

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this \_\_\_\_ day of August, 2023 ("Effective Date"), by and between Shive-Hattery, an Indiana corporation, (the "Tenant"), and CITY OF SOUTH BEND, INDIANA, a municipal corporation, ACTING BY AND THROUGH ITS BOARD OF PARKS COMMISSIONERS, collectively ("Landlord").

### WITNESSETH:

WHEREAS, Landlord is the owner of that certain property located in the City of South Bend, St. Joseph County, Indiana, which is commonly known as Howard Park and more particularly described on Exhibit A attached hereto and made a part hereof, together with all rights-of-way and, easements, belonging thereto (collectively, "the Property");

WHEREAS, Tenant intends and desires to lease the Property (the "Leased Premises") for purposes of promoting the Fusion Fest event occurring on the Property (the "Activity"); and

WHEREAS, Landlord and Tenant desire to enter into a lease for the Leased Premises; and

WHEREAS, Landlord agrees to maintain at Landlord's expense, ingress and egress points to the Leased Premises at all times for park patrons and event attendees so that Tenant may fulfill the purpose and terms of this Lease; and

NOW THEREFORE, in consideration of the parties' mutual covenants and undertakings, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Lease. Landlord, for and in consideration of the covenants and agreements hereinafter set forth, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises together with certain appurtenances thereto, on the terms and conditions set forth in this Lease, as of the Effective Date set forth herein.
2. Term and Use. The term of this Lease shall be for a period of ten (10) days, commencing at 12:00 a.m. on September 3, 2023 (the "Effective Date") and expiring at 11:59 p.m. on September 12, 2023. Tenant intends to utilize the Leased Premises to promote the Fusion Fest event. Tenant's use of the Leased Premises is subject to any deed restrictions that may be applicable to the Property now or in the future requiring the use of the Property for outdoor recreation.
3. Improvements. As of the Effective Date, Tenant shall have the right to erect, construct, and install on the Leased Premises any and all structures, equipment, and other improvements, including, but not limited to, any and all ground improvements or fixtures (herein collectively called "Improvements") to be located thereon and utilized in connection with the use and operation of the Leased Premises as contemplated under this Lease. The Improvements shall not be erected, constructed, or installed outside of the Leased Premises. The Improvements shall be reasonably constructed and maintained according to standards of similar recreational facilities.
4. Permits. Landlord shall maintain all necessary permits and comply with all applicable

requirements thereof, including but not limited to local, state, or federal permits, required for maintenance and operation of the Leased Premises and its associated infrastructure.

5. Insurance. Tenant shall, at its sole cost and expense, at all times during the term of this Lease maintain and/or cause to be maintained, in full force and effect, comprehensive casualty and general liability insurance covering Tenant's operations at the Leased Premises, naming Landlord as an additional insured. Tenant shall deliver to Landlord a certificate from each insurance carrier as to each such insurance policy. Tenant, or its designee, shall have the sole and exclusive right (without the participation of Landlord) to adjust and settle any and all claims under insurance policies obtained by Tenant or those claiming by or through Tenant in connection with or relating to the Leased Premises and to receive the proceeds of any such claims. The Landlord shall maintain proof of casualty and general liability insurance for the Leased Premises, or a self-insurance program, and provide appropriate proof of such policy or self-insurance program upon request.

6. Indemnity. Landlord shall not be liable for any loss, damage, death or injury of any kind or character to persons or property, arising from any use of the Leased Premises, or any part thereof, or caused by any defect in the Improvements, or caused by or arising from any act or omission of Tenant, or any of its agents, employees, sublessees, licensees or invitees. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising from Tenant's or Tenant's invitee's use of the Leased Premises, or from the conduct of Tenant's business, or from any activity, work or things done, permitted or suffered by Tenant in or about the Leased Premises or elsewhere, and shall further indemnify, defend and hold harmless Landlord from and against any and all claims to the extent arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or any action or proceeding brought against Landlord by reason of any such claims, and Tenant shall defend the same, at Tenant's expense, by counsel satisfactory to Landlord in its reasonable discretion.

Tenant shall not be liable for any loss, damage, death or injury of any kind or character to persons or property, arising from any use of the Leased Premises, or any part thereof caused by or arising from any act or omission of Landlord, or any of its agents, employees, licensees or invitees. Landlord shall indemnify, defend and hold harmless Tenant from and against any and all claims arising from Landlord's use of the Leased Premises, or from the conduct of Landlord's business, or from any activity, work or things done, permitted or suffered by Landlord in or about the Leased Premises and appurtenant infrastructure, and shall further indemnify, defend and hold harmless Tenant from and against any and all claims to the extent arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or any action or proceeding brought against Tenant by reason of any such claims, and Landlord shall defend the same, at Landlord's expense, by counsel satisfactory to Tenant in its reasonable discretion.

