

CAUSE NO DC-22-03741

ANDRES “ANDREW” ESPINOZA, IN
HIS OFFICIAL CAPACITY AS THE
BUILDING OFFICIAL OF THE
CITY OF DALLAS, TEXAS,

Plaintiff,

v.

BOARD OF ADJUSTMENT FOR
THE CITY OF DALLAS, TEXAS,

Defendant,

and,

TCHDALLAS2, LLC,

Intervenor.

§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

**TCHDALLAS2, LLC’S MOTION TO SUSPEND
ENFORCEMENT OF JUDGMENT PENDING APPEAL**

Pursuant to Texas Rule of Appellate Procedure 24.2(a)(5), Intervenor TCHDallas2, LLC (“*Intervenor*” or “*TCH*”) respectfully moves this Court to suspend enforcement of its *Final Order* signed on October 25, 2022 (the “*Judgment*”), without security, pending TCH’s post-trial motions and appeal.¹

I. INTRODUCTION

After years of meetings, due diligence, and vetting of the legality of TCH’s business model, the City Attorney, District Attorney, Building Official, City Council, City Plan Commission, Dallas Police Department, and all other City officials who vetted TCH’s operations repeatedly approved and supported the legality of TCH’s business. As such, in October 2020, the Building

¹ By filing this Motion, TCH does not waive and specifically reserves any and all rights with respect to the filing of post-trial motions.

Official of the City of Dallas (“*Plaintiff*” or the “*Building Official*”) issued a certificate of occupancy (“*C.O.*”) to TCH to operate a private poker club in Dallas. Then, after TCH had been operating for 14 months without any legal inquiries, investigations, or law enforcement activity of any kind arising from its operations, Plaintiff revoked TCH’s C.O. in December 2021. TCH immediately appealed the revocation of its C.O. to Defendant the Board of Adjustment (“*Defendant*” or “*BOA*”), who, after a two-day hearing, voted unanimously (5-0) to reverse Plaintiff’s revocation of TCH’s C.O. After this Court reversed the BOA’s decision on October 25, 2022, Plaintiff made clear that it will not agree to suspend enforcement of the Judgment pending TCH’s appeal, thus revealing the City/Building Official’s intent to enforce the Judgment and shut down TCH’s business while TCH exhausts its appellate rights. Because such enforcement will cause significant and irreparable harm to TCH and its approximately 235 employees, TCH seeks an order suspending enforcement of the Judgment in order to preserve the status quo during the pendency of the appeal.

Because the Building Official brought this suit in its governmental capacity and has no pecuniary interest in the Judgment, TCH is entitled to supersede the Judgment and suspend its enforcement by showing that the harm that is likely to result to TCH if the Judgment were enforced outweighs any purported harm Plaintiff would suffer if enforcement is suspended. There is little question that this balancing of harms clearly supports TCH’s requested suspension of enforcement. Indeed, if the Judgment is not suspended, TCH will be forced to close its business, lose all revenue and profits it would have earned throughout the appeal process, forfeit as sunk costs the substantial amounts it has invested into the business and property (including roughly \$1.2 million in construction costs and \$800,000 in other start-up costs), immediately terminate over 200 employees, potentially break its commercial lease, liquidate certain assets, cancel bank accounts,

and pay off creditors, not to mention the significant negative impact it would have on the valuable goodwill and positive reputation that it has worked hard to achieve over the past two years in Dallas and throughout the State of Texas. TCH's employees will immediately lose their jobs as well as wages and health benefits paid by TCH, and TCH's investors will lose their significant investments in the business.

In contrast, Plaintiff faces no risk of harm from a suspension of enforcement of the Judgment. TCH has already been operating for two years with no complaints, no legal issues, and no identifiable "harm" to the City, the Building Official, or any third parties. Moreover, at least two other poker clubs are currently operating in Dallas and will continue to operate, which further undermines any claim of harm to the City by TCH's continued operation during its appeal, and which also confirms that shutting down TCH would not rid Dallas of private poker clubs.

Finally, because there is no risk of Plaintiff incurring any actual damages from a suspension of enforcement, TCH is entitled to suspension of the Judgment without requiring any security.

II. BACKGROUND

1. On April 1, 2022, Plaintiff filed an original petition against the BOA seeking a writ of certiorari under Texas Local Government Code § 211.011, alleging the BOA abused its discretion by reversing the Building Official's revocation of the C.O. issued for TCH to operate a private poker club at 11834 Harry Hines Blvd, Suite 135, Dallas, Texas 75234 (the "***Harry Hines Location***"). That was and is the sole claim at issue in the lawsuit.

2. TCH filed a petition in intervention as the real party in interest to oppose Plaintiff's requested relief and defend its right to continue operating under the C.O. duly issued by Plaintiff.

3. On October 25, 2022, this Court held a bench trial. That same day, the Court entered its Final Order/Judgment in favor of Plaintiff, finding "the Board of Adjustment abused its

discretion and made an illegal decision when it reversed the Building Official's revocation of Certificate of Occupancy number 2003031040, which was issued in violation of state law[.]”

