

MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: October 16, 2015

Subject: Approval of an increase in the monthly rental rate paid by the Weisman Center Cooperative for use of space in the Weisman building

The Weisman Center Cooperative currently pays \$480 per month in rent to the City for use of space in the Weisman Center building, per the terms of the five-year lease agreement that was approved in October, 2013. The terms further state that the rent will be established by the City Commission and may be adjusted annually, by no more than 20 percent in any year.

The amount of rent paid by the Cooperative has remained the same during the first two years of the lease agreement period. It is recommended that the City Commission now approve a monthly rental increase of 20 percent, as provided for in the terms of the lease agreement. This will increase the rent paid by the Cooperative to \$576 per month.

A copy of the current lease agreement is attached.

LEASE AGREEMENT
CITY OF MARSHALL AND WEISMAN CENTER COOPERATIVE

This Lease Agreement is made and entered into to be effective this 24th day of October 2013, by and between the City of Marshall, Texas, ("City"), and the Weisman Center Cooperative (the "Cooperative") Cooperative hereafter referred to as Tenant").

Recitals.

Whereas, the City is the owner of the property commonly known as J. Weisman & Co., located at 211 North Washington; and

Whereas, the tenants include the Weisman Center Cooperative, which is an independent non-profit organization established and existing under the laws of the State of Texas for the purpose of operating a manufacturer's cooperative, and Central Perks, LLC, a for profit Texas Limited Liability Company; and

Whereas, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

Whereas, the City desires to assist the Tenant in its operation that promotes the development of retail sales, tourism, and a strong manufacturing sector for Marshall and its vicinity; and

Whereas, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Marshall and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and the Tenant; and

Whereas, the City has agreed to lease to the Tenant and the Tenant has agreed to lease from the City the property located at 211 North Washington; and

Now, Therefore, In consideration of the covenants, terms and conditions set forth herein, the parties agree and covenant as follows:

Section 1

Grant.

The City leases to the Tenant, as-is with all faults, that certain property located at 211 North Washington ("Premises").

Section 2

Term.

The term of this Lease shall commence on Nov. 1, 2013 and shall terminate on Oct. 31, 2018, a term of five years. This Lease may be renewed by the Tenant for an additional two-year period upon the mutual consent of the parties. **Notwithstanding the foregoing, the Tenant agrees and understands that the City may terminate this Lease at any time by giving the Tenants sixty (60) days written notice to vacate the premises.** The Tenant understands and agrees that they shall have no recourse against City if City terminates the lease or any part thereof during any term of the lease. Notwithstanding, the foregoing, the City also agrees that the Tenant may terminate this lease with the City at any time by giving the City sixty (60) days written notice that the Tenant is vacating the premises.

Section 3

Rent, Levies and Utilities

3.1 Rent.

The Tenant agrees to pay the City a monthly rent during the term of this lease. The rent will be established by the Marshall City Commission and may be adjusted annually. The City agrees not increase the rent by more than 20% in any year. For the first year of this lease the Cooperative shall pay \$480.00

per month. Payment shall be due on the first day of each month and the first payment shall be paid on the first day this lease becomes effective.

3.2 Levies.

The City shall pay when due all duties, assessments, water charges, sewer charges, and other levies assessed against the Premises.

3.3 Utilities And Other Services.

1. During the term of this Lease, the City shall supply the Premises with a reasonable amount of ventilation, air conditioning and heating as required by the season for the use of the Premises. The City shall also provide its usual light, electrical power and water, as now installed. Any repair work needed on the above-listed utility services shall be provided by the City at no expense to the Tenant.

2. all other services required by the Tenant shall be at the sole expense of the Tenant.

3. The Tenant shall provide and pay for all telephone and computer service used on Premises.

4. The Tenant shall pay for trash disposal.

Section 4 Occupancy And Use.

