

LICENSE AGREEMENT

(Farmers Market Site, 5th and Wall Streets, Saint Paul, Minnesota)

[Version 1, June 1, 2021]

THIS LICENSE AGREEMENT (this “Agreement”) is dated as of the ____ day of June 2021 between the City of Saint Paul, Minnesota, a public body corporate and politic organized under the laws of the State of Minnesota, whose address is suite 1300, 25 West 4th Street, St. Paul, MN 55102 (the “CITY”), and Big River Pizza a Minnesota limited liability company, whose address is 260 5th Street East, St. Paul MN 55101, Saint Paul, MN 55104 (the “Licensee”).

RECITALS

A. The City of Saint Paul, Minnesota, a public body corporate and politic organized under the laws of the State of Minnesota (“CITY”) is the fee owner of certain real property legally described on Exhibit A attached hereto (the “CITY Property”).

B. Licensee desires to enter upon the CITY Property for and limited to the sole purpose of operating a patio/dining space with alcohol and music for the dates of year 2021: 5/29, 6/5, 6/26, 7/10, 7/24, 8/14, 8/28, 9/4, 9/18 and 10/2. Big River Pizza may schedule additional dates by negotiating with and obtaining consent in writing from the City of St. Paul, which consent may be granted or denied in the City’s sole and absolute discretion. Events are subject to availability of space. The specific time schedule of entry onto the CITY Property and the permitted activities and actions to be taken by Licensee are described on Exhibit B attached hereto (the “Permitted Activities”). No other activities shall be conducted on the CITY Property. The responsibilities of the CITY are set forth in Exhibit C.

C. The CITY is willing to grant to Licensee a license to conduct the Permitted Activities on the CITY Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **GRANT OF LICENSE.** The CITY hereby grants to Licensee, its employees, and contractors a non-exclusive license to enter into and upon the CITY Property (the “License”), solely and exclusively for the purpose of conducting the Permitted Activities on the CITY Property. This Agreement is granted subject to all the terms and conditions set forth herein. Licensee acknowledges and agrees that this Agreement creates a license only and that Licensee does not, and shall not claim any title, interest or estate of any kind or extent whatsoever, including,

but not limited to any fee, leasehold or easement interest in the CITY Property by virtue of this License or Licensee's use of the CITY Property in accordance herewith.

2. RESTRICTIONS ON USE OF LICENSE. In addition to the restrictions upon usage of the CITY Property as expressly described herein and necessarily implied by the License granted by Section 1 above, Licensee shall exercise all reasonable efforts to undertake all aspects of the Permitted Activities in the least intrusive manner possible, so as to minimize the impact and effect such activities may have upon the CITY and the general public's use of adjacent streets and sidewalks, except as set forth in Exhibit B.

3. EMPLOYEES, AGENTS, AND CUSTOMERS. The Permitted Activities may be performed by Licensee through its employees, agents, and contractors. For the purposes of this Agreement, the actions and omissions of such employees, agents, and contractors shall be deemed to be the actions and omissions of Licensee.

4. ACCESS TO PROPERTY FOR INSPECTION. Licensee shall permit governmental authorities with jurisdiction over the Permitted Activities and CITY employees and representatives to enter the CITY Property for the purpose of inspecting or monitoring progress of the Permitted Activities. Licensee shall permit the agents and representatives of any insurance companies that are insuring the CITY Property, the Permitted Activities or Licensee access to the CITY Property for the purpose of monitoring progress of the Permitted Activities.

5. TERM. The term of this Agreement shall commence as of the Effective Date (as defined in Section 15 below) and shall end on October 3 2021. Upon termination of this Agreement, the Licensee shall restore the CITY Property to a condition that is at least as good as the condition on the date of this Agreement and shall leave the CITY Property in a broom clean condition.

6. LIENS. Licensee shall not permit any lien or encumbrance upon the CITY Property resulting from its activities thereon.

7. DAMAGE TO PROPERTY, MAINTENANCE, SIGNAGE. If any of the CITY Property is damaged by Licensee in connection with the Permitted Activities, Licensee shall, upon request by the IMPARK or the CITY, promptly repair (or arrange for the repair of) such damage at the sole cost and expense of Licensee. Licensee shall not construct any buildings or other improvements or place signage on the CITY Property without the prior written consent of the CITY.