III. ARGUMENT AND AUTHORITIES

A. Legal Standard

4. “As a rule, a judgment debtor is entitled to supersede the judgment pending appeal, thereby suspending its enforcement.” *In re S Tex. Coll. of Law*, 4 S.W.3d 219, 220 (Tex. 1999) (citing TEX. R. APP. P. 24.1(a), (f)). That right to supersede a judgment pending appeal is “generally a matter of right, and mandamus or temporary relief may be warranted when a trial court denies that right after a final judgment.” *L Series, L.L.C., v. Holt*, 571 S.W.3d 864, 878 (Tex. App.—Fort Worth 2019, pet. denied). The purpose of allowing a party to supersede and suspend enforcement of a judgment “is to preserve the status quo of the matters in litigation as they existed before the issuance of the judgment from which an appeal is taken.” *EMF Swiss Ave., LLC v. Peak's Addition Home Owner's Ass'n*, 05-17-01112-CV, 2017 WL 5150954, at *2 (Tex. App.—Dallas Nov. 7, 2017, no pet.) (citing *Smith v. Tex. Farmers Ins. Co.*, 82 S.W.3d 580, 585 (Tex. App.—San Antonio 2002, pet. denied)). Additionally, a “final judgment may be superseded, pending appeal, even though the judgment does not require a writ of execution or other process to enforce it,” which is true of the Judgment in this case. *Smith*, 82 S.W.3d at 585.

5. When, as here, the judgment is in favor of a party acting in its governmental capacity and that has no pecuniary interest in the judgment, Texas Rule of Appellate Procedure 24.2(a)(5) governs a request to supersede the judgment and suspend enforcement pending appeal. *S Tex. Coll. of Law*, 4 S.W.3d at 220; TEX. R. APP. P. 24.2(a)(5). Rule 24.2(a)(5) states:

When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The

appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

6. Thus, in determining whether to suspend enforcement, with or without security, the Court is to consider (i) the harm that would likely result to TCH if the City/Building Official were to enforce the Judgment (i.e., by effecting the revocation of TCH's C.O. and forcing TCH to cease operating) and the appellate court were to ultimately rule in TCH's favor on appeal, and (ii) "the harm that is likely to result to others if enforcement is suspended" (i.e., if the status quo of TCH continuing to operate were maintained during the pendency of the appeal). *Id.* As such, "[p]robability of success on the merits is not a factor to be considered under . . . 24.2(a)(5). Rather, the Court's task is to consider the *relative harm* that is likely to be suffered" by the respective parties. *S. Tex. Coll. of Law*, 4 S.W.3d at 225 (Owen, J., concurring) (emphasis added).

B. The Court's October 25, 2022 Final Order is a Final and Appealable Judgment.

7. "A judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record." *Deadmon v. Dallas Area Rapid Transit*, 347 S.W.3d 442, 444 (Tex. App.-Dallas 2011, no pet.) (citing *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (noting such a decree "is final, regardless of its language")). Here, the Judgment reversing the BOA's decision is final and therefore appealable, as it disposed of the sole claim asserted in the lawsuit, stated "judgment is hereby ENTERED in favor of Plaintiff," and further stated "all relief not granted [therein] is Denied."

C. Texas Rule of Appellate Procedure 24.2(a)(5) Applies to the Court's Judgment.

8. Plaintiff brought this action "in His Official Capacity as the Building Official of the City of Dallas, Texas." Therefore, it is undisputed that the Judgment was entered in favor of Plaintiff "in its governmental capacity." Additionally, Plaintiff has no pecuniary interest in the

Court's Judgment, because the sole issue in the case is whether the BOA abused its discretion when it reversed Plaintiff's revocation of TCH's C.O., and the extent of relief granted by the Judgment is an order that the BOA's decision is reversed. Neither Plaintiff, TCH, nor the BOA sought any monetary damages, nor did Plaintiff otherwise allege any monetary interest arising from the BOA's decision or the judgment it was seeking. Indeed, in its live pleading, Plaintiff stated: "Plaintiff seeks non-monetary relief pursuant to Section 211.011 of the Texas Local Government Code." Pls. 1st. Am. Pet., at ¶ 12. Accordingly, TCH's request to suspend enforcement of the Judgment is governed by Rule 24.2(a)(5).

D. The Balance of Harms Strongly Weighs in Favor of Suspending Enforcement of the Judgment.

9. The harm that would result to TCH if Plaintiff enforced the Judgment during TCH's appeal heavily outweighs any purported "harm" that would result to Plaintiff or any other parties if enforcement were not suspended. If the City/Building Official were to enforce the revocation of TCH's C.O. and force TCH to shut its doors while its appeal is pending, the harm that TCH would suffer would be immediate and irreparable, and the consequences and implications would be significant if TCH ultimately prevails on appeal.

