitation of Liability**. McKay Property Holdings shall not be liable for any Equipment or other item brought to the Facility or for any damage or injury to person or property related to the Event. In the event of any breach of this Agreement by McKay Property Holdings, the maximum amount of damages shall be the Price. In no event shall McKay Property Holdings be liable for consequential or incidental damages of any nature for any reason whatsoever.

11. **Indemnity**. Customer shall indemnify and hold McKay Property Holdings and Owner, their members, agents, employees, successors and assigns, harmless from and against any and all actions, causes of action, suits, claims, demands, damages, debts, expenses (including reasonable attorneys' fees), liabilities and losses, which may be made against or sustained by McKay Property Holdings or McKay Tower, their members, agents, employees, successors and assigns, in law or in equity or otherwise, arising out of or in connection with Customer's use of the Facility or the Event, including, but not limited to, any claims for personal injury or property damage sustained by any person whatsoever on or about the Facility or McKay Tower, including, without limitation, any claims made under or with respect to ADA. Customer shall also pay all costs, expenses and reasonable attorney fees that may be incurred or paid by McKay Property Holdings in enforcing the covenants and agreements of this Agreement.

12. **Property Left at Facility**. Customer agrees that any property left at the Facility following the Event shall be deemed abandoned by Customer and any person attending the Event.

McKay Property Holdings shall have the right to discard or otherwise dispose of any such property. Customer agrees to hold harmless and indemnify McKay Property Holdings for any claim made on account of McKay Property Holdings disposing of the property, according to the indemnification terms of this Agreement.

13. **Joint and Several Liability.** In the event more than one person signs this Agreement as Customer, each person so signing shall be jointly and severally liable for all obligations of Customer under this Agreement.

14. **Governing Law.** This Agreement shall be governed in all respects by Michigan law. Venue for any dispute under this Agreement shall be Kent County, Michigan.

15. **Assignment.** Customer may not assign any of its rights or obligations under this Agreement without McKay Property Holdings' written consent. No assignment shall relieve or discharge Customer from its obligations under this Agreement unless McKay Property Holdings shall expressly and explicitly agree in writing.

16. **Waiver.** No waiver of any provision of this Agreement, or of the breach thereof, shall be construed as a continuing waiver, nor shall the same constitute a waiver of such provision or breach on a future occasion or of any other provision or breach.

17. **Interpretation.** The paragraph headings contained herein are solely for convenience and shall in no event affect, or be used in connection with, the interpretation of this Agreement. Each separately designated section of this Agreement shall be treated as severable, to the end that if one or more such sections or any portion thereof shall be adjudged or declared illegal, invalid or unenforceable, this Agreement shall be interpreted, and shall remain in full force and effect, as though such section or sections, to the extent illegal or unenforceable, had never been contained in this Agreement. Whenever reasonably necessary for interpretation of this Agreement, pronouns of any gender shall be deemed synonymous, as shall singular and plural pronouns.

18. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and all prior and contemporaneous agreements between the parties, whether written or oral, are merged herein and shall be of no force or affect. This Agreement cannot be changed, modified or amended except in writing, signed by the party against whom enforcement of the change, modification or amendment is sought.

19. **Facsimile signatures.** Any of the parties hereto or the guarantor may execute this Lease and transmit its signature by facsimile or email and the signature shall be binding against the signor just as an original signature.

**In Witness Whereof**, McKay Property Holdings and Customer have caused this Agreement to be executed as of the date first hereinabove set forth.

**MCKAY PROPERTY HOLDINGS, LLC**

By \_\_\_\_\_

Its Authorized Representative

**CUSTOMER:**

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Signature

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Printed

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Email

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Date