8. INDEMNITY. Licensee shall indemnify, defend and hold harmless the GROWERS ASSOCIATION, IMPARK, the CITY and the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota ("HRA") against any and all claims, demands, actions, suits, judgments, losses, damages, expenses, penalties, fines, sanctions, court costs, litigation costs, and reasonable attorneys' fees (collectively referred to herein as "Claims") asserted against or incurred by the CITY or HRA, its successors, designees and assigns, for injuries to persons and/or entities

(including, without limitation, loss of life), for damage, destruction or theft of property, or for any other losses or liabilities that may be sustained directly or indirectly due to the condition of the CITY Property or the activities, operations or use of the CITY Property by Licensee, its successors, guests, customers, business invitees, agents, employees, and contractors of any kind, and all those claiming by or through them.

9. **CONDITION OF PROPERTY; ASSUMPTION OF RISK.** Licensee acknowledges that it (a) has physically inspected the CITY Property, and (b) accepts the CITY Property with full knowledge of the condition thereof, without any representations or warranties of any kind from the GROWERS ASSOCIATION, IMPARK or the CITY. Licensee is also fully aware of the risks of using the CITY Property and knowingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the CITY Property.

10. **INSURANCE.** Licensee shall at its own expense obtain and keep in force, during the term of this Agreement, (i) a commercial general liability insurance policy in an amount not less than Two Million and no/100 Dollars (\$2,000,000.00) per person per occurrence and Five Million and no/100 Dollars (\$5,000,000.00) in the aggregate for bodily injury, including death, and Two Million and no/100 Dollars (\$2,000,000.00) per person per occurrence and Five Million and no/100 Dollars (\$5,000,000.00) in the aggregate for property damage, such policy to include express coverage for the liabilities assumed by Licensee under this Agreement; (ii) commercial automobile liability insurance with a combined single limit of at least Two Million and no/100 Dollars (\$2,000,000.00) per accident; and (iii) worker's compensation insurance in conformity with applicable laws and (iv) liquor liability coverage in a suitable amount approved by CITY. The commercial general liability policies shall contain an endorsement naming the IMPARK, the GROWERS ASSOCIATION, CITY and HRA as additional named insureds as to the actions and omissions committed by Licensee, its employees, agents, and customers for which the CITY or HRA could be held responsible. Prior to entering on the CITY Property, the Licensee shall furnish certificates of insurance evidencing compliance with this Section, with coverage effective as of the date the Permitted Activities are commenced, and a provision requiring written notice to the CITY of cancellation or change in the policy.

11. **PERMITS AND LICENSES; COMPLIANCE WITH LAWS.** Licensee shall secure all permits, approvals and licenses required in connection with the Permitted Activities, including without limitation temporary liquor licenses, block party permit and noise permit if any is required, and shall comply with all laws applicable to the Permitted Activities including, but not limited to, any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Further, Licensee acknowledges and agrees that all Permitted Activities shall comply with the code and ordinances of the City of Saint Paul.

12. **FEE, DAMAGE DEPOSIT, AND UTILITIES.** (a) The Licensee shall pay a fee of \$200.00/event to REEF/Impark prior to each event date. (b) Licensee shall be solely responsible to pay for rubbish removal and clean up.

13. **DEFAULT; ENFORCEMENT OF AGREEMENT.** In the event of a breach or a threatened breach by Licensee of its obligations under this Agreement, and after the CITY's delivery of five (5) days' prior written notice of said breach or threatened breach (or, without any notice in the event of an emergency where public health or safety is endangered), Licensee agrees that it shall immediately surrender and vacate the CITY Property and restore the CITY Property to a condition that is at least as good as the condition on the date of this Agreement. Licensee further acknowledges and agrees that no remedy conferred upon or reserved to the CITY is intended to be exclusive of any other available remedy or remedies, and thus the CITY shall be entitled forthwith to full and adequate other relief under both law and equity to enforce Licensee's obligations hereunder, including, but not limited to an action for money damages. If Licensee defaults under any of the provisions of this Agreement and the CITY employs attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of Licensee, Licensee will on demand pay to the CITY the reasonable fee of such attorneys and such other expenses so incurred.

