

**LEASE AGREEMENT**  
**BY AND BETWEEN**  
**THE BOARD OF PARK COMMISSIONERS FOR THE CITY OF SOUTH BEND**  
**AND**  
**THE SOUTH BEND CHOCOLATE COMPANY**

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**LEASE**

This Lease (“LEASE”) is made effective as of June 17, 2019 (the “Effective Date”), by and between the City of South Bend, Indiana, Venues Parks & Arts Department, acting by and through its governing body the Board of Park Commissioners (the “OWNER” or “CITY”), and The South Bend Chocolate Company, Inc., 330 W. Sample Street, South Bend, Indiana 46619, an Indiana Corporation (the “TENANT”) (each a “PARTY,” and together, the “PARTIES”).

**PARAGRAPH I**

**RECITALS**

WHEREAS, the Board of Park Commissioners for the City of South Bend (“City”) is authorized under I.C. 36-10-4 to administer, improve and lease park property for the City of South Bend; and

WHEREAS, the City, through its Board of Park Commissioners, is the owner of certain real property and improvements located within the City of South Bend, Indiana and commonly known as the Howard Park, which property is more specifically described at **EXHIBIT A** attached hereto and incorporated herein (“Howard Park”); and

WHEREAS, the CITY continues to prioritize public parks as vital cultural and recreational community assets and wish to continue to improve the amenities within these spaces; and

WHEREAS, the CITY is interested in forming business relationships, with sustainable business models, that provide for a return on investment to the residents, helping to further enhance our public parks; and

WHEREAS, the City has determined that it is in the best interest of City and the citizens of South Bend to enter into this agreement with TENANT related to the operation and management of food and beverage services at Howard Park through this Lease.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

## **PARAGRAPH II**

### **DEFINITIONS**

OWNER: City of South Bend, Indiana, Venues Parks & Arts Department, acting by and through its Board of Park Commissioners, 310 S. St. Louis Blvd. South Bend, IN 46617.

BPC: City of South Bend, Indiana Board of Parks Commissioners

TENANT: South Bend Chocolate Company (SBCC), an Indiana based Corporation, President Mark Turner, 3300 W. Sample Street, South Bend, IN 46619

COMMUNITY CENTER: The Howard Park Community Center, a mixed-used, public building, owned and operated by the OWNER and located at the 600 Block of East Jefferson Boulevard in South Bend, Indiana 46617. See **Exhibit B**.

CAFÉ: A city-owned 3,014 SQ FT indoor facility attached to the west end of the COMMUNITY CENTER. See **Exhibit B**.

OUTDOOR COVERED PATIO: A city-owned, semi-private 2,000 SQ FT paved patio, gas heated and under cover located to the south and west of the CAFÉ. See **Exhibit B**.

OUTDOOR PATIO: A city-owned, 5,550 SQ FT uncovered, paved patio located to the south and west of the OUTDOOR COVERED PATIO. See **Exhibit B**.

COMMUNITY ROOMS: ~2,800 SQ FT mixed-use room (divisible by three) plus ~2,000 SQ FT pre-event room. See **Exhibit B**.

CONCESSION STAND: ~300 SQ FT concession area located in the support facility, to the south east of the COMMUNITY CENTER. See **Exhibit B**.

PRIVATE OFFICE: ~105 SQ FT lockable, private office located in the COMMUNITY CENTER. See **Exhibit B**.

PREMISES: Collectively the CAFÉ, OUTDOOR COVERED PATIO, OUTDOOR PATIO, CONCESSION STAND, PRIVATE OFFICE, and other spaces, such as the COMMUNITY ROOMS, when used by the TENANT for catering or food service operations.

**PARAGRAPH III**  
**PRE-OPENING COMMITMENTS**

**A. OWNER PROVISIONS:**

Upon the execution of this Agreement, OWNER agrees to provide the following:

3.1 Architecture planning, engineering, and construction of CAFÉ building shell, including, but not limited to, structural supports, exterior walls, roof, windows, and doors.

3.2 An amount not to exceed, One Hundred Fifty Thousand Dollars (\$150,000.00), to be used towards buildout of the CAFÉ space designed to reasonably cover architecture professional services, HV/AC systems, electrical system, restroom buildout, and floors.

3.3 Architecture planning, engineering, and construction of PATIO, including, but not limited to, structural pergola, pavers, bocce ball court, and planted landscaping beds.

3.4 Architecture planning, engineering, and construction of CONCESSION STAND, including, but not limited to, structural supports, exterior walls, interior walls, mechanicals, doors, and windows.

3.5 The purchase of mutually agreed upon exterior patio furniture, games, and amenities, not to exceed Forty-Five Thousand Dollars (\$45,000.00).

3.6 Allowance for concession stand equipment and buildout, not to exceed Twelve Thousand Dollars (\$12,000.00).

3.7 Exterior audio system and exterior gas heating system for COVERED PATIO and pergola areas.

3.8 OWNER's contractor will be responsible for executing the scope of work defined in Paragraph 1. OWNER will pay for this work directly in compliance with applicable municipal, state and federal laws, regulations and rules.

**B. TENANT PROVISIONS:**

In cooperation with OWNER, TENANT agrees to provide, at its sole expense, on or before November 18, 2019:

3.9 Buildout of the CAFÉ, including but not limited to, interior walls, kitchen/bar equipment and associated mechanicals, furniture, casework, fixtures, lighting, audio/visual equipment, décor, signage, and all service wares.

3.10 Buildout of the CONCESSION STAND, including but not limited to, interior walls, food service equipment and associated mechanicals, furniture, casework, fixtures, lighting, audio/visual equipment, décor, signage, and all service wares.

3.11 All operating permits, including, but not limited to, 3-way liquor license and food service permits.

3.12 A fully functional CAFÉ and CONCESSION STAND operation, complete with trained staff, menu, inventory, and point of sale system.

3.13 Where appropriate TENANT will be obligated to utilize OWNER'S contractor as awarded in a competitive bidding process and in compliance with applicable State of Indiana and City of South Bend public works project laws and regulations. Generally, this work will be related to structural, walls, mechanical, plumbing, and electrical systems. TENANT and OWNER will mutually approve costs and scope before work is performed. TENANT will reimburse OWNER for scope of services performed by OWNER'S contractor and defined in Paragraph III. TENANT will be responsible for self-performing or directly contracting for interior work, generally defined as Furniture, Finishings, and Equipment.

