

LEASE

THIS LEASE is entered into this 1st day of April, 2019, by and between the Town of Marble ("Landlord"), and Slow Groovin Holding, LLC, a Colorado limited liability company ("Tenant").

WITNESSETH:

1. Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and conditions as hereinafter set forth, the following real property:

Those portions of Main Street and West First Street, Town of Marble, Gunnison County, Colorado, illustrated on Exhibit 1 (Survey Map), (hereinafter referred to as "Premises").

2. Term of Lease. The original term of this Lease shall start on April 1, 2019, and shall run for a period of one year (the "Initial Lease Term"), unless sooner terminated or extended as hereinafter provided. The Lease shall automatically renew for up to four successive one year terms (each a "Lease Term"), unless either party delivers to the other party written notice of non-renewal on or before the December 31 prior to the scheduled commencement of the next Lease Term.

3. Application Fee. Upon execution of this Lease, Tenant shall pay Landlord a non-refundable application fee in the amount of \$500, at the address provided below, or at such other place designated by Landlord.

4. Rent. Tenant agrees to pay Landlord at the address provided below, or at such other place designated by Landlord, without prior demand therefor and without any deduction or offset whatsoever, the amount of \$2,000 for the Initial Lease Term. Rent shall be increased by 3% for each subsequent Lease Term. The Rent shall be due and payable on the first day of the Lease Term.

5. Late Fees and Interest. If any amount due under this Lease is not paid within 5 business days of the due date, tenant shall pay a late charge of \$100 together with interest at a rate of 18% per annum.

6. Use of Premises.

a. Tenant shall have the right to use and occupy the Premises for commercial purposes associated with the operation of Slow Groovin' BBQ on Lots 9-12, Block 23, Town of Marble (the "Restaurant"), as follows:

i. The area east of the centerline of West First Street shall be used exclusively as a parking lot for customers of the Restaurant. Each year, Tenant shall paint a crosswalk across West First Street from the parking lot to the stairs leading to the Restaurant.

ii. The area west of the centerline of West First and labeled as "seating" on Exhibit 1 may only be used as follows: Tenant may locate removable tables and chairs within this area, allow customers to wait for restaurant seating, locate a smoker, use the area to service to-go customers, and ancillary uses, but shall not use the area for additional restaurant/sit-down service. Tenant shall install a fence along the eastern edge of this easement area, at Tenant's expense. The design of

the fence shall be subject to Town approval, and such approval shall not be unreasonably withheld.

iii. The area west of the centerline of West First and labeled as “parking” on Exhibit 1 shall be used exclusively as parking for owners, employees, and customers of the restaurant.

iv. This Lease allows for the use and occupation of the leased Premises by existing building encroachments, including the kitchen vents, provided that such encroachments shall not be expanded or increased without the express written consent of the Town.

b. Tenant shall not serve alcohol on the Premises unless and until Tenant has provide sufficient proof to Landlord that Tenant’s liquor licenses allow such service.

c. Tenant covenants through the term of this Lease, at Tenant's sole cost and expense, to promptly comply with (1) all laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and local governments.

d. Except as expressly set forth herein (e.g. obligation to paint a cross-walk), Tenant shall have no right under this Lease to occupy or alter Town property outside of the Premises.

7. Insurance. During the term of this Lease, Tenant, at its sole cost and expense and for the mutual benefit of Landlord and Tenant, shall carry and maintain insurance, as follows:

a. Tenant shall at all times keep in force a comprehensive general combined liability insurance policy providing single-limit coverage of not less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Through that policy or a separate policy, Tenant shall maintain liquor liability insurance with the same or greater coverage limits. Landlord shall be named and protected under the terms and conditions of said policy(ies) as an additional insured.

b. Tenant shall be responsible for insuring any and all personal property that may be owned by Tenant.

c. Any insurance that may be purchased pursuant to this Paragraph or any proceeds that may be payable as a result of a loss under any such insurance shall in no way reduce, alter, or modify any provisions of this Lease and specifically the indemnity provisions hereof.

d. Tenant’s insurance shall be primary to any other insurance, including any insurance obtained by Landlord.

e. Tenant shall provide Landlord with proof of insurance, and shall cause to be delivered to Landlord certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Lease. No such policy shall be cancelable or subject to modification, except after thirty days’ prior written notice to Landlord. Tenant shall, at least thirty days prior to the expiration of such policies, furnish Landlord with evidence of renewals or “insurance binders” evidencing renewal thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by

Tenant to Landlord upon demand. If the Tenant shall fail to procure and maintain the insurance required under this Lease, the Landlord may, but shall not be required to, procure and maintain the same, but at Tenant's expense.

f. Without affecting any other rights or remedies, Landlord and Tenant waive all rights against each other and any of their respective officers, members, managers, agents, and employees, for damages to the extent covered by insurance obtained pursuant to this Section or other insurance applicable to the Premises, except such rights as they have to proceeds of such insurance, and agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. Waivers of subrogation shall be effective whether or not the person had an insurable interest in the property damaged or paid the insurance premium, and even if that person would otherwise have a duty of indemnification.

