

MEMORANDUM

TO: **Real Estate & Transportation Committee**
 Commissioner Bill Read, Chairman
 Commissioner Justin Troller
 Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: April 1, 2019

RE: **Agreement with Go Mad, LLC to Lease a Portion of the
 Magnolia Building for Restaurant Operations**

Attached hereto for your consideration is a proposed Lease Agreement between the City and Go Mad, LLC (Go Mad) to lease 1276 square feet of interior space in the Magnolia Building basement and 500 square feet of exterior patio space to operate the "Garden Bistro", a food and beverage concession in the Magnolia Building.

The term of the Lease will be for a period of five (5) years, commencing April 1, 2019, upon approval by the City Commission. Annual rent for the leased premises will total \$16,095.12 or \$1,341.26 per month, in addition to applicable sales tax, for the first year of the Lease. Thereafter, rent for the Lease will be adjusted annually in accordance with the Consumer Price Index (CPI) for all Urban Consumers, with a not-to-exceed rate increase of more than 5% per year.

Pursuant to the Lease, Go Mad will be required to maintain high quality food and beverage service, with the City retaining the right to approve menu content for the Garden Bistro. Go Mad will be required to operate the Garden Bistro a minimum of thirty (30) hours per week, with the option to extend hours of service upon approval of the City. In addition, Go Mad will be required to obtain all licenses and permits necessary for operation of the restaurant, as well as maintain insurance coverage as required by the Agreement. The City will be responsible for payment of utilities and structural repairs/improvements to the building.

It is recommended that the appropriate City officials be authorized to execute this Lease Agreement with Go Mad, LLC.

attachment

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of April 2019, by and between the **CITY OF LAKELAND, FLORIDA** a municipal corporation, (hereinafter referred to as "**Lessor**"), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, and **GO MAD, LLC** (hereinafter referred to as "**Lessee**"), whose address is 611 East Orange Street, Lakeland, FL 33801.

WITNESSETH:

The parties hereto do hereby mutually covenant, agree and promise as follows:

SECTION 1.

The Lessor, for and in consideration of the mutual promises, agreements, and covenants herein contained, does hereby lease, let, and rent unto the Lessee for a term of five (5) years beginning the 1st day of April 2019 (the "Commencement Date") and ending on the March 31, 2024, the land owned and controlled by Lessor, located in and comprising a part of the Magnolia Building, more particularly described in Exhibit "A" attached hereto and made a part hereof, said property containing approximately 1276 square feet (hereinafter referred to as the "Premises").

SECTION 2.

2.1. Commencing on April 1, 2019, the Lessee shall pay to the Lessor as rent for the Premises, a total annual rental of Sixteen Thousand Ninety-Five Dollars and 12/100 (\$16,095.12) in monthly installments of One Thousand Three Hundred Forty-One Dollars and 26/100 Dollars (\$1,341.26), in addition to sales taxes, payable in advance on or before the first day of each month. Late payments, which shall be any payment

received more than five (5) days after the due date, shall bear a late payment fee of 1.5%. Rent for the second, third, fourth and fifth years of the Lease term will be adjusted annually in accordance with the Consumer Price Index (CPI) for all Urban Consumers based on the relevant CPI for the period from July to July of the preceding year, but not to exceed 5% annually.

2.2 The Lessor shall be responsible for payment of all electric, water and wastewater utilities and refuse collection.

2.3 The Lessee shall be responsible for payment of a pro rata share of ad valorem real property taxes and a pro rata share of sewer connection fees, if applicable.

2.4 The Lessor and Lessee agree that certain improvements shall be made to the leased Premises. Those improvements may generally include installation of sinks, range hoods, and other restaurant related equipment. Any improvements or alterations made to the Premises shall be performed by the Lessee at Lessee's sole expense pursuant to plans and specifications pre-approved, in writing, by the Lessor. Any alterations or equipment permanently installed in the Leased Premises shall become the property of the Lessor upon termination of this Lease Agreement. Equipment which can be removed without damage to the Lessor's property may be removed by Lessee.

SECTION 3.

The Lessee, so long as it is not in default, shall have an option to lease an additional 1140 square feet of exterior space on the Magnolia Building Patio adjacent to the Leased Premises during the term of this Lease. Lessee is exercising its option to lease 500 square feet of the exterior space available on the Magnolia Building Patio. Lessee's monthly rent currently includes the cost of leasing the 500 square feet of exterior

space. In the event Lessee desires to lease additional exterior space, Lessee shall notify the Lessor, in writing, of its intent within thirty (30) days and the parties shall negotiate a price for said space, which shall be added to Lessee's current monthly rent pursuant to a written amendment to this Lease Agreement.

SECTION 4.