3.14 At the time of signing this lease, TENANT projects to contribute up to Five Hundred Thousand Dollars (\$500,000) to the items conveyed in this Paragraph III subsection B.

#### **PARAGRAPH IV** **COMMITMENTS, USES, AND SERVICES**

##### **A. General Operations**

4.1 Services: TENANT agrees to provide quality food and beverage operation, including but not limited to, table-side, counter, catering, banquet and concessions sales and service in the PREMISES; on-site and off-site commercial marketing; labor, supplies, equipment, and licensees required to operate and deliver services (collectively hereinafter referred to as "SERVICES").

4.2 Catering License: TENANT and OWNER agree that pursuant to this Agreement, and following TENANT securing any required licenses, registrations and permits, TENANT becomes the exclusive provider of food and beverage for COMMUNITY ROOMS events. TENANT shall provide menus and dedicated sales staff to plan for menus, logistics, and service of COMMUNITY ROOM events – which may include, but is not limited to, meetings, parties, banquets, or receptions. Exceptions to these TENANT obligations include internal OWNER events and activities as well as specialty cakes (i.e. wedding cakes or birthday cakes). For the purposes of this PARAGRAPH, the PRE-EVENT ROOM shall function as a COMMUNITY ROOM as available.

4.3 Concessions License: TENANT and OWNER agree that pursuant to this Agreement, and following TENANT securing all required licenses, registrations and permits, TENANT becomes exclusive operator of the on-site CONCESSION STAND. TENANT will maintain consistent, seasonal, operating hours to be mutually agreed upon by TENANT and OWNER. CONCESSION STAND will offer, at a minimum, quick service, pre-packaged, and family-friendly food and beverage offerings. TENANT will provide for menu and pricing signage as well as a point-of-sale system.

4.4 Additional Concessions: TENANT shall have the non-exclusive right to operate additional concession or mobile stands throughout the park during SPECIAL EVENTS -, typically defined as one-off events, planned and promoted by OWNER or outside organizations and may include festivals, concerts, or other large community gatherings in Howard Park. TENANT, at its own expense, will be

responsible for providing all required licenses, registrations and permits, as well as infrastructure associated with SPECIAL EVENT services. TENANT may waive this right at any time.

4.5 Marketing: TENANT, at its sole expense, will provide marketing typical of a commercial food service operation. TENANT will create and maintain a consistent online presence through a website and engaging social media. TENANT will keep an advertised and reliable schedule of promotions and events. TENANT agrees that any marketing materials which reference Howard Park, Venues Parks & Arts, or the City of South Bend – in name, logo, or likeness – will adhere to the provided branding guidelines and be subject to approval of OWNER. OWNER agrees to reasonably cross-promote TENANT’S operations through its standard marketing channels.

4.6 Permits and Licenses: TENANT must, at its own cost and expense, procure and keep in force during the term of this Agreement all registrations, permits and licenses required by applicable local, state and federal laws and regulations necessary to enable TENANT to prepare, sell, and serve food and alcoholic beverages.

4.7 Private Office: OWNER will provide TENANT a lockable 105 SQ FT PRIVATE OFFICE for the purposes of TENANT accounting, managerial duties, and storage of TENANT’S staff personal items. It is understood that the office will not be immediately adjacent to the CAFÉ. TENANT agrees to properly secure any OWNER spaces utilized by TENANT and to make reasonable efforts to prevent theft, vandalism, or other misuse in TENANT utilized OWNER spaces. TENANT’S only business for entering OWNER spaces is to access PRIVATE OFFICE and access is not to be utilized for any other purpose. TENANT is responsible and liable for security of PRIVATE OFFICE at all times.

4.8 Scheduling Community Rooms: OWNER has exclusive use of COMMUNITY ROOMS and PRE-EVENT ROOM for scheduling OWNER and community partner programming as well as private events. TENANT will refer all individuals or groups who wish to utilize the COMMUNITY ROOMS to the OWNER for reservation. OWNER will book all events and exclusively refer food and beverage needs to TENANT. In general, the PRE-EVENT ROOM is not available for private use during ice skating season, normally November 1<sup>st</sup> through March 15<sup>th</sup> of each year. OWNER and TENANT shall maintain a mutually agreed upon shared booking calendar to coordinate use of COMMUNITY ROOMS and PRE-EVENT ROOM.

4.9 Management Contacts: TENANT agrees to employ an on-site, full-time general manager to oversee PREMISES and SERVICES. TENANT agrees to assign this general manager or another person of authority to be the primary point of contact for day-to-day logistical coordination with OWNER.

4.10 Uniforms: All employees of TENANT shall be neatly attired in uniforms which properly identify the TENANT employee as a member of TENANT’S staff.

4.11 Food, Beverage, & Novelty Sales: TENANT and OWNER agree to discuss food, beverage, and novelty selection, sales mix, quality, and pricing as appropriate. OWNER encourages TENANT to utilize in-season, locally sourced, sustainable products sold at competitive market price points. TENANT will have a menu mix that appeals to both families and adults. TENANT will consider utilizing preferred OWNER vendors where possible. TENANT will make alcohol service available in accordance with all

applicable local, state and federal laws and regulations.

4.12 Chewing Gum and Tobacco Sales Prohibited: Chewing gum and tobacco products are not permitted to be sold or furnished by TENANT on PREMISES.

4.13 General Use: TENANT shall activate the PREMISES for purposes of a food and beverage operation under such assumed name as TENANT determines appropriate, subject to OWNER's advance written approval, and for other associated ancillary purposes. TENANT will maintain consistent, advertised operating hours to be mutually agreed upon by TENANT and OWNER. The PREMISES may not be used for any other purpose without the prior written approval of the OWNER. TENANT shall not permit, allow, or cause to be conducted on the PREMISES: (a) a public or private auction; or (b) a sale that would indicate to the public that TENANT: (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possessory of the PREMISES. The PREMISES shall be used in a manner consistent with the general high standards of the community and neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local laws or regulations.