4.1 The Cooperative shall have the non-exclusive use of and control of the following parts of the building:

- The existing retail space on the first floor that occupies the area from the north row of columns to the south wall of the building and the storage area on the first floor south of the north row of columns.
- The third floor including the storage space on the third floor.
- Wall space on the second floor or mezzanine to display artwork. Artwork displayed on the walls in the part of the second floor or mezzanine occupied by Central Perks shall contribute to the atmosphere of the restaurant seating area desired by Central Perks.
- Customers in the building shall be allowed to pass through any space in the building that is open to customers regardless of what Tenant has the use and control of that space. No Tenant may impede or restrict in any way the movement of customers through the building except through the use of stanchions approved by the City Manager's designee.
- The closet in the small meeting room on the second floor or mezzanine.
- That part of the second floor or mezzanine extending south to the wall of the small meeting room, maintenance closet, and restrooms from a line that goes due east from a point four feet north of the door to the stairway to the third floor to the railing. An open space of a minimum of twelve feet must be left open and unobstructed at all times to allow free and easy access into and out of the portion of the second floor or mezzanine occupied by Central Perks. Other walkways and aisles will be the width required by the Fire Code.
- The shelves in the small meeting room on the second floor or mezzanine for display of merchandise. Central Perks shall have use of the cabinets below the shelves in the small meeting room. The small meeting room on the second floor or mezzanine will not be open for browsing by customers during any time that it is reserved by any party for an event unless agreed to by the party reserving the room.
- If the Cooperative is required to move merchandise on the mezzanine, Central Perks will charge a moving fee in an amount not to exceed \$300.00, and pay the collected fee to the Cooperative.
- Customers in the building shall be allowed to pass through any space in the building that is open to customers regardless of what Tenant has the use and control of that space. No tenant may

impede or restrict in any way the movement of customers through the building except through the use of stanchions approved by the City Manager's designee.

4.2 The small meeting room on the second floor mezzanine shall be common space for all tenants. Use of the small meeting room will be booked on the central calendar located at the Weisman Retail Cooperative central checkout.

4.3 Perks may install locks on an existing door to any space controlled by them except the north front door. Locks will be installed upon the approval of the City of Marshall and at the expense of Perks. Keys to any locks installed by Perks shall be provided to a City of Marshall representative designated by the City Manager. The City of Marshall reserves the right to revoke this condition upon written notice delivered to Perks, remove locks installed by Perks, and install new locks at the expense of the City of Marshall if the conditions of this provision are not observed.

4.4 Central Perks shall be able to place stanchions to delineate that the restaurant is closed in the event the building is open at a time when the restaurant is closed. The stanchions used shall be of an attractive design in keeping with the quality of the surroundings in the building and shall be approved by the City Manager's designee. No other barricade or partition system may be used except what is approved by the City Manager's designee. The placement of the stanchions must also be approved by the City Manager's designee. The stanchions must be erected in a way that allows ingress and egress through the north front door.

4.5 The restrooms on the first floor, the second floor or mezzanine, and the third floor shall be under the control of the City. The City shall be responsible for cleaning the restrooms, stocking them with paper supplies or providing an adequate amount of paper supplies to allow either the Cooperative or Perks to restock paper supplies if necessary

4.6 The City will be responsible for maintaining building safety, security, and accessibility features. The City will also establish widths of selected walkways on all floors of the building to assure reasonable movement by customers along the selected walkways.

4.7 The normal operating hours of the building shall be 10:00 a.m. to 5:30 p.m. Monday through Saturday. Tenant may vary from those operating hours as needed. Seven day notice shall be given by either The Cooperative or Perks to the other party in the event one of the parties desires to open the building to customers at a time outside of the normal operating hours of the building or be closed during normal operating hours. In the event of an unanticipated occurrence such as an illness or a death in the family the seven day notice is waived, but every effort shall be made to provide the other tenant with as much advance notice as possible that the affected tenant will be closed during normal operating hours.

4.8 No furniture, fixture, equipment, decoration, or merchandise belonging to any tenant may be moved, adjusted, or manipulated in any way by any other tenant without the prior consent of the owner of the furniture, fixture, equipment, decoration, or merchandise.

4.9 The Tenant agrees to use and occupy the Premises pursuant to all rules and regulations prescribed by the City including the Rules and Regulations shown in Attachment A. The Rules and Regulations shown in Attachment A shall apply only to the Cooperative.

4.10 The Tenant shall not permit the Premises or any part thereof to be used for any improper, immoral or objectionable purposes.

4.11 The City, its representatives and employees, shall at all times have free access to the Premises in the performance of their assigned duties.

4.12 The Janitor's Closet on the second floor or mezzanine is common space and will be available for use by both the Cooperative and Perks.