14. **TITLE TO PROPERTY.** The CITY makes no representations or warranties whatsoever regarding its title to the CITY Property.

15. **AGREEMENT EFFECTIVE WHEN SIGNED.** This Agreement shall become effective on the execution and delivery by both parties (the "Effective Date").

16. **TRANSFER/ASSIGNMENT.** Licensee shall not transfer or assign any of its rights hereunder without the prior written consent of the CITY. Any such transfer or assignment made without the prior written consent of the CITY shall be null and void and of no force or effect and shall entitle the CITY to terminate this Agreement.

17. **GOVERNING LAW, VENUE.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota, without reference to the choice of law rules thereof. All litigation arising out of this Agreement shall be venued in Ramsey County district court.

18. **ENTIRE AGREEMENT.** This Agreement is the full, complete, and entire agreement of the parties with respect to the subjects hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement.

19. **HEADINGS.** The headings used in this Agreement are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this Agreement.

20. **SINGULAR AND PLURAL.** As used in this Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this Agreement shall be deemed to

include such changes to the accompanying verbiage as may be necessary to conform to the change from a singular to plural, or vice versa.

21. SURVIVAL. The terms and conditions of Sections 7, 8, 9, 10, 12, 13 and 14 shall survive the expiration or termination of this Agreement or the License.

22. COUNTERPARTS, ELECTRONIC SIGNATURE. This Agreement may be executed in counterparts, all of which when taken together shall constitute one and the same agreement. An electronic signature is as valid as an original signature.

23. LIMITED REMEDIES AGAINST CITY. In the event that the CITY fails to perform any of its obligations under this Agreement, the sole remedy of the Licensee is to bring an action for specific performance, and in no event does the Licensee have any claim for direct, consequential and/or incidental damages under this Agreement or by law or equity.

IN WITNESS WHEREOF, the parties have executed this Agreement.

[Signature pages to follow]

CITY OF SAINT PAUL, MINNESOTA

Approved as to form:

Assistant City Attorney

Date: June ____, 2021

By: _____
Its: Mayor

By: _____
Its: Director, Department of Planning and Economic
Development

By: _____
Its: Director, Office of Financial Services

LICENSEE

Big River Pizza

Date: June ____, 2021

By _____
Its _____

EXHIBIT A

Legal Description of CITY Property

Lots 1 thru 6, Block 13, Whitney and Smith's Addition and that portion of Kittson's Addition adjacent thereto and lying between said lots 1 thru 6 and Broadway Street and between Fourth Street and Fifth Street.

Exhibit B

Big River Pizza intends to have free community events at the farmers market space. Big River Pizza intend to sell food/alcohol and provide live and televised entertainment. All events will have appropriate approvals, insurance, and licensing. Additional dates and times will require prior written approval from City of St Paul, which may be granted or denied in the City's sole and absolute discretion.

The events as described above are approved for the following Saturdays and for and limited to the following times:

5/29
6/5,6,26
7/10,7/24
8/14,8/28
9/4,9/18
10/2

Times of operation:

3 pm or when Big River Pizza receives approval from Market Manager, then and only then may Big River Pizza begin set up

Sound Check 4pm-430 pm

Music to begin 4:30 pm and to go no later than 11:00 pm

Area of use and surroundings are to be cleaned and ready for the market no later 12 a.m.

All activities to be subject to applying and receiving all required licenses and permits from the City or any appropriate governmental body.

Area of event

The portion of the City Property available for Licensee's event for setup and event activities are shown in blue, yellow, and red per the attached EXHIBIT BB.

Exhibit BB Attached

EXHIBIT BB

[Attach drawing of City Property]

Exhibit BB attached.

EXHIBIT C

CITY's Responsibilities

The Licensee shall assume full responsibility for any injuries and/or property damage caused by the CITY Property's condition.

The City agrees to allow Licensee to use at no cost the existing power outlets on the site, and 2 restrooms.