10. As an initial matter, TCH will lose all of the revenues and profits it would have earned throughout the pendency of the appeal. Ex. 1, Crow Decl., ¶ 14. TCH will have to forfeit as sunk costs the significant amounts of funds that it has invested into the business and the property—including but not limited to the approximately \$1.2 million that it paid in construction costs to build out the space, \$800,000 in other start-up costs, and the substantial amounts it has paid in rent. *Id.* ¶ 18. TCH entered into a years-long lease in 2019, and will immediately be forced to determine how it can continue to comply with its contractual obligations under the lease. *Id.* ¶ 17. Additionally, since opening in 2020, TCH has cultivated significant goodwill, worked hard to

build a positive reputation among its clientele and within the industry, and developed strong brand value/recognition; if the Court's judgment is reversed on appeal, all of that will be significantly tarnished, if not nearly entirely lost, by the time the appeal process is complete. *Id.* ¶ 18. Since opening in late 2020, the value of TCH's business has increased significantly, in part due to the growth in revenue achieved over the last two years; shutting down the business will harm this valuation as well as the value of its members' equity interest(s). *Id.* ¶ 15.

11. Further, in addition to the significant harm that would result to TCH directly, if the Court's Judgment is not suspended pending appeal, it would have immediate life-changing consequences for the approximately 235 employees TCH currently employs. If the City proceeds with revoking TCH's C.O. and forcing it to shut down, it would put TCH's 235 employees out of a job, and the significant impact that such unemployment would have on the lives of all of those employees and their families will have been completely unnecessary and all the more tragic if TCH ultimately prevails on appeal. *Id.* ¶ 16. And such sudden loss of employment and income for so many individuals is even more significant given some of TCH's current employees *relocated and moved to Dallas from other states* just to work for TCH. *Id.* Moreover, TCH provides its employees generous healthcare benefits, including medical, dental, and vision coverage, so TCH's employees would no longer have any medical coverage if enforcement were not suspended. *Id.*

12. Indeed, in *EMF Swiss*—a case that was also brought under Texas Local Government Code § 211.011 and involved similar facts—the BOA issued a decision approving the issuance of the building permit at issue, and the trial court reversed the BOA's decision and declared the permit invalid and improper. 2017 WL 5150954, at *2-3. After judgment was entered, the intervenor-appellant (who, like TCH, was the real-party-in-interest at the property for which the building permit in question was issued) requested that enforcement be suspended pending

appeal, and the Dallas Court of Appeals held the trial court abused its discretion by refusing to grant the suspension where enforcement of the judgment would have forced the intervenor to cease its continued work/operations that was ongoing in reliance on the building permit. *Id.* at *1-4.

13. In contrast to the significant harm TCH would face if the judgment were enforced, there would be no “harm” to the City/Building Official or other parties if enforcement of the Court’s Judgment is suspended pending appeal. As thoroughly demonstrated and evidenced during this case, prior to the issuance of its C.O. and commencement of its operations, TCH had numerous meetings with, disclosed the details of its business model to, and underwent extensive vetting and due diligence by many City officials at nearly all relevant agencies/departments of the City²—the purpose of which was to ensure (and did ensure) that its business was operated in a manner that the City supported and found to be legal and safe. Notably, in addition to the City Attorney’s explicit confirmation that TCH’s business model was legal, TCH also met with the District Attorney’s office to ensure that they did not find TCH’s business to be in violation of the Penal Code, and, to TCH’s knowledge, the D.A. continues to maintain that position. Based on the City’s approval of the legality of TCH’s business, the Building Official issued a C.O. to TCH in October 2020, and, up until Plaintiff’s revocation letter to TCH in December 2021, TCH had been operating in Dallas without legal incident or complaint for 14 months. Ex. 1, Crow Decl., ¶ 10. And TCH has continued to operate throughout the pendency of the BOA proceedings and this litigation, and to this day—after operating for approximately two years—it is undisputed that TCH has not been the source or subject of any criminal investigations or otherwise caused any identifiable legal or criminal complaints or problems for the City as it relates to the safety and wellbeing of the public.

² This included the District Attorney’s Office, City Attorney’s Office, Dallas Police Department, VICE, Dallas Fire Department, City Council and individual City Councilmembers, City Plan Commissioners, and Building Official’s Office. *See* BOA-71:12-21; BOA-78:17-79:2; BOA-79:3-7, 22-25; BOA-81:21-82:20; BOA 419; SBOA 1074.

Id. There have never been any arrests, indictments, prosecutions, convictions, other criminal inquiries, or any other enforcement actions of any kind by any law enforcement agency related to TCH's operations at the Harry Hines Location. *Id.* In fact, the same is true for all four of the Texas Card House locations that first began operating in Texas back in 2014. *Id.* ¶ 4.

14. Additionally, Plaintiff cannot reasonably show that it will be harmed as a result of suspending enforcement of the judgment because there are at least two other poker clubs currently operating in Dallas, and those two clubs will continue operating regardless of whether TCH's operations are shut down. *Id.* ¶ 19. One of those clubs, Shuffle 214, is currently engaged in litigation with the Building Official and the BOA, and that case is not set for trial until July 17, 2023. *Id.* As for the other poker club operating in Dallas, "Poker House of Dallas," TCH is not aware of any legal or administrative scrutiny into, or any actions taken by the Building Official or any other agency or instrumentality of the City to shut down, Poker House of Dallas. *Id.*

15. Moreover, the Judgment in this case is just the tip of the spear with respect to the legality of private poker clubs in Texas. Although this case has been the first to reach a judgment touching on the issue of whether private poker clubs comply with Chapter 47 of the Texas Penal Code, there are approximately 80 private poker clubs with similar business models operating in 16 cities throughout Texas, and the issue of their legality is likely to be resolved by the Legislature or the Texas Supreme Court or the Texas Court of Criminal Appeals. *Id.* ¶ 19.