8. Responsibility for Maintenance. Landlord shall have no obligation of any kind to make any expenditures of any nature upon the Premises. Tenant shall, throughout the term of this Lease or any extension hereof, at Tenant's sole cost and expense, put, keep, and maintain the Premises in as good of condition, repair, and order, as when received, ordinary wear and tear excepted.

9. Condition of Premises; Covenants of Landlord.

a. Tenant has inspected the Premises, and accepts the same "as is" in their present condition with no warranties or representations of any kind whatsoever.

b. Landlord is the sole owner, in fee simple, of the Premises and has full right and power to lease the same for the term aforesaid.

c. EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE, LANDLORD HAS NOT, DOES NOT, AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PREMISES, AND LANDLORD SPECIFICALLY DISCLAIMS ANY OTHER IMPLIED WARRANTIES OR WARRANTIES ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

d. Tenant acknowledges that Main Street and West 1st St. are maintained as public streets, and snowplowing and other road maintenance and repair work may be performed on such streets from time to time. Tenant waives any claim for loss or damages to personal property within the Premises, against the Landlord or any other individual or entity, arising from such snowplowing and other road maintenance and repair work conducted outside of the Premises, including snowplowing that results in snow being pushed onto the Premises.

10. Indemnity. Tenant agrees to exonerate, hold harmless, protect, and indemnify Landlord, or any subsequent owner of the Premises, from and against any and all losses, damages, claims, suits, or actions, judgments, and costs which may arise based on events occurring during the term hereof and in any manner resulting from or rising out of the occupation or use of the Premises by Tenant or its agents, employees, invitees, licensees, or guests, for personal injury, loss of life, or damaged property sustained in or about the Premises; and from and against all costs, attorney fees, expenses, and liabilities incurred in any such claims, the investigation thereof, or the

defense of any action or proceeding brought thereon; and from and against any judgments, orders, decrees, or liens resulting therefrom and any fines levied by any authority for violation of any law, regulation, or ordinance by virtue of the use of the Premises.

11. No Waiver of Immunity. The Town does not intend, by any provision of this Lease, to waive or limit any rights or defenses against liability available to it pursuant to law, including but not limited to the rights and defenses available pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq. and Article 11, Section 1 of the Colorado Constitution.

12. Alterations to Premises.

a. Tenant shall have no right to make changes or alterations to the Premises without Landlord's prior consent.

b. Prior to commencing any work on the Premises that requires Landlord's approval, Tenant will supply Landlord with a copy of the plans, specifications, and drawings for that work.

c. Tenant shall keep the Premises free and clear of all liens arising out of or claimed by reason of any work performed, materials furnished, or obligations incurred by or at the instance of Tenant, and indemnify and save Landlord and the Premises harmless of all such liens or claims of lien and all attorney fees and other costs and expenses incurred by reason thereof. Should Tenant fail to discharge fully any such lien or claim of lien or provide an acceptable indemnity bond in the event of contest, Landlord, at Landlord's option and subject to Landlord's right of reimbursement, may pay the same or any part thereof, and Landlord shall be the sole judge of the validity of such lien or claim.

13. Default.

a. Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

i. Tenant's failure to pay any installment of Rent, or other charge or money obligation hereunder when due.

ii. Tenant's insolvency or transfer in fraud of creditors.

iii. Tenant's filing of a petition under the Bankruptcy Acts.

iv. The appointment of a receiver or trustee for Tenant's interest in the Premises or for all or substantially all of the assets of the Tenant.

v. Tenant's abandonment or vacation of the Premises.

vi. The filing or creation of a lien on the Premises as a result of Tenant's action or inaction which tenant may cure by fully discharging such any such lien or claim of lien or by providing an indemnity bond acceptable to Landlord in the event of contest.

vii. Tenant's failure to comply with any material term, provision or covenant of this Lease other than those failures specifically addressed above.

viii. Tenant's failure to obtain a business license for the Restaurant or comply with any material term of the business license for the Restaurant.

If Tenant is in default of any provision of this Lease, other than the covenant to pay rent or materially fails to comply with any duties imposed on Tenant by statute, Landlord may pursue the recourse set forth below if the default persists 5 days after delivery of written notice by Landlord specifying the non-compliance and indicating the intention of Landlord to terminate this Lease by reason thereof, provided however, that upon any subsequent breach of the same provision, Landlord shall have the right to pursue any of the below remedies immediately.