## **B. OTHER OPERATIONS, UTILITIES, REPAIR, MAINTENANCE**

4.14 OWNER Operations & Property Taxes: As collected through RENT and fees, OWNER shall be responsible for payment of the following: Property Taxes, Natural Gas Utility, Electric Utility, Water and Sewer Utility, Snow Removal, Exterior Landscaping, and bulk Site Trash & Recycling services.

4.15 OWNER Repair & Maintenance: OWNER shall, at its expense: (a) keep the foundation and roof of the PREMISES in good order, repair and condition; and (b) maintain the exterior walls of the PREMISES in a structurally sound condition, except to the extent that there is damage caused by any act or omission of TENANT, its employees, agents, contractors, invitees or licensees; and (c) replace window and door glass that may be damaged or broken with glass of the same or substantially similar quality, except to the extent that the damage or breakage is caused by an act or omission of TENANT, its employees, agents, contractors, invitees or licensees. OWNER shall be responsible for the replacement and maintenance of all electrical, heating, ventilation, and cooling equipment and systems serving (collectively referred to as the "Building Systems"); provided, however, that OWNER may bill TENANT for such replacement if OWNER's consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of TENANT'S misuse of it or TENANT'S failure to timely notify the OWNER of its malfunctioning. Except as provided in this Paragraph 4.15, during the term of this Lease, OWNER shall not be obligated to make repairs, replacements or improvements of any kind to or for the PREMISES, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of TENANT.

4.16 TENANT REPAIRS & MAINTENANCE: Except for repairs & maintenance by OWNER pursuant to Paragraph 4.15, TENANT shall: (a) keep the PREMISES clean, neat, and safe, and in good order, repair and condition, including, without limitation, that TENANT shall make all maintenance, repairs, alterations, additions, or replacements to the PREMISES and shall provide routine janitorial services at TENANT'S expense; (b) keep all glass in windows, doors, fixtures, and other locations clean and in good order, repair, and condition, and replace interior light bulbs or fluorescent lights as needed; (c) maintain and repair all systems related to plumbing associated grease traps; and (d) paint and decorate the

PREMISES as necessary or appropriate to comply with the terms and conditions of this Paragraph 4.16. Notwithstanding any provision to the contrary, including Paragraph 6.1, the TENANT shall be responsible for notifying the OWNER of any damage to, malfunctioning of, or apparent repairs needed for the Building Systems for the PREMISES. Plumbing and electrical maintenance and repair expenses which are directly attributable to the plumbing and electrical systems exclusively serving TENANT shall be the responsibility of TENANT.

4.17 Security: OWNER will provide reasonable site security throughout Howard Park; however, it is TENANT'S sole responsibility to provide security for CAFÉ and PRIVATE OFFICE. OWNER claims no responsibility for security of these areas or is not responsible for any TENANT or third party claims of any nature arising from these areas.

4.18 Sanitary Conditions: TENANT shall maintain all areas of the PREMISES in a clean and sanitary condition, in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes, and requirements of duly authorized health authorities of St. Joseph County and any other health department having jurisdiction. All food service areas shall be subject to inspection at all times by the OWNER.

4.19 Exterminators: TENANT shall, at its expense, engage the services of, and supervise the activities of a licensed and insured pest control/ exterminator at least twice monthly to control, prevent and eliminate the presence of vermin and pests. Such extermination services shall be supplied in all non-public areas where food is prepared, dispensed or stored.

4.20 Waste and Waste Containers: TENANT will supply appropriate, adequate, trash receptacles in the vicinity of all TENANT work and service areas (e.g., the kitchen, bar, concession stands, patio, etc.). These areas shall be regularly monitored by TENANT for cleanliness and trash removal. All refuse and waste materials created by TENANT'S operations in all public food, beverage, catering and concession service areas shall be promptly disposed of. TENANT shall make full use of the kitchen garbage disposals for organic waste to minimize the amounts of waste placed for removal in the outside refuse compactor. TENANT shall exercise special care for the removal of grease including, the use of sealed containers for the removal process. TENANT has sole financial responsibility for and is required to contract with a tallow service for disposal of any waste oils. TENANT shall employ the necessary personnel before, during and after operating hours, including special events, to comply with these provisions. TENANT staff shall ensure that all waste receptacles are kept clean and properly serviced during business hours. TENANT staff shall be responsible for the removal and placement of all kitchen refuse into outside refuse compactors, provided by OWNER. It shall be the duty of TENANT to provide continuous bussing of tables in all areas in which food is served to seated customers until all food and trash has been removed. TENANT shall regularly empty waste containers in CAFÉ and PATIO areas into outside refuse compactors and bins supplied by the OWNER.

4.21 Sidewalks: OWNER is responsible for maintaining sidewalks adjacent the PREMISES, however, TENANT will assist with general cleanliness. TENANT acknowledges that the use of the sidewalks adjoining the PREMISES is controlled by the South Bend Public Works Department. OWNER makes no representation concerning the availability of such use for dining or other purposes. TENANT understands that it must make application to the South Bend Board of Public Works for a permit to use the adjoining

sidewalks.

4.22 Parking: OWNER is responsible for maintaining adjacent public parking areas. OWNER will not be required to provide any parking spaces to the TENANT; and it is expressly understood by TENANT that TENANT employees are not permitted to use on-street parking on either Jefferson Street or St. Louis Boulevard. TENANT will make reasonable efforts to ensure that TENANT employees or contractors do not utilize the most convenient customer and visitor parking areas. TENANT will ensure TENANT employees respect private or restricted parking areas.