16. Lastly, neither the Building Official nor any other party would face any economic harm as a result of the suspension of the Court's Judgment.

17. In sum, neither the Building Official, the City, or any other third party will be harmed by suspending enforcement during the pendency of TCH's appeal to the Dallas Court of Appeals and, if necessary, the Texas Supreme Court. And based on all of the foregoing, the

significant harm TCH would suffer if enforcement is not suspended substantially outweighs any supposed “harm” that would result to the City/Building Official, if any, from suspending enforcement. Therefore, suspending enforcement of the Court’s Judgment is necessary to preserve the status quo as it existed before the issuance of the Judgment.

E. TCH Should Not Be Required to Post Security.

18. TCH is entitled to have the Court’s Judgment superseded and enforcement suspended without posting security. Under Rule 24.2(a)(5), after the Court determines whether to suspend enforcement pending appeal, the next inquiry is whether to grant supersedeas “with or without security,” but “[i]f security is required, recovery is limited to the *governmental entity’s* actual damages resulting from suspension of the judgment.” TEX. R. APP. P. 24.2(a)(5) (emphasis added). Thus, this requires the Court to consider the Building Official’s actual damages, if any, resulting from suspension of the Judgment. Here, as noted above, the City/Building Official will not incur any actual damages whatsoever as a result of maintaining the status quo by allowing TCH to continue operating pending its appeal. By way of illustration, TCH has been operating since late-2020, and the City/Building Official has not suffered any damages as a result of TCH operating its business for the last two years, and there is nothing to suggest the possibility of any future damages to City. Therefore, no bond or security should be required.

IV. CONCLUSION

For the foregoing reasons, TCH respectfully requests that the Court suspend enforcement of its October 25, 2022 Final Order/Judgment pending TCH’s post-trial motions and/or appeal.

Date: November 1, 2022

Respectfully submitted,

/s/ Brian E. Mason

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**ATTORNEYS FOR INTERVENOR
TCHDALLAS2, LLC**

CERTIFICATE OF CONFERENCE

I hereby certify that on October 30 and 31, 2022, I conferred with counsel for Plaintiff regarding the relief requested herein, and Plaintiff's counsel expressed that Plaintiff is opposed to the suspension of enforcement of the Court's judgment as requested herein.

/s/ Brian E. Mason

Brian E. Mason

CERTIFICATE OF SERVICE

I hereby certify that, on November 1, 2022, a true and correct copy of the foregoing document was served on all counsel of record via the Court's e-filing system.

/s/ Brian E. Mason

Brian E. Mason

EXHIBIT 1

CAUSE NO DC-22-03741

ANDRES “ANDREW” ESPINOZA, IN HIS OFFICIAL CAPACITY AS THE BUILDING OFFICIAL OF THE CITY OF DALLAS, TEXAS,

Plaintiff,

v.

BOARD OF ADJUSTMENT FOR THE CITY OF DALLAS, TEXAS,

Defendant,

and,

TCHDALLAS2, LLC,

Intervenor.

§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

DECLARATION OF RYAN CROW

1. My name is Ryan Crow. I am over eighteen years of age, am of sound mind, and am fully competent to make this declaration. The facts stated in this Declaration are within my personal knowledge and they are true and correct.

2. I am the Chief Executive Officer of TCHDallas2, LLC (“*TCH*”), a Texas limited liability company formed on or around September 27, 2019. TCH was formed for the purpose of owning and operating the Texas Card House facility located at 11834 Harry Hines Blvd, Suite 135 in Dallas, Texas 75234 (the “*Harry Hines Location*”), which is the business location made the focus of the above-captioned lawsuit.

3. Prior to forming TCH, I was also involved in the formation of TCHDallas1, LLC, another Texas limited liability company that was formed for the purpose of owning and operating a Texas Card House facility located at 13235 Montfort Drive, Dallas, Texas 75240 (the “*Montfort Location*”).

4. I have also been involved in the formation, management, and operation of other Texas Card House facilities throughout the State of Texas. In or around 2014, Texas Card House opened a facility in Austin; around 2018-2019, I facilitated opening a Texas Card House facility in Houston; and, around 2019-2020, I facilitated opening a Texas Card House facility in Edinburg. At all these facilities, there has never been an arrest, indictment, prosecution, conviction, or other law enforcement inquiry related to the operation of the business.

5. On or about December 9, 2019, TCH entered into a commercial lease with Moon Ventures, Ltd., the owner of the property at the Harry Hines Location. A true and correct copy of portions of TCH's commercial lease with Moon Ventures, Ltd. is attached herein as **Exhibit A**. The initial term of the lease is for 65 months.

6. Prior to the opening of the Texas Card House at the Harry Hines Location, TCH needed to retain contractors to build out the space and make it suitable for TCH's intended purpose. TCH retained the services of Abstract Construction Company ("**Abstract Construction**"). TCH spent approximately \$1,200,000 in total construction costs to build out the space and another approximately \$800,000 in start-up costs.