If Tenant fails to pay rent when due and the default continues for five business days thereafter, Landlord may, at Landlord's option, pursue the recourse set forth below.

b. Recourse of Landlord. In the event of an occurrence of default as set forth above, Landlord may pursue any and all rights and remedies available to Landlord at law or in equity, including but not limited to:

i. Terminate. Terminate this Lease and end the term hereof by giving to Tenant written notice of such termination.

ii. Money Damages. Without resuming possession of the Premises or terminating this Lease, to sue monthly for and recover all rents, other required payments due under this Lease, and other sums including damages and legal fees at any time and from time to time accruing hereunder.

iii. Security Interest. The parties understand and agree that in order to secure payment of all sums becoming due at any time to Landlord hereunder and to secure the proper performance and fulfillment by Tenant of the Tenant's agreements herein, Tenant hereby grants to Landlord a security interest in and lien upon all of the trade or business property and equipment, including inventory, which may be placed in or upon the Premises by the Tenant. Tenant hereby gives Landlord a security interest in the subject business property and equipment and agrees that Landlord may file a financing statement evidencing said security interest with Gunnison County and/or the State of Colorado. Upon Tenant's request, Landlord shall subordinate its security interest and lien in Tenant's trade or business property and equipment, including inventory, to Tenant's lender, on condition that Tenant is not in default hereunder. In the event of default by Tenant under this Lease, the Landlord shall have the right to all of Tenant's business property and equipment which may be placed in or upon the Premises by the Tenant as if Landlord were a creditor under the Colorado Uniform Commercial Code. In addition, in the event of default by Tenant, the Tenant hereby authorizes Landlord to enter upon the Premises and to remove and to sell the trade or business property and equipment which are the subject of this lien. This action shall not be deemed a breach of the peace. Tenant agrees to pay the reasonable attorneys' fees incurred by Landlord in the event the Landlord forecloses upon the security interest and lien granted by Tenant herein.

iv. All rights and remedies described herein are cumulative and the exercise of any one remedy shall not be taken to exclude or waive the right to make use of any other remedy.

c. Default by Landlord. In the event of any default by Landlord under this Lease, the Tenant shall have the right to terminate this Lease in the following manner:

- i. The Tenant shall give to the Landlord written notice of such default by certified mail.
- ii. The Landlord shall have fifteen days from the date of mailing of such notice to correct said default and if said default remains uncured fifteen days after the date of said notice, the Tenant shall have the right to terminate this Lease; provided, however, that in the event of a default incapable of being cured within fifteen days, the Landlord shall not be deemed in default if Landlord shall have, within such fifteen day period, in good faith begun action necessary to remedy such default and continues thereafter diligently to prosecute such action to completion.

14. Hold Over. Any rule or law to the contrary notwithstanding, in the event Tenant remains in possession of the Premises or any part thereof subsequent to the expiration of the Lease Term, it shall be conclusively deemed that such possession and occupancy shall be a tenancy from month to month only, at a prorated rental rate which was existing at the end of the term hereof and, further, such possession shall be subject to all of the other terms and conditions contained in this Lease.

15. Notices. All notices, demands, and requests required to be given by either party to the other shall be in writing. All notices, demands, and requests shall be sent by (1) email; (2) hand delivery; or (3) certified or registered mail, return receipt requested, postage prepaid; addressed to the parties at the addresses set forth below or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered upon transmittal if by hand delivery or email, or two (2) days subsequent to the date that said notice was deposited with the United States Postal Service.

Town of Marble Attn: Town Clerk 322 W. Park St. Marble, CO 81623 leach@townofmarble.com	Slow Groovin Holding, LLC 101 W. 1st St. Marble, CO 81623 ryanvinciguerra@gmail.com
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16. Assignment; Sublet. Tenant shall not assign or sublet the Premises or any portion thereof without the prior written consent of Landlord. Any assignment or sublease in violation of this paragraph shall be null and void.

17. Entire Agreement. This Lease contains the entire agreement of the parties regarding the subject matter hereof and all discussions, negotiations and representations are merged herein. This Lease shall not be amended except by written instrument signed by Landlord and Tenant.

18. Applicable Law. This Lease is entered into in Gunnison County, Colorado, and it is agreed that the exclusive proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease shall be in the District Court of Gunnison County, Colorado.

19. Attorney Fees. In case suit or arbitration shall be brought to enforce any provisions of this Lease, the prevailing party shall be awarded (in addition to other relief granted) all reasonable attorney fees and costs incurred in attempting to enforce its rights under the Lease.

20. Construction. This Lease is the result of substantial negotiations between the parties and their counsel and the provisions hereof shall not be more strictly construed against or in favor of either party.

21. Severability. If this Lease, any provision of this Lease, or any other instruments by way of reference incorporated herein contains any term or provision which is or becomes under present or future laws, illegal, invalid or unenforceable, the remainder of the Lease shall not be affected thereby, and each and every term and provision otherwise valid shall remain valid and be enforced to the fullest extent permitted by law. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. Execution. This Lease may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. The parties will accept facsimile signatures or electronic signatures as original signatures.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed the day and year first above written.

LANDLORD:

TENANT:

GUARANTY: The undersigned hereby guarantees the payment of Rent and any damages incurred by Landlord in enforcing the payment of Rent by Tenant and/or Guarantor.

_____, individually

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Guaranty was acknowledged before me this _____ day of _____, 2019, by _____. Witness my hand and official seal. My commission expires: _____.

Notary Public