4.13 The Cooperative shall not have any outside vendors come into the building to sell food.

4.14 Perks shall not have any outside vendors come into the building to sell merchandise either in the building or on the sidewalk in front of the building.

4.15 The Cooperative shall be allowed to offer samples of vendor's pre-packaged foods.

4.16 Food provided in the small meeting room must be either pre-packaged food items or it must be prepared in a kitchen that is inspected and approved by the City of Marshall Health Inspectors.

4.17 Perks shall have the non-exclusive use of and control of the following parts of the building:

- The existing dining room and office/storage space that occupies the area from the north row of columns north to the north wall of the building on the first floor;
- That part of the second floor or mezzanine level extending north to the north wall from a line that goes due east from a point four feet north of the door to the stairway to the third floor due east to the railing, including the storage area ;
- Customers in the building shall be allowed to pass through any space in the building that is open to customers regardless of what Tenant has the use and control of that space. No tenant may impede or restrict in any way the movement of customers through the building except through the use of stanchions approved by the City Manager's designee.

Section 5

Quiet Enjoyment of Premises, Alterations and Surrender.

5.1 The Tenants' Duty To Maintain Premises.

The Tenant shall, at its sole expense, keep the Premises in a condition of thorough repair and good order, and shall be responsible for all routine and customary janitorial services, with the exception of the area covered by section 4.5 above . In the event that the Tenant fails to perform any maintenance obligation required by this Lease, and the failure continues for 30 days after being notified in writing by the City of such failure, the City may, at its option, make the necessary repairs and charge the Tenant for all costs incurred in making such repairs. Notwithstanding the foregoing, the City shall be responsible for maintaining and repairing the structural components of the Premises, except to the extent such structural components are damaged by the Tenant, its agents, employees or invitees. The Tenant agrees to promptly notify the City of any observed structural defects. Upon receipt of such notice by the Tenant, the City agrees to promptly repair such defects at the City's sole cost and expense.

5.2 Use Of the Premises.

The Tenant shall use the premises in compliance with the conditions of the grant agreements between the City of Marshall and the U.S. Department of Commerce Economic Development Administration, U.S. Department of Agriculture Rural Development Administration and the Texas Department of Economic Development. These conditions required the building to 1) be used primarily as a manufacturer's retail outlet; and, 2) to encourage the creation and expansion of small businesses.

The Tenant shall not use the Premises in a manner that would violate any federal, state or local laws. The Tenant further covenants not to do or suffer any waste or damage, disfigurement or injury to the Premises, or to any fixtures and equipment located therein.

5.3 Alterations and Additions.

The Tenant shall have the right to make such other alterations, additions and improvements to the Premises as it shall deem necessary, provided that any such alterations, additions and improvements shall be in full compliance with all applicable laws, and further provided that the Tenant shall have obtained the prior written consent of the City, which consent shall not be unreasonably withheld.

5.4 Surrender.

Upon the termination of this Lease, the Tenant shall surrender possession of the Premises to the City in good condition and repair, ordinary wear and tear excepted.

Section 6

Assignment, Sublease and Liens.

The Tenant shall not assign this lease in whole or in part. The Tenant may sublet the Premises or any part of the premises in compliance with Section 4-Occupancy and Use and Attachment A without the prior written consent of the City.

Section 7

Limitations of Use

Tenant shall not, without the City's prior written consent, keep anything within the Premises, use the Premises, or fail to install or maintain any safety equipment which would cause increases in the insurance premium costs or result in the invalidation of any insurance policies on the Premises. Tenant shall not keep at Premises any material that is explosive or flammable in nature in such quantities as may endanger any part of the Premises without the written consent of all insurance companies carrying fire and rent insurance on the property or contents.

All property kept, stored, or maintained within the premises by Tenant shall be at Tenant's own risk.

Section 8

Insurance.

The Tenant shall procure and maintain at its own expense during the term of this Lease the types and amounts of insurance as shall be deemed necessary by the Tenant to cover contents liability and, with insurance companies authorized to do business in Texas. The City shall be named as an additional insured on all policies of the Tenant. The Tenant shall provide proof of insurance. The City shall have no obligation or responsibility to Tenant for any damage or destruction resulting or occurring to Tenant's equipment, merchandise, or other property placed in or upon the demised premises.