7. On or about October 23, 2020, the Building Official's office issued Certificate of Occupancy No. 2003031040 for Texas Card House at the Harry Hines Location.

8. On December 17, 2021, Megan Wimer, the Assistant Building Official of the City of Dallas, sent a letter to me purporting to revoke TCH's certificate of occupancy at the Harry Hines Location.

9. After receiving the revocation letter from Ms. Wimer, I engaged Jackson Walker LLP to represent the Texas Card House business operating at the Harry Hines Location in handling the appeal of Ms. Wimer's revocation to the Dallas Board of Adjustment ("**BOA**"). At the conclusion of the March 22, 2022 BOA appeal hearing, the panel voted unanimously to reverse Ms. Wimer's revocation of the certificate of occupancy.

10. Throughout the entirety of the BOA appeal process, including the time beginning on December 17, 2021 when Ms. Wimer purported to revoke the certificate of occupancy, TCH has continuously operated at the Harry Hines Location without encountering pushback from law enforcement. For example, notwithstanding Ms. Wimer's revocation of the certificate of occupancy, there have been no arrests, indictments, prosecutions, or convictions related to TCH's operations at the Harry Hines Location.

11. Within a few days after the BOA issued its decision, I learned that David Session, in his official capacity as the Building Official of the City of Dallas, brought a lawsuit against the BOA asking the court to overturn the BOA's decision to reverse Ms. Wimer's revocation of the certificate of occupancy at the Harry Hines Location. TCH intervened into that lawsuit, and following a trial on October 25, 2022, Judge Eric V. Moyé of the 14th Judicial District Court in Dallas, Texas signed an order finding that the BOA "abused its discretion and made an illegal decision when it reversed the Building Official's revocation of Certificate of Occupancy number 2003031040, which was issued in violation of state law."

12. TCH paid \$884,000 in sales tax in 2021. TCH's owners paid nearly \$3 million in Federal Income Taxes for 2021 relating to the Texas Card House Harry Hines Location. TCH is projected to pay \$1,100,000 in sales tax in 2022.

13. If the City or Building Official were to seek immediate enforcement of Judge Moyé's Final Order/Judgment by taking actions to shut down TCH's business at the Harry Hines Location, TCH will face significant harm and hardship that will likely be irreparable. If TCH is

shut down, its revenue stream will cease immediately and it will lose all of the revenues and profits it would have earned throughout the pendency of the appeal. TCH derives almost all its revenue from the daily, monthly, or annual dues paid by its members in addition to the hourly use fees paid for time spent enjoying the private club's facilities. If TCH is shut down, it is likely that many of its more than 16,000 members will cancel their memberships, which means they will stop paying their term dues and hourly use fees because they will not be visiting the business.

14. This cessation in revenue will also substantially reduce TCH's business valuation. TCH paid over \$1 million to open and begin operations at the Harry Hines Location. These investments include, but are not limited to, payment of invoices to Abstract Construction, rent payments to Moon Ventures, Ltd., and other expenditures to prepare the business and property for operation. Since beginning operations around late 2020, the valuation of the business has increased significantly, in part due to the growth in revenue achieved during this time. Shutting down the business will harm this valuation as well as the value of its member's or members' equity interest(s). In addition, if TCH is shut down, this will immediately impact the value of TCH and its affiliated poker clubs throughout Texas.

15. A cessation of TCH's stream of revenue will also cause significant hardship for TCH's employees. TCH employs about 235 employees at the Harry Hines Location and pays their wages and healthcare benefits from the revenue stream generated from member dues and hourly use fees. Some of these individuals have been employees of TCH for nearly two years. If TCH is shut down—especially with little to no notice—these approximately 235 will be immediately unemployed. TCH will be forced to stop paying wages and healthcare benefits for these employees. Terminating these employees may also harm these employees' families who rely upon the employee's earned wages. Additionally, some of TCH's employees moved from other states to Dallas to specifically work for TCH, and thus these employees will likely undergo hardship now that the job that attracted them to Dallas ceases to exist.

16. TCH will also have to take measures to wind up its operations, including paying outstanding creditors, liquidating certain assets, and canceling its business bank accounts at Wells Fargo and any lines of credit. Additionally, TCH will be forced to determine how it can continue to comply with its contractual obligations under its commercial lease with Moon Ventures, Ltd. before the expiration of the lease term.

17. TCH would also have to forfeit as sunk costs the substantial amounts of funds that TCH has invested into its business and the property at the Harry Hines Location—including but not limited to the amounts that it paid to contractors to build out the space and the substantial amounts it has paid in rent. Additionally, since opening in 2020, TCH has cultivated significant goodwill, worked hard to build a positive reputation among its clientele and within the industry, and developed strong brand value/recognition; if the Court's judgment is reversed on appeal, all of that will be significantly tarnished, if not nearly entirely lost, by the time the appeal process is complete.