4.22 TENANT Alterations:

- (a) Alterations: TENANT, at its sole cost and expense, may install within the food and beverage service areas of the PREMISES such fixtures and equipment as TENANT reasonably determines to be necessary and appropriate to conduct its business, subject to compliance with all applicable local, state and federal laws and regulations. TENANT, at its cost and expense, also may make non-structural alterations or improvements to the interior of the PREMISES if: (i) TENANT delivers to OWNER written notice describing the proposed alteration or improvement with particularity, and provides to OWNER copies of any plans and specifications for the alteration or improvement; and (ii) upon the termination of this Lease, TENANT surrenders the part of the PREMISES altered or improved to OWNER in as good a condition as on the date of installation or construction completion, normal wear and tear excepted. TENANT shall not, without the prior written consent of OWNER, make any: (1) alterations, improvements, or additions to the exterior of the PREMISES; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the interior of the PREMISES. All alterations, improvements, or additions to the PREMISES, exclusive of moveable equipment and furniture, shall become the sole property of OWNER upon termination of this Lease.
- (b) Exterior Signs. TENANT shall comply with all zoning requirements and other state and local laws governing the installation and use of exterior signs, and window and door graphics, and OWNER'S approval shall be required in advance of installation, such approval shall not be unreasonably withheld.
- (c) Permits. Before making any alterations, improvements, or additions, TENANT shall: (i) obtain all required permits, licenses, bonds and approvals necessary for the improvements, alterations, or additions; and (ii) deliver to OWNER: (A) copies of such permits, licenses, bonds and approvals; and (B) provide evidence reasonably satisfactory to OWNER that TENANT has procured workers' compensation, builder's risk, commercial general liability, and property damage insurance in as OWNER reasonably may require. TENANT shall at TENANT'S cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.



- (d) Liens. TENANT shall not suffer or cause the filing of any mechanic's or other lien against the PREMISES or the Building. TENANT shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the PREMISES, or any improvements. If any mechanic's or other lien is filed against the PREMISES, or any part thereof for work claimed to have been done for TENANT, or materials claimed to have been furnished to TENANT, then TENANT shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to OWNER that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to OWNER (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to OWNER within thirty (30) days after notice of the filing thereof. All liens suffered or caused by TENANT shall attach to TENANT'S interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any Party for the performance of any work for, or the furnishing of any materials to TENANT; or (2) give TENANT the right or authority to contract for, authorize, or permit the performance of any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the PREMISES or improvements or OWNER's interest therein.

4.23 Rights Reserved to OWNER: OWNER shall have the following rights, exercisable upon reasonable prior notice to TENANT, but without liability to TENANT for damage or injury to property, person, or business, all claims or damages being hereby released, and without effecting a constructive eviction or disturbance of TENANT'S use or occupation of Premises or giving rise to any claim for offsets or abatement of rent:

- (a) To change the name or street address of the PREMISES, including any building or structure included as forming part of the PREMISES;
- (b) To install and maintain signs on the exterior and interior of the Building which signs will not affect the access to or visibility of the PREMISES or TENANT'S signs;
- (c) To designate and/or approve, prior to installation, all types of window coverings, awnings, covered entrances and signs and lettering (in accordance with Paragraph 7.6) on windows and building exteriors and elsewhere visible from the sidewalk around the PREMISES, and to control all internal lighting that may be visible from outside the PREMISES;
- (d) To have pass keys to the PREMISES, and all portions thereof;
- (e) To grant to anyone, including the OWNER itself, the right to conduct any business or render any service in the PREMISES and throughout Howard Park provided such right shall not operate to exclude TENANT from the use expressly permitted in this Lease;
- (f) To decorate, remodel, repair, alter or otherwise prepare the PREMISES for re-occupancy during the last three (3) months of the Term, but only if during or prior to such time TENANT vacates the PREMISES, or (ii) at any time after TENANT abandons the PREMISES;

- (g) To enter the PREMISES to make inspections, repairs, alterations, or additions in or to the PREMISES, or during the final three (3) months of the Term to show the PREMISES to prospective TENANTS, purchasers, or others, at reasonable hours, and at any time in the event of an emergency, and to perform any acts related to the safety protection, preservation, re-letting, sale or improvement of the PREMISES;
- (h) To require all persons entering or leaving the PREMISES during such hours as OWNER may from time-to-time reasonably determine to identify themselves to a guard by registration or otherwise and to establish their right to enter and to exclude or expel any peddler, solicitor, or unruly or loud person at any time from the PREMISES;
- (i) To close the PREMISES during times of emergency and, subject to TENANT'S right to admittance under such rules as shall be prescribed from time-to-time by OWNER, after scheduled business hours;
- (j) To approve the weight, size and location of safes and other heavy equipment and TENANT property in and about the PREMISES and to require all such items to be moved in and out of the PREMISES only at such times and in such manner as OWNER shall direct and in all events at TENANT'S sole risk and responsibility;
- (k) With prior written notice to TENANT, and without the interruption of TENANT'S business, to decorate, alter, repair or improve the PREMISES at any time; and OWNER and its representative for that purpose may enter on and about the Building with such materials as OWNER may deem necessary, may erect scaffolding and all other necessary structures on or about the PREMISES and may close or temporarily suspend operations of entrances, doors, corridors, elevators and other facilities. TENANT waives any claim for damages including the loss of business resulting from such action by OWNER. However, in the exercise of its rights under this subparagraph, OWNER shall not unreasonably interfere with the conduct of TENANT'S business operations and shall provide access to the PREMISES for TENANT'S customers and staff during scheduled business hours; and
- (l) To do or permit to be done any work in or about the PREMISES or any adjacent or nearby building, land, street or alley.

**PARAGRAPH V**  
**TERM**

**5.1 Dates:** The initial term of this LEASE shall be for ten (10) years, with the option for the Parties to negotiate one consecutive 10-year renewal. This LEASE shall be effective as the date listed above. The Rent commencement date for the initial ten (10) year term shall begin on January 1, 2020 and expire on December 31, 2029.

**5.2 Rates:** TENANT agrees to pay OWNER a fixed monthly amount according to **EXHIBIT C** - Howard Park TENANT Rent, O&M, & License Fee Schedule.

