

FIRST AMENDMENT TO MANAGEMENT AGREEMENT BETWEEN
CITY OF SAINT PAUL AND O'REILLY CUSTOM 4, LLC

This FIRST AMENDMENT to the February 20, 2018 Agreement between the City of Saint Paul, through its Department of Parks and Recreation ("City") and O'REILLY CUSTOM 4, LLC, d/b/as Dock and Paddle ("Manager") is entered into this ___ day of September 2020.

WHEREAS, the City and O'REILLY CUSTOM 4, LLC d/b/a Spring Café entered into an Agreement on February 20, 2018 for management of the Como Lakeside Pavilion and surrounding areas which terminates on December 31, 2023; and

WHEREAS, the Agreement incorrectly references the managing entity as O'REILLY CUSTOM 3, LLC; and

WHEREAS, in May of 2020 the d/b/a name was changed to Dock and Paddle; and

WHEREAS, the agreement requires Manager to pay the City a percentage of its Monthly Gross Revenue as well as meet an Annual Minimum Payment, and requires the onsite restaurant to operate within certain times and on certain days during the Off-Peak Season; and

WHEREAS, Minnesota's Emergency Executive Order 20-01 Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19 severely impacted Manager's operations; and

WHEREAS, Manager wishes to amend the Agreement to allow for a one-year reduction in payments to City for the period April 1, 2020 and March 31, 2021 and the ability to reduce Off-Peak Season hours during this time; and

WHEREAS, the City believes that there is a benefit to the public of supporting this important Saint Paul business during the challenge of the COVID-19 pandemic by amending the Agreement to help ensure that this restaurant can survive and continue to serve the Saint Paul community while across this industry similar businesses are being permanently shuttered.

Now, therefore, Manager and City agree to amend the February 20, 2018 Como Lakeside Pavilion Management Agreement as follows:

1. The Agreement is amended to correctly reflect the Managing entity as O'REILLY CUSTOM 4, LLC, d/b/as Dock and Paddle.
2. Paragraph 4.1 of the Agreement is amended by adding:

4.1. **Pavilion hours of operation** Beginning on April 1, 2018, Manager will staff the interior of the Pavilion and provide public food and beverage service for at least the following hours of operation:

	<u>Peak Season</u>	<u>Off-Peak Season</u>
Monday-Friday	11:00 am - 9:00 pm	None
Saturday/Sunday	9:00 am - 9:00 pm	9:00 am - 3:00 pm

Notwithstanding the foregoing, for the contract year of April 1, 2020 to March 31, 2021 the Off-Peak Season hours of operation may be reduced or eliminated with written approval from City.

3. Paragraph 4.10 is amended by adding:

4.10. **Concerts; plays; related commission credit.** Manager will schedule and control the Public performance schedule at the Promenade, and will schedule at least 100 events per year (such as concerts and plays). Manager is responsible for complying with all local ordinances relating to sound and notification. Prior to February 1 of each year, City may schedule up to 20 dates of the 100 to be scheduled by Manager for that year. Manager will work in good faith with the groups identified by the City for those 20 dates to meet their scheduling requests. City will promote bookings made by Manager and communicated to City before March 31st of each year as part of its Music in the Parks program. For 2018, Manager has until May 1 to communicate bookings to the City. If Manager successfully meets the 100-event booking requirement for a given calendar year during which this Agreement is in effect, Manager is entitled to a \$10,000 commission credit to be applied against its commission payment for September of that calendar year.

Notwithstanding the foregoing, for the contract year of April 1, 2020 to March 31, 2021 no commission credit will be awarded.

4. Paragraph 5.3 is amended by adding:

5.3. **General payment structure.** Commission and CIF payments to City will be made as described in sections 5.4 through 5.8. Over the term of this Agreement, in general, City will receive 10 % of MGR on a monthly basis. Commission payments for the Peak Season will be payable to the City for use in its sole discretion. Commission payments for the Off-Peak Season will be invested into CIF. If the cumulative total of MGR exceeds \$1.5 million in the Annual Minimum Period, the commission percentage will increase to 11% for the remainder of that Annual Minimum Period. If MGR exceeds \$1.75 million in the Annual Minimum Period, the commission percentage will increase to 12% for the remainder of that Annual Minimum Period. MGR resulting from restaurant sales Monday through Friday in the Off Peak months, will be exempted from commission payments.

Notwithstanding the foregoing, for the contract year of April 1, 2020 to March 31, 2021 the City will receive 6% of MGR which must be paid no later than July 20, 2022. All commission payments for this contract year will be invested into CIF.

5. Paragraph 5.4 is amended as follows

5.4 Annual Minimum Payments. The Manager will guarantee the City a total Annual Minimum Payment of \$100,000 each year pursuant to §5.1, regardless of performance, and will make \$20,000 in aggregate investments into the facility by June 1, 2018. No commission credits may be used to reduce commission payments to below the Annual Minimum Payment.

5.4.1 Minimum payments. For each Annual Minimum Period, Manager's aggregate commission payment (~~which does not include CIF payments~~) to City must total at least the Annual Minimum Payment. If Manager's aggregate commission payments have not totaled at least the Annual Minimum Payment by the conclusion of an Annual Minimum Period, Manager must add the full amount of the shortfall to its March payment obligation (due April 20) for that Annual Minimum Period.

For the contract year of April 1, 2020 to March 31, 2021 there will be no Annual Minimum Payment requirement.

6. All other terms and conditions of the Agreement will remain in full force and effect.

Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be valid as an original signature of such party and shall be effective to bind such party to this Agreement.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

For the City of Saint Paul:

For and O'REILLY CUSTOM 4,
LLC, d/b/as Dock and Paddle

By _____

Mayor's Office

Its _____

Director, Parks and Recreation

Director, Finance

Approved as to Form:

Assistant City Attorney