The Tenant expressly understands and agrees that any insurance protection furnished by it hereunder shall in no way limit its responsibility to indemnify and save harmless the City under the provisions of Section 9 of this agreement.

The City shall maintain fire and extended coverage insurance in such amounts as the City may, in its sole discretion, deem proper and appropriate to insure the Premises. The City's duty to rebuild and/or repair shall in no event exceed the fire and extended insurance coverage paid for any such loss, and should the insurance proceeds be inadequate or insufficient to property rebuild and/or complete such repairs, the City may elect to terminate this lease effective as of the date of mailing of notice thereof.

**Section 9
Indemnification.**

9.1 The Tenant agrees to defend, indemnify and hold the City, its officers, officials, agents and employees, completely harmless from and against any and all claims arising by reason of injury or death of any person or damage to property resulting from the Tenant's use or occupancy of the Premises, or the acts or omissions of the Tenant's officers, agents, employees, contractors, subcontractors or licensees, except to the extent caused by the negligence or willful misconduct of the City, its agents or employees. Upon notice from the City of any claim which the City believes to be covered hereunder, the Tenant shall timely appear in and defend all suits brought upon such claim and shall pay all costs and expenses incidental thereto, but the City shall have the right, at its option and at its own expense, to participate in the defense of any suit, without relieving the Tenant of any of its obligations under this agreement.

9.2 This section shall survive expiration of this Lease and the expiration of any obligations owing to any party under this Lease.

**Section 10
Required Reporting.**

10.1 Tenant shall provide separate financial reports including quarterly and/or annual sales reports, profit and loss reports, an annual balance sheet, and other reports as may be required by the City Manager or his designee.

**Section 11
Miscellaneous Provisions.**

11.1 Partial Invalidity.

If any covenant, condition, provision, term or agreement of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

11.2 Governing Law.

This Lease shall be construed and be enforceable in accordance with the laws of the State of Texas.

11.3 Binding Effect Of Lease.

The covenants, agreements and obligations contained in this Lease shall extend to, bind and inure to the benefit of the parties and their representatives, successors and assigns.

11.4 Authorization To Execute Lease.

The persons executing this Lease represent and warrant that they are duly authorized and acting representatives of the City and the Tenant respectively, and that by their execution of this Lease, it became the binding obligation of the City and the Tenant respectively, subject to no contingencies or conditions except as specifically provided in the agreement.

11.5 Entire Agreement.

This Lease constitutes the entire agreement of the City and the Tenant with respect to the subject matter of this Lease, and no act or omission of the City or the Tenant shall alter, change or modify any of the provisions in the agreement. Any amendments, changes or modifications of this Lease shall be effective only when made in writing and executed by authorized officers of the parties.

11.6 Modification of Agreement.

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

11.7 Notices.

Unless otherwise specified, any notice, demand or request required under this agreement shall be given in writing at the addresses set forth below, by personal service or registered or certified mail, return receipt requested.

If to the City: City of Marshall
 401 S. Alamo
 Marshall, Texas 75670

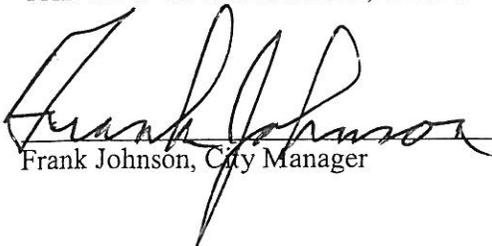
If to the Tenants: The Weisman Center Cooperative
 211 North Washington
 Marshall, Texas 75670

And

 Central Perks, LLC
 211-A North Washington
 Marshall, Texas 75670

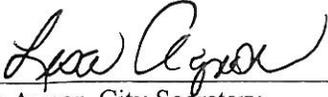
IN WITNESS WHEREOF, the parties have caused the Lease Agreement to be executed by their respective and appropriate officials on this the 24th day of October, 2013, to be effective on the date for the term herein provided.

THE CITY OF MARSHALL, TEXAS



Frank Johnson, City Manager

ATTEST:



Lisa Agnor, City Secretary

“City”

WEISMAN CENTER COOPERATIVE



President



Secretary/Treasurer

“Cooperative”