The Premises, and any improvements thereon, whether in existence or constructed in the future pursuant to the terms and conditions contained herein, shall be used for restaurant purposes only.

SECTION 5.

The Lessee may not sublet or assign all or any portion of the Premises without the prior written approval of the Lessor, which approval shall not be unreasonably withheld, and if such approval is given, the Lessee shall nevertheless remain liable for any obligation under this Lease.

SECTION 6.

6.1. Lessee shall pay, defend, indemnify and save harmless the Lessor, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, losses and other reasonable expenses, including attorney's fees, and costs of every kind and description to which the Lessor, its agents, guests, invitees or employees may be subjected to by reason of injury to persons or death or property damage, resulting from the negligence of the Lessee, its agents or employees, arising from and/or in connection with this Lease or any operations necessary relating to the occupancy, maintenance, repair or improvement by the Lessee of the Premises.

6.2. The Lessee shall defend, indemnify and save harmless the Lessor, its agents or employees, against any claim or liability, including attorney's fees, arising from or based upon the violation of any federal, state, county or city law, by-law, ordinance, or regulation by such Lessee, its agents, trainees, invitees, servants or employees.

6.4. The Lessee covenants and agrees to comply with the following insurance requirements:

Coverage - Lessee, at Lessee's sole cost and expense, shall obtain and keep in force during the term of this Lease the required insurance coverages set forth in Exhibit "B", incorporated herein by reference and attached hereto.

SECTION 7.

The Lessor shall, at its expense, make any repairs to the buildings, structures or other improvements located upon the Premises, including electrical, plumbing, sewer, roof, HVAC systems, and structural repairs if needed in Lessor's reasonable opinion. The Lessor shall at its expense keep its space, including the interior and exterior thereof and any fixtures and equipment therein, in a good state of repair and condition at all times, less ordinary wear and tear.

SECTION 8.

8.1 A fundamental consideration of the Lessor's consent to this Lease is Lessee's agreement to maintain, at all times, a high quality restaurant facility for the purpose of providing consistently high quality food and beverage service to the general public. The Lessor shall approve menu content. The facility shall offer for purchase all its full menu of food and beverage during any hours of operation. The facility shall be operated a minimum of thirty (30) hours per week:

8.2 Lessee, at its option, may extend the hours of service as may be otherwise permitted by law and agreed to in writing by Lessor. Lessee may not reduce the hours of service without the prior written consent of the Lessor.

8.3 Lessee agrees to maintain at all times a standard of First Class quality in providing all of its food and beverage services hereunder. All food, beverages and other products offered for sale shall be fresh, wholesome and of the highest quality. Lessee shall offer for sale a variety of products, comparable to that offered at similar facilities, and shall use its best efforts to maximize sales at the facility. Recurring non-compliance with this standard shall be grounds for termination of this Agreement as hereinafter provided.

SECTION 9.

The following events shall constitute material default of this Agreement:

1. Failure to maintain the quality standards set forth in Section 8, following ninety (90) days written notice.
2. Failure to pay rent following ten (10) days written notice.
3. Any other material breach of this Agreement following thirty (30) days written notice.

Upon the occurrence of an event of default, as set forth herein, Lessor may at its option exercise any one or more of the following remedies:

- (a) The Lessor may terminate this Lease by giving to the Lessee written notice of Lessor's intention to do so, in which event the term of this Lease shall end and all right, title and interest of the Lessee hereunder shall expire on the date stated in such notice, which shall not be less than five (5)

days after the date of the notice by the Lessor of its intention to so terminate; or

(b) The Lessor may terminate the right of the Lessee to possession of the Premises or any portion thereof by giving written notice to the Lessee that the Lessee's right of possession shall end on the date stated in such notice, which shall not be less than five (5) days after the date of the notice by the Lessor of its intention to so terminate the right of possession; or

(c) The Lessor may enforce the provisions of this Lease and may enforce and protect the right of the Lessor hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy.

(d) If the Lessor exercises either of the remedies provided for in sub-paragraphs (a) or (b), the Lessor may then or at any time re-enter the Premises in accordance with Florida law.

(e) If the Lessor terminates the Lessee's right of possession pursuant to sub-paragraph (b), the Lessor may re-enter the Premises or any portion thereof and take possession of all or any portion of the real property, may move any portion of the Lessee's property thereon which the Lessor elects so to do, and may sub-let or re-let the Premises or any part thereof from time to time for all or any part of the unexpired part of the then term hereof, or for a longer period, and the Lessor may collect the rents from re-

letting or sub-letting and apply same, first to the payment of the rents payable hereunder and in the event that the proceeds from such re-letting or sub-letting are not sufficient to pay in full the foregoing, the Lessee shall remain and be liable therefor. Lessee reserves the right to remove any personal property which shall not include building or fixtures. The Lessee promises and agrees to pay the amount of any such deficiency and the Lessor may at any time sue and recover judgment for any such deficiency or deficiencies.