- The First Rental Amount, Second Rental Amount, and Third Rental Amount, as those terms are defined below and further explained in **EXHIBIT C**, shall collectively be referred to herein as “Rent.” Rent shall be paid to OWNER as set forth below, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, in monthly installments, commencing on the January 1, 2020 date and during the entire Term and Extended Term (should the parties exercise the Renewal Option), on or before the first (1st) day of each calendar month, in advance.
- Commencing on the first Rent due date (January 1, 2020) and continuing through December 31, 2022, TENANT shall pay the First Rental Amount, consisting of base rent in the amount of Two Thousand Nine Hundred Fifteen Dollars and Seventy Five Cents (\$2,915.75) (“Base Rent”), plus Operating Maintenance and Licensing Fees totaling Two Thousand Five Hundred Dollars (\$2,500.00) (“OM&L Fees”) for a total Rent of Five Thousand Four Hundred Fifteen Dollars and Seventy Five Cents (\$5,415.75) per month.
- Commencing on January 1, 2023 and continuing through December 31, 2025, TENANT shall pay the Second Rental Amount, consisting of base rent in the amount of Three Thousand Four Hundred Forty Dollars and Fifty Nine One Cents (\$3,440.59) (“Base Rent”), plus Operating Maintenance and Licensing Fees totaling Two Thousand Five Hundred Eighty Seven Dollars and Fifty Cents (\$2,587.50) (“OM&L Fees”) for a total Rent of Six Thousand Twenty Eight Dollars and Nine Cents (\$6,028.09) per month.
- Commencing on January 1, 2024 and continuing through December 31, 2029, TENANT shall pay the Third Rental Amount, consisting of base rent in the amount of Four Thousand Fifty Nine Dollars and Eighty Nine Cents (\$4,059.89) (“Base Rent”), plus Operating Maintenance and Licensing Fees totaling Two Thousand Six Hundred Seventy Nine Dollars and Thirty Eight (\$2,679.38) (“OM&L Fees”) for a total Rent of Six Thousand Seven Hundred Thirty Nine Dollars and Twenty Seven Cents (\$6,739.27) per month.
- TENANT recognizes that the RENT rates in 5.2 are reflective of the TENANT’s initial leasehold improvements. Any renewal or future terms will involve a renegotiation of RENT rates that are consider market rates as well as any additional TENANT leasehold investments.

**5.3 Overdue Payments:** Any amount of Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by TENANT under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid.

**5.4 Taxes & Fees:** TENANT shall pay (as an Operating Expense) all federal, state and local license and permit fees, and shall collect, withhold, remit, and/or pay (as an Operating Expense) for all sales, use and excise taxes and compensation taxes relating to the provision of the Services. Pursuant to Paragraph 4.14, OWNER will pay property taxes on behalf of TENANT, as collected through O&M Fees.

## **PARAGRAPH VI** **INSURANCE AND INDEMNIFICATION**

**6.1. TENANTs Liability Insurance:** TENANT, at its expense, shall maintain at all times during the Term of this Leases, commercial general liability insurance on the PREMISES covering TENANT as the

named insured and identifying OWNER as an "additional insured" with terms satisfactory to OWNER and with companies admitted to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$5,000,000.00. At all times, TENANT shall maintain limits naming OWNER as an "additional insured" in an amount sufficient to cover any possible liability OWNER may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or re-codified from time to time.

6.2 Dram Shop Coverage: In addition to the insurance required under this Paragraph, for any such period of time as TENANT shall serve liquor or other alcoholic beverages in or from the PREMISES, TENANT agrees to maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure TENANT, as the named insured, and OWNER, as the additional insured, and all those claiming by, through or under OWNER, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times OWNER will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the PREMISES.

6.3 Hazardous Materials Coverage: Notwithstanding the above-mentioned commercial general liability insurance policy limit for TENANT shall not bring, possess, use, store, treat, or dispose of in or upon the PREMISES, any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws").

If TENANT does or intends to bring, possess, use, store, treat or dispose of any Hazardous Materials in or upon the PREMISES, TENANT shall purchase additional public liability insurance and supply OWNER with certificates of insurance reflecting the additional insurance, with coverage of no less than Five Million Dollars (\$5,000,000.00) and purchase environmental impairment liability insurance with coverage of not less than Five Million Dollars (\$5,000,000.00) with a deductible of not greater than Fifty Thousand Dollars (\$50,000.00) to ensure that anything contaminated with or by the Hazardous Material be removed from the PREMISES, and that the PREMISES be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition. OWNER shall be named as an "additional insured" on any such policies.

6.4 Coverage Verification: All policies of insurance required by this Paragraph to be maintained by TENANT shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to OWNER; and (b) provide that such policies shall not be subject to cancellation, termination, or lowering of coverage amounts without written notice to OWNER at least thirty (30) days in advance. TENANT shall provide

OWNER a Certificate of Insurance for each policy insurance required to be maintained by TENANT pursuant to this Paragraph, duly executed by the insurance company or the general agency writing such policies and effective not later than the Lease Commencement Date. TENANT shall also furnish OWNER with Certificates of Insurance not less than (10) days prior to the expiration of any such policy or policies. If TENANT shall fail to timely procure or renew any of the insurance required under this Paragraph, OWNER may obtain replacement coverage and the cost of same shall be payable by TENANT with the next installment of Rent thereafter becoming due and payable.

#### 6.5 Indemnity:

- (a) Definition of Loss. The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).
- (b) Definition of Indemnify. The term "Indemnify," as used throughout this Lease, shall mean that TENANT shall indemnify OWNER, save it harmless and, at OWNER's option and with attorneys approved in writing by OWNER, defend OWNER, its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the situations listed in subsections 6.6(c)(d)(e) and (f) of this Paragraph.
- (c) Mutual General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of OWNER, it's employees, contractors, or agents, TENANT assumes all risk of injury or damages to person or property within the lease Premises and covenants to Indemnify and hold harmless OWNER, it's employees, contractors or agents against any claim, damages, injuries, accidents, liability, and expense, including reasonable attorneys' fee for injury to persons or property resulting from, in connection with, arising from or occasioned wholly or in part by the use of the leased Premises by TENANT. Except for loss, injury or damage caused by the negligent acts or willful misconduct of TENANT, its employees, contractors, invitees, licensees, visitors or agents, OWNER covenants to Indemnify TENANT, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of OWNER, its agents, contractors or employees occurring on or about the PREMISES.
- (d) Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of OWNER, its employees, contractors, or agents, the OWNER shall not be liable for damage caused by hidden defects or failure to keep said PREMISES in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or PREMISES, nor for damage occasioned by water, nor for any damages arising from negligence of co-TENANTS or other occupants of the Building, or

the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

- (e) The OWNER shall not be liable for any injury to the TENANT, its employees and agents or any other person, occurring on said PREMISES, irrespective of whether said injury is caused by a defect in said PREMISES or by reasons of said PREMISES becoming out of repair or arising from any other cause whatsoever, and the OWNER shall not be liable for damage to TENANT'S property or to the property of any other person which may be located in or upon said PREMISES and the TENANT agrees to indemnify, defend, and save harmless the OWNER from any and all claims arising out of injuries to persons or property occurring on said PREMISES.