7. Repairs and Maintenance: Firearms. Landlord shall keep and maintain the Leased Premises in reasonably good and safe order, condition and repair, and in material compliance with all applicable governmental requirements, ordinary wear and tear excepted.

Tenant affirms that firearms should not be permitted on the Leased Premises during the Fusion Fest event and that, accordingly, firearms shall be prohibited from Howard Park for the duration of such event.

8. Compliance with Laws and Ordinances. Tenant shall comply in all material

respects with all federal, state, county and municipal laws, ordinances and regulations of any duly constituted authority or governmental entity governing the Leased Premises. Tenant, at its expense, shall have the right to contest or review by legal, administrative or other proceedings the validity of any such law, ordinance or regulation, or the application thereof. During such proceedings, compliance with any such law, ordinance and/or regulation may be deferred by Tenant upon the condition that Tenant shall secure the cost of complying with said law, ordinance or regulation in such manner as Landlord may reasonably request. Landlord shall join in such proceedings if necessary to prosecute such proceedings properly, but Landlord shall not be liable for any expenses in connection therewith. The proceedings referred to herein shall include, without limitation, appropriate appeals from any judgments, decrees or orders made in any such proceedings.

Landlord shall comply with all federal and state laws, regulations, orders, mandates, and agreements entered into by or on behalf of Landlord related to the operation, maintenance, and control of the Leased Premises.

9. Access to Leased Premises: Ingress and Egress. Tenant shall have access to the Leased Premises during operating hours, and as otherwise required during the Lease term to promote the Fusion Fest event. Tenant shall also have the right to traverse other Landlord property, within reason, in order to access the Leased Premises, as well as other facilities to conduct its normal course of conduct hereunder. Landlord agrees to always maintain at Landlord's expense ingress and egress points to the Leased Premises so that Tenant may fulfill the purpose of this Lease. Tenant shall communicate and coordinate with the Landlord on all matters that arise concerning the operation of the Leased Premises. It is understood that Tenant shall have the ability to access and park vehicles which are directly associated with maintenance and operation of the Leased Premises. Landlord shall retain access to the Leased Premises at all times for any City purpose. Members of the public shall retain access to the Property as a public park at all times during the Lease, except that Tenant may establish rules of conduct or admission to the Leased Premises upon which admission is conditioned during the Fusion Fest event on September 9-10, 2023.

10. Assignment. Tenant may not at any time sell, assign, convey or transfer (collectively, "Transfer") this Lease, or any obligations or rights hereunder, to any third party without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any such Transfer shall be subject to all the covenants, conditions, agreements, and terms of this Lease. As a condition to any Transfer, the transferee shall assume and agree to be bound by all of the terms and provisions of this Lease and Tenant shall have no further rights or obligations hereunder.

11. Taxes. The parties acknowledge at the time of execution that no property taxes exist on the Leased Premises. However, should the Leased Premises or any land which later becomes subject to this Lease, for any reason, become subject to property taxes during the term of this Lease, Tenant shall have no obligation to pay or contribute to any tax assessment levied upon the Leased Premises unless said assessment is due to Tenant's occupancy of the Leased Premises.

12. Casualty. Tenant shall have no obligation to restore, repair or rebuild on the Leased Premises and shall, at Tenant's sole discretion, be free to terminate, without consequence, this Lease in the event of a casualty loss of the Leased Premises.

13. Default and Termination. Tenant shall be in default of this Lease if Tenant fails to comply with any material term, provision or covenant of this Lease and Tenant does not cure such failure within thirty (30) days after receipt of written notice thereof from Landlord (or if such failure is of such nature that it cannot be completely cured within such period, if Tenant does not

commence curing within such thirty (30) day period and thereafter proceed with reasonable diligence and in good faith to cure the default). Upon the occurrence of an event of default by Tenant, Landlord shall have all available remedies at law or in equity.

14. Quiet Enjoyment. Landlord covenants and agrees that, so long as no event of default exists, subject to any applicable cure periods, Tenant shall have quiet and peaceful enjoyment of the Leased Premises to promote the Fusion Fest event and shall not be unreasonably disturbed or interfered with by Landlord or any person claiming by, through or under Landlord, except as otherwise allowed herein.

15. Notices. All notices to or demands upon Landlord or Tenant desired or required to be given under the provisions of this Ground Lease shall be in writing and shall be deemed to have been duly given upon the earlier of actual receipt, whether in person or via electronic delivery, or, if mailed, three (3) days after being deposited in the United States mail, registered or certified, return receipt requested, postage prepaid and addressed as follows:

or at such other address as either party may notify the other party as herein specified.