18. Moreover, with respect to any purported harm to the City/Building Official if enforcement of the judgment is suspended, I would note that I am aware of at least two other

businesses (other than TCH) currently operating private poker clubs in Dallas, and, to my knowledge, those two clubs will continue operating regardless of whether TCH's operations were shut down. I am aware that Matt Morgan DBA Shuffle #214 operates a private poker club under certificate of occupancy No. 2105031098 at 11411 East Northwest Highway, Suite 111, Dallas, Texas 75238. I am also aware that Shuffle 214 is currently engaged in litigation with the Building Official and the BOA, and I understand that that case is not set for trial until July 17, 2023. Further, I am aware that Badger Tavern LP DBA La Zona Rosa Cabaret DBA Poker House of Dallas operates a private poker club under certificate of occupancy No. 1612131019 at 1676 Regal Row, Dallas, Texas 75257. I am not aware of any legal or administrative scrutiny into, or any actions taken by the Building Official or any other agency or instrumentality of the City to shut down, Poker House of Dallas.

19. Based on my role as CEO of TCH and experience with poker clubs throughout Texas, I routinely stay in touch with owners of other poker clubs in Texas and their business operations. I have personal knowledge that there are approximately 80 other poker clubs currently operating throughout the State of Texas. These poker clubs are located in various cities, including Amarillo, Austin, Corpus Christi, Cypress, Dallas, Edinburg, El Paso, Houston, Katy, Lubbock, Midland, San Antonio, Spring, Waco, Webster, and Wichita Falls.

20. On behalf of TCH, TCH intends to appeal Judge Moyé's October 25, 2022 Final Order/Judgment by the applicable deadline to file such appeal.

My name is Ryan Crow, my date of birth is November 29, 1978, and my address is 4600 Secluded Hollow, Austin, Texas 78727. I declare under penalty of perjury that the foregoing is true and correct and within my personal knowledge.

Executed in Travis County, State of Texas, on this 1st day of November 2022.

DocuSigned by:
Ryan Crow
Ryan Crow
Declarant

EXHIBIT A

**SAM MOON CENTER
DALLAS**

COMMERCIAL LEASE

BY AND BETWEEN

MOON VENTURES, LTD.

AND

TCH DALLAS2, LLC

DBA TEXAS CARD HOUSE

Commercial Lease

THE STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

ARTICLE I.

DEFINITIONS AND CERTAIN BASIC PROVISIONS

- 1.1 (a) "Landlord": Moon Ventures, Ltd.
- (b) Landlord's address: 6007 Legacy Drive, Plano, TX 75024
- (c) "Tenant": TCH Dallas2, LLC
- (d) Tenant's EIN: 84-3750296
- (e) Tenant's mailing address: 4600 Secluded Hollow, Austin TX 78727
- (f) Tenant's trade name: Texas Card House
- (g) Tenant's address in Shopping Center: 11834 Harry Hines Blvd., Suite 135, Dallas, TX 75234
- (h) "Demised Premises" is approximately 7,669 rentable square feet (computed from measurements to the exterior of outside walls of the building and to the center of interior walls). Such premises being shown and outlined on the plan attached hereto as *Exhibit 1*, and being part of the Shopping Center situated on the property described in *Exhibit A*, attached hereto. "Shopping Center" shall refer to the property described in *Exhibit A* together with such additions and other changes as Landlord may from time to time designate as included within the Shopping Center.
- (i) "Commencement Date" of this Lease shall be the earlier of (a) one hundred fifty (150) days after the Delivery Date, as such term is described in Exhibit C hereto, and (b) the date on which Tenant opens for business to the public in the Demised Premises.
- (j) "Lease Term" shall commence on the Commencement Date and continue for sixty-five (65) months thereafter; provided that if the Commencement Date is a date other than the first day of a calendar month, the Lease Term shall be extended to include the remainder of the calendar month in which the Rental Commencement Date occurs. By way of example only, if the Rental Commencement Date is January 15th, the Lease Term would include the remaining calendar days in January and continue for sixty-five (65) months thereafter.
- (k) "Minimum Guaranteed Rental":

Months	1- 5	\$0 (\$00.00 per SF/yr.)
Months	6-17	\$8,627.63 per month (\$13.50 per SF/yr.)
Months	18-29	\$8,800.18 per month (\$13.77 per SF/yr.)
Months	30-41	\$8,979.12per month (\$14.05 per SF/yr.)
Months	42-53	\$9,158.06 per month (\$14.33 per SF/yr.)
Months	54-65	\$9,337.01 per month (\$14.61 per SF/yr.)

19.1 The following events in addition to the other events of default as set out elsewhere in this Lease shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall fail to pay any installment of Rental or any other expense demanded by Landlord as herein provided and such failure shall continue for a period of ten (10) days.
- (b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and shall not cure such failure within ten (10) days after written notice thereof to Tenant. In addition to any other remedies Landlord may have pursuant to the provisions in Article XIX hereof, Landlord may cure such default and such reasonable expense shall be added to the rent otherwise due but any such default in and of itself shall not work as a forfeiture of this Lease.
- (c) Tenant or any guarantor of Tenant's obligations under the Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- (d) Tenant or any guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of Title 7 or Title 11 of the United States Bankruptcy Code, as amended from time to time or any similar federal or state laws now or later enacted for the relief of debtors, or Tenant or any guarantor of Tenant's obligations under this Lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease..
- (e) A receiver or Trustee shall be appointed for all Demised Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.
- (f) Tenant shall desert or vacate any portion of the Demised Premises.
- (g) Tenant shall do or permit to be done anything which creates a lien upon the Demised Premises.
- (h) The Business operated by Tenant shall be closed for failure to pay any state sales tax as required or for any other reason.
- (i) **Upon the occurrence of any such events of default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:**
 - (1) Terminate this Lease in which event Tenant shall immediately surrender the Demised Premises to Landlord and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which he may have for possession or arrearage in rental, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor.
 - (2) Enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor with or without having terminated the Lease.
 - (3) Enter upon the Demised Premises by force if necessary without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any reasonable expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.
 - (4) Alter all locks and other security devices at the Demised Premises without terminating this Lease.