6.6 Release of Subrogation: Each Party hereto does hereby release and discharge the other Party from any and all claims or demands for damages, loss expense, or injury to the leased PREMISES, or to the furnishings, fixtures, equipment or inventory or other property of either party in, about or upon the PREMISES, as the case may be, caused by or resulting from perils, events or happenings which are covered by insurance covering such loss and further provided that such waiver shall be effective only to the extent of insurance proceeds actually received.

## **PARAGRAPH VII** **CASUALTY AND CONDEMNATION**

### 7.1 Casualty:

- (a) Insubstantial Damage. If the PREMISES are damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the PREMISES, then OWNER shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after deducting the amount of any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall OWNER be required to repair or replace: (1) the improvements to the PREMISES made by TENANT; or (2) any trade fixtures, equipment, or inventory of TENANT (or any other person or entity) located on, in, or about the PREMISES.
- (b) Substantial Damage. If: (i) there is Casualty Damage to the PREMISES, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the PREMISES; or (ii) there is Casualty Damage to a Building of which the PREMISES is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace the Building; then OWNER may elect either to: (1) repair or rebuild the PREMISES, or a Building which is part of the PREMISES; or (2) terminate this Lease upon delivery of written notice to TENANT within ninety (90) days after the occurrence of the Casualty Damage.

7.2. Removal of Certain Property: All moveable equipment and furniture furnished by, or paid for at the expense of TENANT, shall be removed by or on behalf of TENANT at or prior to the expiration or termination of this Lease or of TENANT'S right of possession hereunder, but only if, and to the extent, that the removal thereof will not damage to the PREMISES or necessitate repairs to the same. TENANT shall repair and restore any damage to the PREMISES arising from such removal so as to return the PREMISES to the condition existing prior to installation; or alternatively, at OWNER's discretion, TENANT shall pay or cause to be paid to OWNER one hundred ten percent (110%) of the cost of repairing or restoring, which costs shall be deemed due and payable as of the date on which surrender by TENANT is required under this Lease.

7.3. Property Not Removed: Any personal property of TENANT which shall remain in or upon the PREMISES after TENANT has surrendered possession of the PREMISES shall be deemed to have been abandoned by TENANT, and at the option of OWNER, such property: (a) shall be retained by OWNER as its property; (b) shall be disposed of by OWNER in such manner as OWNER shall determine, without accountability to any person; or (c) shall be removed by TENANT within three (3) business days at TENANT'S expense upon written request from OWNER; provided, however, that if TENANT fails to remove such property within such timeframe, OWNER may remove such property at TENANT'S expenses, charging TENANT one hundred ten percent (110%) of the costs incurred by OWNER to remove said items, which funds shall be due immediately upon notification of TENANT of such charges. OWNER shall not be responsible for any loss or damage occurring to any property owned by TENANT remaining in the PREMISES after TENANT surrenders possession thereof.

7.4 Survival of Terms: The terms of this PARAGRAPH VII shall survive termination of this Lease.

## **PARAGRAPH VIII** **DEFAULT**

8.1 Events of Default: Each of the following events shall be deemed an "Event of Default" by TENANT under this Lease:

- (a) Nonpayment. TENANT'S failure to pay Rent or other charges that TENANT is obligated to pay under this Lease when due or is not paid within ten (10) days following receipt of notice from OWNER.
- (b) Insurance Not Maintained. Any failure to maintain the insurance coverages required to be maintained by TENANT under this Lease.
- (c) Other Lease Violations. TENANT'S failure to perform or observe any other covenant, condition, or agreement of this Lease, which failure is not cured by TENANT within thirty (30) days after the giving of notice by OWNER specifying the nature of the default.
- (d) Partial Abatement of Base Rent. Base Rent shall be abated proportionately (based upon the proportion that the unusable space in the PREMISES due to the Casualty Damage bears to the

total space of the PREMISES) for each day that the PREMISES or any part thereof is unusable by TENANT by reason of any Casualty Damage.

- (e) Repair of TENANT Improvements. If OWNER is required or elects to repair the PREMISES, then TENANT shall repair or replace: (i) the alterations, improvements, and additions to the PREMISES made by TENANT; and/or (ii) any equipment of TENANT located on, in, or about the PREMISES.
- (f) Notice. TENANT shall give OWNER prompt written notice of any Casualty Damage in or to the PREMISES, or to the Common Areas of which TENANT has knowledge.

**PARAGRAPH IX**  
**SURRENDER**

**9.1. Surrender of Leased PREMISES:** Except as herein otherwise expressly provided in this Paragraph IX, TENANT shall surrender and deliver up the PREMISES, together with all property affixed to the PREMISES, to OWNER at the expiration or other termination of this Lease or of TENANT'S right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by TENANT, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by OWNER on account of any improvements made by TENANT. Each of the following shall constitute an Event of Default by TENANT:

- (a) Falsification of Information. If TENANT or any agent of TENANT falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to OWNER pursuant to this Lease.
- (b) Merger or Consolidation. If TENANT is merged or consolidated with any other entity, or there is a transfer of a controlling interest in TENANT.
- (c) TENANT'S Dissolution or Liquidation. The commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of TENANT or toward the liquidation of its assets, which includes TENANT'S failure to maintain a business license or any other required registration, license or permit, in accordance with federal, state or local law.
- (d) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against TENANT, or the filing of a voluntary or involuntary petition proposing the adjudication of TENANT as bankrupt or insolvent, or the reorganization of TENANT, or an arrangement by TENANT with its creditors, unless the petition is filed or case commenced by a Party other than TENANT and is withdrawn or dismissed within thirty (30) days after the date of its filing.