SECTION 10.

No remedy herein conferred upon or reserved by the Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and so often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 11.

Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that the rights granted under this lease agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another operator or other operators.

SECTION 12.

12.1. The Lessee, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the facilities;

(b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

12.2. In the event of a breach of any of the above nondiscrimination covenants, the Lessor shall have the right to terminate the Lease and to re-enter and repossess the leased Premises, and hold the same as if the Lease had never been made or issued.

SECTION 13.

The Lessor reserves the right to take whatever actions necessary for the operation, maintenance, and improvement of the Magnolia Building and its appurtenances, without interference or hindrance, with appropriate consideration for the continuity and profitability of the Lessee's operations and the payment of the obligations to the Lessor herein.

SECTION 14.

The Lessee, its officers, employees, guests, invitees and suppliers of materials and services, shall have the right of ingress and egress over public right-of-way to the Premises for the purpose of permitting Lessee to enjoy the rights, uses, and privileges granted by the Lessor.

SECTION 15.

The Lessee expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises or other public property which would interfere with or adversely affect the operation or maintenance of the Magnolia Building, or otherwise constitute a hazard.

SECTION 16.

The Lessee specifically covenants and agrees to observe and obey all reasonable and lawful rules and regulations which may, from time to time, during the term hereof, be adopted and promulgated by the Lessor. The Lessee shall conduct and operate its activities in accordance with any applicable federal, state and local laws, ordinances, regulations, directives, orders, and judicial decisions.

SECTION 17.

17.1. The Lessor hereby designates the Director of Parks and Recreation as its official representative with the full power to represent the Lessor in all dealings with the Lessee in connection with this Lease, subject to approval by the Lakeland City Commission. The Lessor may designate by written notice, addressed to the Lessee, other representatives from time to time, and such representatives may exercise those rights and duties of the Lessor as may be necessary to effectuate the purposes of this Lease.

17.2. Notice to the Lessor shall be sufficient if either mailed by first class mail, postage prepaid, addressed to Director of Parks and Recreation, City of Lakeland, 228 S. Massachusetts Avenue, Lakeland, Florida 33801, or delivered at such address, and notice to the Lessee named herein shall be sufficient if either mailed by first class mail, to Lessee at 611 E. Orange St., Lakeland, Florida 33801. Either party may change its address at which notice is to be mailed or delivered, by giving written notice of such change of address to the other party in the manner provided in this section.

SECTION 18.

This Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns to the extent assignment and subletting is permitted.

SECTION 19.

Should it become necessary for the Lessor to bring any action at law or equity to enforce or interpret this agreement or to remove the Lessee from the Premises, the prevailing party shall be entitled to all costs, including a reasonable attorney's fee at both the trial and appellate levels.

SECTION 20.

This Lease shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action brought to enforce or interpret this Agreement or to remove Lessee from the Premises shall be Polk County, Florida.

SECTION 21.

The terms and provisions of this Lease, and each sentence and paragraph hereof, are severable, and if any such term or provision shall be held invalid or unenforceable, all other terms and provisions hereof shall continue in force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and their respective seals to be hereunto affixed, the day and year first above written.

CITY OF LAKELAND, FLORIDA
a municipal corporation

ATTEST:

BY: _____
Kelly S. Koos, City Clerk

BY: _____
H. William Mutz, Mayor

(Seal)

APPROVED AS TO FORM AND CORRECTNESS:

BY: _____
Timothy J. McCausland
City Attorney

Signed in the presence of:

GO MAD, LLC
By:

Witness

(Signature)

Witness

(Printed Name)

EXHIBIT "A"