EXECUTED as of the latest date accompanying a signature by Landlord or Tenant below.

LANDLORD:

Moon Ventures, Ltd.,
a Texas limited partnership

By: Moon Brothers Management, Inc.,
a Texas corporation, its general partner

By: 
Daniel Moon, Vice President

Date of Signature: December 9, 2019
Taxpayer Identification No.: 20-4394968
Telephone No.: 972-421-2700
Facsimile No.: 972-421-2701
E-mail: Daniel@sammoon.com

TENANT:

TCH Dallas2, LLC
a Texas limited liability company


By: 
Name: RYAN Crenshaw
Title: CFO
Date of Signature: 12/05/19
Taxpayer Identification No. 84-3750296
Telephone No.: 409-779-9299
E-mail: ryan@texascardhouse.com

EXHIBIT C

CONSTRUCTION – ALLOWANCE TO TENANT FOR FINISH-OUT

ARTICLE I. GENERAL

A. Except as otherwise provided in the Lease for Landlord's day-to-day obligations in respect of the Shopping Center or Demised Premises, as applicable, there is no Landlord's Work in connection with Tenant's finishing of or construction work pertaining to the Demised Premises as set forth in this Exhibit C. Tenant accepts the Demised Premises in accordance with Section 3.1 of the Lease. The Demised Premises shall be deemed ready for occupancy and available for Tenant's access on the Delivery Date, which shall be defined as the last date on which all of the following have occurred: (a) The Lease has been executed by both parties and (b) The tenant currently occupying the Demised Premises has completely vacated. Tenant agrees to accept possession thereof and to proceed with due diligence to perform Tenant's Work, as described in Article IV below, and to open for business at the Demised Premises, and Tenant's finish work hereunder shall in any event be completed on or before one hundred ~~eighty~~ (180) days after the Delivery Date. By initiating Tenant work in the Demised Premises, Tenant shall be deemed to have accepted the same. Tenant agrees that at the request of Landlord, Tenant will, following the Commencement Date, execute and deliver a written statement acknowledging that Tenant has accepted possession and reciting the exact Commencement Date and termination date of this Lease in form as provided on Exhibit B to the Lease.

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B. In the event of any dispute as to work performed or required to be performed, the certificate of Landlord's architect or general contractor shall be conclusive, as applicable. By occupying the Demised Premises, Tenant shall be deemed to have accepted the same and to have acknowledged that the same fully complies with Landlord's covenants and obligations under this Lease at such time only. Occupancy of the Demised Premises by Tenant prior to the Commencement Date shall be subject to all of the terms and provisions of this Lease, excepting only those requiring the payment of rent and any provision relating to Tenant's obligation to operate or be open for business.

ARTICLE II. PRE-CONSTRUCTION OBLIGATIONS

A. Landlord warrants and represents that as of the Delivery Date, the existing plumbing, electrical, mechanical and HVAC systems serving the Demised Premises are in good working order, and that the Demised Premises are free of Environmental Hazards

C. Tenant shall secure Landlord's written approval (not to be unreasonably withheld, conditioned or delayed) of all designs, plans, specifications, materials, contractors and contracts for work to be performed by Tenant before beginning the work (including following whatever "work letter" instructions, if any, which Landlord may deliver to Tenant in connection with the work), and shall secure all necessary licenses and permits to be used in performing the work. Tenant shall obtain Landlord's prior written consent (not to be unreasonably withheld, conditioned or delayed) to any changes to any of the above at any time following Landlord's initial approval of same. Tenant's finished work shall be completed in a good and workmanlike manner, in conformance with the approved plans and specifications and shall be subject to Landlord's approval and acceptance (not to be unreasonably withheld, conditioned or delayed), which shall be a condition to any reimbursement hereinafter provided.

ARTICLE III. Intentionally Deleted.

ARTICLE IV. DESCRIPTION OF TENANT'S WORK

A. Signs: Tenant shall pay for all signs and the installation thereof, including electrical hook-up subject to the provisions of Section 10 of this lease.

B. Utilities: All meters (including sub-water meters to measure the volume of water being used by the Tenant) or other measuring devices in connection with utility service shall be provided by Tenant. Landlord shall provide all connections to the utility services provided to the Demised Premises. All service deposits shall be made by Tenant at Tenant's expense. Tenant is responsible for separating the utilities, including, without limitation, separating the sprinkler system and HVAC duct work, bringing utilities to the Demised Premises and adding all utilities necessary to

serve the Demised Premises, including but not limited to any necessary additional HVAC units and related wiring and duct work.