- (e) Assignment or Attachment. The making of an assignment by TENANT of TENANT'S obligations hereunder for the benefit of its creditors, or if in any other manner TENANT'S interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.
- (f) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of TENANT, unless such appointment shall be vacated within ten (10) days after its entry.
- (g) Inability to Pay. The admission in writing by TENANT of its inability to pay its debts when due.
- (h) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

9.2. Remedies: Upon the occurrence of an Event of Default, OWNER, without notice to TENANT in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

- (a) Satisfy TENANT Obligations. OWNER may perform, on behalf of and at the expense of TENANT, any obligation of TENANT under this Lease which TENANT has failed to perform and of which OWNER has given TENANT notice (entering upon the PREMISES for such purpose, if necessary), the cost of which performance by OWNER, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by OWNER, shall be payable by TENANT to OWNER with the first Rent installment thereafter becoming due and payable. The performance by OWNER of any TENANT obligation under this Paragraph shall not be construed either as a waiver of the Event of Default or of any other right or remedy of OWNER with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Paragraph and regardless of whether an Event of Default shall have occurred, OWNER may exercise the remedy described in this Paragraph without any notice to TENANT if OWNER, in its good faith judgment, believes that it or the PREMISES would be materially injured by failure to take rapid action or if the unperformed obligation of TENANT constitutes an emergency.
- (a) Termination of Lease. OWNER may terminate this Lease, by written notice to TENANT, without any right by TENANT to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, TENANT shall immediately surrender possession of the PREMISES to OWNER, and OWNER shall, in addition to all other rights and remedies that OWNER may have, immediately become entitled to receive from TENANT: (i) an amount equal to the aggregate of all Rent which then remains due to OWNER but unpaid by TENANT; (ii) reasonable costs and expenses incurred by OWNER in connection with a re-entry

or taking of possession of the PREMISES; (iii) reasonable costs and expenses incurred by OWNER in connection with making alterations and repairs for the purpose of re-letting the PREMISES; and (iv) reasonable attorneys' fees.

- (b) Termination of Possessory Rights. OWNER may terminate TENANT'S rights to possession of the PREMISES without terminating this Lease or TENANT'S obligations hereunder and TENANT shall continue to be obligated to pay all Rent which then remains due to OWNER but unpaid by TENANT and TENANT shall continue to be obligated for future RENT as the same comes due under this Lease.
- (c) Acceleration of RENT. OWNER may, whether it terminates the Lease or TENANT'S possessory rights to the PREMISES, accelerate and declare immediately due all of the RENT that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Term or Extended Term, the option for which has been exercised.
- (d) Rent Minus Fair Market Value. OWNER may declare immediately due and payable from TENANT, in addition to any damages or other amounts becoming due from TENANT under any other provision of this Lease, an amount equal to the difference between (i) the Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Term or Extended Term, the option for which has been exercised, and (ii) the then-fair market value of the PREMISES for the same period.
- (e) Other Remedies. OWNER may pursue any legal or equitable remedy allowed by applicable law.

9.3 Failure to Surrender: If TENANT fails to surrender the PREMISES upon expiration of the Term or earlier termination of the Lease pursuant to Paragraph 9.2(a), or termination of TENANT'S possession rights, the provisions of Paragraph 3.3 shall apply, and OWNER may, without further notice and with or without process of law, enter upon and re-enter the PREMISES and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess TENANT and remove TENANT and all other persons and property from the PREMISES and may have, hold and enjoy the PREMISES and the right to receive all rental and other income of and from the same.

12.4 Reimbursement of OWNER's Costs in Exercising Remedies: OWNER may recover from TENANT, and TENANT shall pay to OWNER upon demand, such reasonable and actual costs and expenses as OWNER may incur in recovering possession of the PREMISES, placing the same in good order and condition and repairing and altering the same for reletting and all other reasonable and actual costs and expenses, commissions and charges incurred by OWNER in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by TENANT hereunder (including, without limitation, reasonable attorneys' fees).

12.5 Remedies Are Cumulative: No right or remedy herein conferred upon or reserved to OWNER is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be

cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

**PARAGRAPH X**  
**ASSIGNMENT AND SUBLETTING**

10.1 Assignment and Subletting: TENANT shall not assign, sublet, mortgage, encumber, or in any manner transfer, in whole or in part, any interest in this Lease or the PREMISES, or otherwise allow the possession of the PREMISES by any person or entity other than TENANT.

10.2 Assignment by OWNER: OWNER, at any time and from time to time, may assign its interest in this Lease, and, if: (a) OWNER assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of OWNER under the terms and conditions of this Lease; then OWNER and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

**PARAGRAPH XI**  
**ATTORNMEN, SUBORDINATION, AND ESTOPPEL CERTIFICATES**

11.1 Attornment: In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by OWNER covering the PREMISES, TENANT hereby attorns to the successor-in-interest of OWNER and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby TENANT attorns to such successor- in-interest and recognizes such successor-in-interest as OWNER hereunder.

11.2. Subordination:

- (a) OWNER shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, bond, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting OWNER's fee estate in the PREMISES, or any part thereof, and the rights of TENANT under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by OWNER of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb TENANT'S possession so long as TENANT is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as OWNER under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event TENANT agrees to, within ten (10) days after request by OWNER or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between TENANT and such Mortgage holder.

Any holder of any such Mortgage is herein referred to as "OWNER's Mortgagee(s)." Notwithstanding the foregoing, a OWNER's Mortgagee may at any time subordinate its Mortgage to this Lease without TENANT'S consent by notice in writing to TENANT, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such OWNER's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such OWNER's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the PREMISES of record.

11.3 Estoppel Certificates: TENANT and OWNER agree to execute and deliver, within ten (10) days after a request by the other Party, a statement, in writing, certifying to OWNER and/or any Party designated by OWNER, or TENANT and/or any Party designated by TENANT, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by OWNER or TENANT, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (t) any other information reasonably requested.

## **PARAGRAPH XII** **MISCELLANEOUS**

12.1 Quiet Enjoyment: OWNER warrants that it is the owner in fee simple of the PREMISES, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. OWNER agrees that if TENANT observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, TENANT shall have the peaceful and quiet enjoyment of possession of the PREMISES, without any manner of hindrance from Parties claiming under, by, or through OWNER.