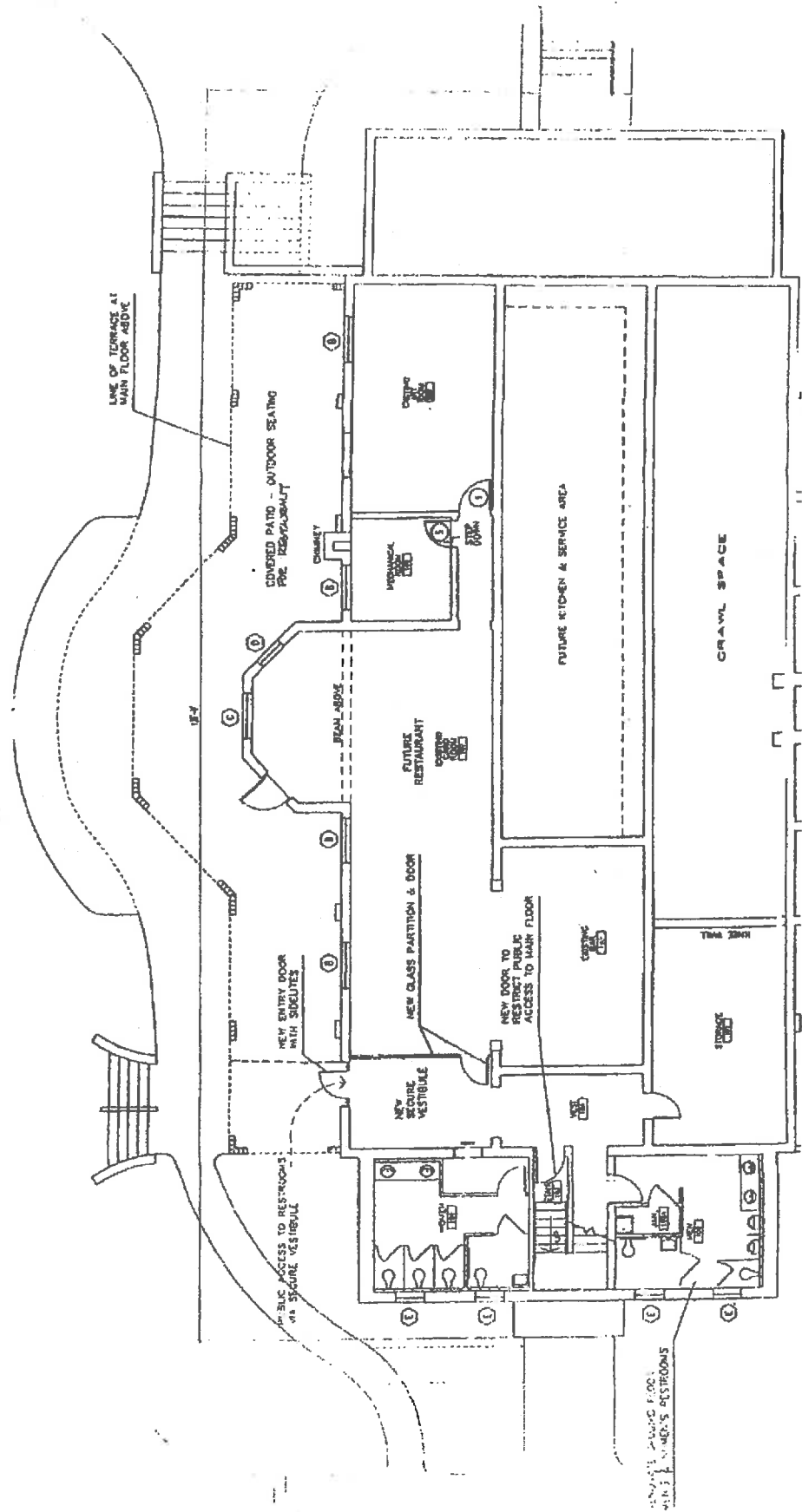


Exhibit “B: INSURANCE REQUIREMENTS

STATEMENT OF PURPOSE

The City of Lakeland (the “City”) from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City’s interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

CITY DEFINED

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

OTHER PARTY DEFINED

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party’s subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

LOSS CONTROL/SAFETY

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

INSURANCE - BASIC COVERAGES REQUIRED

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party’s interests or liabilities, but are merely minimums.

"Except for workers’ compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as **additional insured**. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

Insurance Requirements (cont'd)

INSURANCE – BASIC COVERAGES REQUIRED (cont'd)

Except for worker's compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

Commercial General Liability: This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and **"Products and Completed Operations" coverage.**

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$1,000,000 Single limit each occurrence
--	---

Business Automobile Liability: Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$300,000 Single limit each occurrence
--	---

Workers' Compensation: Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

Excess Liability: This insurance shall protect the Other Party and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial general liability policies. The policy shall be an "occurrence" type policy, and shall follow the form of the General and Automobile Liability.

The liability limits shall not be less than: \$1,000,000

ADDITIONAL INSURANCE

Additional Insurance: The City requires the following types of insurance.

Fire Legal Liability: Tenant's liability for damages by fire to the rented premises the tenant occupies.

The liability limits shall not be less than: \$100,000

Liquor Liability Coverage: In anticipation of alcohol being served, the Other Party shall provide evidence of coverage for liquor liability in an amount equal to the general/umbrella/excess liability coverage. If the general liability insurance covers liquor liability (e.g. host or other coverage), the Other Party's agent or insurer should provide written documentation to confirm that coverage already applies to this agreement, contract, or lease. If needed coverage is not included in the general/umbrella/excess liability policy (ices), the policy (ices) must be endorsed to extend coverage for liquor liability, or a separate policy must be purchased to provide liquor liability coverage in the amount required.

The liability limits shall not be less than: \$1,000,000