16. Amendment; Waiver. This Lease may not be amended, modified, or supplemented, except by a written agreement executed by both of the parties hereto. The parties hereto may, by a writing signed by both of the parties, waive the performance by any party of any of the provisions to be performed by such party under this Lease. The failure of any party hereto at any time to insist upon the strict performance of any provision of this Lease shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provision at a future time. The waiver by either party hereto of a breach of or noncompliance with any provision of this Lease shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

17. Brokers' Fees and Commissions. The parties hereby acknowledge, represent and warrant that no agents, brokers, or finders were involved in the negotiation and execution of this Lease and that no agent, broker, finder, or other person is entitled to any commission on or compensation as a result of the negotiation or the execution of this Lease. Each party shall indemnify the other party and hold it harmless from any and all liability for the breach of any such representation and warranty on its part and shall pay any compensation to any agent, broker, finder, or other person who may be deemed or held to be entitled thereto.

18. Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successors, and assigns. Nothing in this Lease, expressed or implied, is intended to confer upon any person, other than the parties hereto, except as provided above, any rights, remedies, obligations, or liabilities under or by reason of this Lease.

19. Entire Agreement. This Lease supersedes all other prior and contemporaneous understandings, commitments, representations, negotiations, discussions, and agreements, whether oral or written, express or implied, between the parties hereto relating to the matters contemplated hereby and constitutes the entire agreement between the parties hereto relating to the subject matter hereof.

20. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions. The parties agree that any litigation in connection with this Ground Lease shall be brought in either the Circuit Court of St. Joseph County, Indiana or the United States Federal Court for the Northern District of Indiana.

21. Construction. This Lease is the product of negotiation by the parties hereto and shall be deemed to have been drafted by such parties. This Lease shall be construed in accordance with the fair meaning of its provisions and its language shall not be strictly construed against, nor shall ambiguities be resolved against, either party.

22. Headings. The headings contained in this Lease have been inserted and used solely for ease of reference and shall not be considered in the interpretation or construction of this Lease.

23. Severability. In case any one or more of the provisions (or any portion thereof) contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this

Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provision or provisions (or portion thereof) had never been contained herein.

24. Force Majeure. If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease (other than an obligation or condition requiring the making of any payment hereunder) by any condition beyond the reasonable control of such party, including without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, an Act of God, unusually severe weather, governmental restriction, regulation or control, terrorist, enemy, or hostile governmental action, civil commotion, insurrection, pandemic, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus thirty (30) days. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefore in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus fifteen (15) days.


25. Authority. The persons executing this instrument on behalf of Landlord and Tenant each represent that they have been duly authorized to do so by appropriate action and this Lease is binding upon such party.

26. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same agreement.

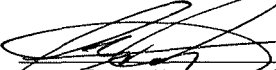
IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease as of the day and year first above written.

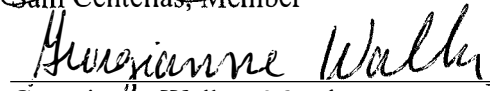
\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*\*\*

**LESSOR, SOUTH BEND BOARD OF PARK  
COMMISSIONERS**


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

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

  
\_\_\_\_\_  
Sam Centellas, Member

  
\_\_\_\_\_  
Georgianne Walker, Member

ATTEST:

  
\_\_\_\_\_  
Jessica Williams, Clerk

**LESSEE, SHIVE-HATTERY**

\_\_\_\_\_

## EXHIBIT A

### Legal Description of the Leased Premises

Commencing at the Northeast corner of Colfax (U.S. 20) and St. Joseph Street, also being the Southeast corner of Lot Ninety-one (91) in the River Bend Addition and situated in the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East; thence Northwest 228.43 feet along the East right-of-way line of St. Joseph Street; thence North 87.18 feet along the East right-of way line of St. Joseph Street; thence Southeast for 108.76 feet; thence Southeast for 430.00 feet along the St. Joseph River back to the point of beginning.

Commencing at the Northwest corner of Lot 4 in Heck's Addition, also situated in the West Half of the Northeast Quarter of Section 12, Township 37 North, Range 2 East; thence Southeast along the East side of the St. Joseph River for approximately 1200 feet to the Southeast corner of Lot 19; thence North for 20 feet; thence Northwest parallel to the East side of the St. Joseph River for approximately 1200 feet, the North line of Lot 4; thence West for 20 feet back to the point of beginning.

The Southeast Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, St. Joseph County, Indiana, more particularly described as beginning at the Southeast corner of Lot 213 of Heck's Addition and the Easterly edge of the waters of the St. Joseph River; thence meandering Southeasterly and South along said Easterly water's edge to the point of intersection with the North right-of-way line of Sample Street projected; thence Northeast along said projected North right-of-way line of Sample Street to the West right-of-way line of Northside Boulevard; thence Northwesterly and North along said West right-of-way line of Northside Boulevard to the East lot line of Lot 213 of Heck's Addition; thence South along said East lot line a distance of 15 feet, more or less, back to the point of beginning.