12.2 Recordation: The Parties agree that this lease shall not be recorded, but upon the request of either Party, a Memorandum of Lease shall be prepared by OWNER, and shall be promptly executed, delivered, and recorded in the Office of the Recorder of St. Joseph County, and the costs of recordation shall be charged to the Party requesting the Memorandum of Lease.

12.3 Notices: Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to OWNER, at the address set forth in the Paragraph II hereof, or at such other address as OWNER may

designate by written notice; and (b) if to TENANT, at the address set forth in PARAGRAPH II hereof, or at such other address as TENANT may designate by written notice.

12.4 Waiver: One or more waivers of any covenant or condition by OWNER shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by OWNER to or of any act by TENANT requiring OWNER's consent or approval shall not be deemed to render unnecessary OWNER's consent or approval to or of any subsequent similar act by TENANT.

12.5 Entire Agreement; Amendment: This Lease and the exhibits attached hereto (which exhibits are incorporated herein by reference) set forth all the covenants, promises, agreements, conditions and understandings between OWNER and TENANT concerning the PREMISES, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between OWNER and TENANT other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon OWNER or TENANT unless reduced to writing and signed by authorized representatives of both OWNER and TENANT.

12.6 Dispute Resolution; Remedies Cumulative: Any litigation over the terms or performance of this Lease shall be commenced in the courts of St. Joseph County, Indiana. In any legal proceeding concerning this Lease, each Party irrevocably waives the right to trial by jury with respect to any and all causes of action, counterclaims, and disputes. The rights and remedies of OWNER and TENANT hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by OWNER or TENANT shall not impair its standing to exercise any other such right or remedy.

12.7 Accord and Satisfaction: No payment by TENANT or receipt by OWNER of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and OWNER may accept any such check or payment without prejudice to the right of OWNER to recover the balance of such Rent or to pursue any other right or remedy.

12.8 Relationship: Nothing contained herein shall be deemed or construed to create between the Parties any relationship other than that of OWNER and TENANT.

12.9 Information: TENANT shall provide to OWNER, annually, accurate financial statements of TENANT certified by the highest-ranking financial officer of TENANT. Upon request, OWNER may be asked to deliver updates on operations to the BPC.

12.10 Construction: The laws of the State of Indiana shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The Parties acknowledge that this Lease was negotiated and prepared by the Parties and their respective legal counsel; therefore, if any provision of this Lease requires judicial interpretation, the court interpreting or construing such provision shall not construe it more strictly against either Party. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar days, not business days,

unless business days are specified.

12.11 Force Majeure: Notwithstanding anything to the contrary set forth herein, if OWNER or TENANT is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other Party; or (b) any other cause that is not within the control of the delayed or prevented Party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

12.12 Counterparts: This Lease may be executed in separate counterparts, each of which when so executed shall be an original, and all of which together shall constitute but one and the same instrument.

12.13 Successors and Assigns: Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of OWNER and TENANT. All indemnities set forth herein shall survive the termination of this Lease.

12.14 Authority: Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

12.15 Equal Opportunity Obligation: TENANT agrees not to (1) discriminate against any employee or applicant for employment, to be employed by TENANT with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, age, color, religion, sex, handicap, orientation, national origin, or ancestry, or (2) violate the City of South Bend Human Rights Ordinance.

12.16 Anti-Collusion Requirement: By executing this Lease, TENANT certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein.

[Signature page follows.]

**THE SOUTH BEND CHOCOLATE COMPANY, INC.**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Tarner, President

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Mark Neal, President

\_\_\_\_\_  
Consuella Hopkins, Vice-President

\_\_\_\_\_  
Aimee Buccellato, Member

\_\_\_\_\_  
Dan Farrell, Member

Attest this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Eva Ennis, Clerk



EXHIBIT A  
HOWARD PARK



No TENANT Parking On-Street

No TENANT Parking On-Street

**EXHIBIT B**



Patio

Cafe

Community Rooms

Pre-Event Room

Private Office

Covered Patio

Water Feature

Event Lawn

Ice Pond

Concession Stand

Dumpsters

Fire Pit

Ice Trail

Playground

No TENANT Parking On-Street

No TENANT Parking On-Street

Fire Pit

**EXHIBIT C - Howard Park Tenant Rent, O&M, & License Fee Schedule**

	Unit	Lease Year			
		1-3 1st Rental Amount (End 12.31.22)	4-6 2nd Rental Amount (End 12.31.25)	7-10 3rd Rental Amount (End 12.31.29)	11+
Interior Café Rent	3,014	\$6.00	\$7.08	\$8.35	<i>Renegotiated Terms</i>
Covered Heated Patio Rent	1,515	\$3.00	\$3.54	\$4.18	
Outdoor Patio Rent	5,550	\$2.00	\$2.36	\$2.78	
Private Secured Office Space Rent	105	\$12.00	\$14.16	\$16.71	
Base Monthly Rent (x12)		\$2,915.75	\$3,440.59	\$4,059.89	
<b>Total SF Weighted Average Base Rent</b>	<b>10,184</b>	<b>\$3.44</b>	<b>\$4.05</b>	<b>\$4.78</b>	
O&M*	Fixed/Month	\$1,750.00	\$1,837.50	\$1,929.38	
Concession Stand License	Fixed/Month	\$250.00	\$250.00	\$250.00	
Community Center License	Fixed/Month	\$500.00	\$500.00	\$500.00	
<b>Total Monthly O&amp;M, &amp; License</b>	<b>Fixed/Month</b>	<b>\$2,500.00</b>	<b>\$2,587.50</b>	<b>\$2,679.38</b>	
<b>Total Monthly Rent, O&amp;M, &amp; License</b>		<b>\$5,415.75</b>	<b>\$6,028.09</b>	<b>\$6,739.27</b>	
<b>Annual Rent, O&amp;M, &amp; License Fees</b>		<b>\$64,989.00</b>	<b>\$72,337.02</b>	<b>\$80,871.18</b>	

\*CAM, Provided Utilities, Property Taxes, Provided R&M