C. Storefront: Except as may be already in place at the Demised Premises, Tenant shall be responsible for the storefront, exterior doors and weatherproofing. Entrance door(s) and rear door(s) shall be provided in number, size and location as specified by Landlord in conformity with applicable code requirements. All doors and hardware are to match building standard.

D. Interior Work: The work to be done by Tenant shall include, but not be limited to, the purchase and installation of the following, except to the extent as may be already in place at the Demised Premises:

- a. Adequate electrical service, panel, wiring, and fixtures.
- b. Interior partitions, including finishing, electrical wiring, and connections within the Demised Premises.
- c. Lighting in adequate number to provide a minimum of 70-foot candle lighting throughout the Demised Premises
- d. Interior painting.
- e. Store fixtures and furnishings.
- g. Display window enclosures.
- f. Plumbing fixtures within the Demised Premises.
- g. Heating, air conditioning and ventilating equipment (adequate to provide at least a 25-degree differential), including electrical and gas hookup, duct work and roof penetrations.
- h. Floor covering or concrete stain.
- i. All other Tenant-required construction.

E. Subject to reimbursement by landlord under the Lease, all work undertaken by Tenant shall be at Tenant's expense, and shall not damage the building or any part thereof. Any roof penetration shall be performed by Landlord's roofer or, at Landlord's option, by a bonded roofer approved in advance by Landlord and roof manufacturer. Tenant's Work shall not begin until Landlord has given consent (not to be unreasonably withheld or delayed), which consent shall in part be conditioned upon Tenant's plans, to include materials acceptable to Landlord, in order to prevent injury to the roof and to spread the weight of the equipment being installed. Tenant shall also be responsible for obtaining, and paying for, professional inspections of any structural work (including, without limitation, any roof work or concrete work).

F. Tenant agrees that all work performed by Tenant or its contractor or agent shall be of good and workmanlike quality and performed in a diligent manner so as not to create nuisance to the other tenants of the Shopping Center in which the Demised Premises are located. All debris created by Tenant's Work and improvements must be removed from site in a customary manner at Tenant's sole cost.

G. Tenant warrants that all contractors shall be contractors in good standing. Tenant further warrants that its contractors shall in no way delay or cause delay or nuisance to any other contractor working on the Shopping Center, which such contractors shall in no way delay or cause delay to Tenant's contractors. Tenant agrees to hold Landlord harmless for the cost of any time lost by Tenant's contractor due to the actions or failure to act of Landlord's contractor(s).

H. It is agreed that Tenant shall, if requested to do so by Landlord, prior to the commencement of any construction of improvements or delivery of materials, labor or services to be incorporated within the construction of any improvements, upon the Demised Premises, obtain and deliver to Landlord a copy of contractor's insurance.

I. If required for odor suppression or sound attenuation, Tenant shall, at Tenant's sole cost and expense, install insulation and/or vinyl barriers in the demising walls and take such other measures as may be reasonably required by Landlord with regard to odor suppression or sound attenuation.

J. Tenant is responsible for the disposal of any trash and/or packaging that is generated during the construction of "Tenant's Work" or during the initial stocking of the store with merchandise. Prior to opening for business, the Tenant must contact the trash removal company/service for a special pick-up of all packing materials and

construction trash of Tenant. Tenant shall **not** use the Shopping Center dumpsters for this use. The cost of this pick up is the responsibility of the Tenant.

K. Upon taking possession of the Demised Premises, Tenant will have all utilities to be paid directly by Tenant under the Lease transferred to the Tenant's account.

L. Landlord will pay to Tenant an amount up to \$114,090.00 (\$15.00/RSF) as a reimbursement for Tenant's bona fide (and verified) hard and soft construction expenses (including, without limitation, fees associated with Construction Documents, MEP Plans, permitting and construction management), paid to parties not related to or affiliated with Tenant or any holder of its Shares (the "Allowance"). Landlord will pay the Allowance in installments upon completion of 20%, 40%, 60%, 80% and 100% of Tenant's Work. Each such installment prior to the final installment shall be paid thirty (30) days after Tenant submits to Landlord (i) a certification from Tenant's architect or Contractor that the applicable portion of Tenant's Work has been completed in accordance with the approved plans and specifications and (ii) invoices marked paid and/or lien waivers from any person or entity who furnished labor and/or materials for the work applicable to the installment for which reimbursement is being sought. For the final installment of the Allowance, Landlord shall make payment within thirty (30) days after the date that Tenant opens for business to the public, provided that on or prior to that date, (i) all Tenant's Work has been completed, (ii) Tenant has delivered to Landlord a true copy of its Certificate of Occupancy or equivalent government permit and (iii) Tenant has delivered to Landlord copies of paid receipts and an Affidavit of Total Release and Bills Paid and Waiver of Liens therefor from Tenant's general contractor and all sub-contractors or other persons who furnished labor and/or materials in completing Tenant's Work.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Zachary Tobolowsky on behalf of Zachary Tobolowsky
Bar No. 24106512
zachary.tobolowsky@gtlaw.com
Envelope ID: 69784488
Status as of 11/2/2022 8:51 AM CST

Associated Case Party: DAVID SESSION

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Associated Case Party: TEXAS CARD HOUSE, LLC

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