JOINT STATEMENT OF STIPULATIONS

Pursuant to a resolution reached between the Parties on or about August 15, 2024, Respondent Peters Market Inc., d/b/a Peters Market ("Respondent" or "Peters Market") and the City of St. Paul (the "City"), jointly enter to the following stipulations of fact to which the Parties jointly agree occurred as described herein.

1. Peters Market operates a business located at 530 Saint Peter Street, Saint Paul, Minnesota (the "Premises").

2. Peters Market holds a Tobacco Shop License, License ID #20200001649 (the "License") for the Premises.

3. Under Saint Paul Legislative Code ("SPLC") Section 324.07(j), "[n]o person may sell, offer for sale, or otherwise distribute any flavored [tobacco] products, unless exempted under section 324.07(*l*)," None of the exceptions under Section 324.07(*l*) apply to this proceeding.

4. As relevant to this proceeding, the SPLC defines a Flavored Tobacco Product as "any tobacco product . . . that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product . . . including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice." St. Paul Legislative Code § 324.03(5).

5. On or about May 12, 2022, the City's Department of Safety and Inspections ("DSI") conducted a complaint inspection at the Premises (the "May 2022 Inspection").

6. The May 2022 Inspection was performed after DSI received a complaint that Flavored Tobacco Products were being sold at the Premises.

7. When he arrived at the Premises for the May 2022 Inspection, DSI Inspector Joseph

Voyda observed Flavored Tobacco Products "[i]n plain sight behind the counter/cash register." Additional Flavored Tobacco Products were located in a glass display case and "hidden behind bags and boxes under the counter" behind lottery tickets.

8. The Flavored Tobacco Products found at the Premises during the May 2022 Inspection were on display shelves and appeared organized for sale, including with a display of pricing information. The City provided notice of the violation to Peters Market which detailed an alleged violation of SPLC § 324.07(j) and discussed options for its resolution.

9. Peters Market choose the option of not responding to the notice so the violation was deemed to be admitted and was placed on the City Council agenda for consideration of the presumptive penalty of a ten-day license suspension.

10. On August 24, 2022, the City passed Resolution 22-1286, approving a ten-day suspension of the License for the violation of Saint Paul Legislative Code § 324.07(j) for products found at the Premises during the May 2022 Inspection.

11. The License was suspended from 12:01 a.m. on Friday, September 2, 2022, until 11:59 p.m. on Sunday September 11, 2022.

12. Peters Market fully complied with the terms of the September 2022 suspension of the License.

13. On January 26, 2023, Inspector Voyda received a complaint that the Minnesota Department of Revenue had found Menthol cigarettes in a drawer by the cash register at the Premises.

14. The following day, Inspector Voyda and DSI Inspector Allan Vang performed a complaint inspection at the Premises (the "January 2023 Inspection").

15. During the January 2023 Inspection, Inspector Voyda asked Inspector Vang to "go get

some menthol tobacco." Inspector Vang entered the Premises and asked to purchase a pack of Newport Menthol cigarettes.

16. The clerk at the premises informed Inspector Vang that the Premises did not sell Newport Menthols.

17. Inspector Vang then turned and walked toward the outer door of the Premises, at which point Inspector Voyda entered the store.

18. Inspector Voyda and Inspector Vang located the following tobacco products in a metal filing cabinet at the Premises:

    a. Thirty-one (31) packs of Newport Menthol cigarettes;

    b. One (1) carton – consisting of ten (10) packs – of Newport Menthol cigarettes;

    c. One (1) pack of mint-flavor Al Fakher;

    d. One (1) pack of Winner Menthol cigarettes;

    e. Three (3) packs of Black & Mild Wine cigars;

    f. Two (2) Black & Mild Wine Cigars in an open box;

    g. One (1) pack of Twisted Palm Island Hopper cigars;

    h. One (1) pack of Dutch OG Fusion cigarillos;

    i. One (1) pack of Dutch Leaf cigars;

    j. One (1) pack of Blow vape;

    k. One (1) pack of Zig-Zag Blue Dream Hemp Wraps;

    l. Two (2) packs of Backwoods Honey cigars;

    m. One (1) GST Plus Lush Ice vape;

    n. One (1) pack of Backwoods Honey Bourbon cigars;

    o. One (1) pack of Backwoods Banana cigars;

    p. One (1) Cali 2K Mango Ice vape;

q. One (1) pack of Backwoods Honey Berry cigars;

r. One (1) pack of Frontoleafmaster Palma cigar wrap;

s. One (1) pack of Al Capone Rum leaf wrap;

t. One (1) pack Backwoods Russian Cream cigars; and

u. One (1) pack High Hemp Vegan Organic herbal wraps.

These products are collectively referred to in this document as the "Filing Cabinet Products." The filing cabinet was not visible from the public area of the store.

19. At least some of the Filing Cabinet Products constitute Flavored Tobacco Products under the Saint Paul Legislative Code. Specifically, the Parties stipulate that the Filing Cabinet Products identified at Paragraph 14(a)-(f), (*l*), (n)-(q), (s) & (t), above, constitute Flavored Tobacco Products. The Parties dispute whether any product located on the Premises during the January 2023 Inspection other than those identified in the previous sentence constitutes a Flavored Tobacco Product.

20. There were no advertisements for any of the Filing Cabinet Products or any other Flavored Tobacco Product on the Premises during the January 2023 Inspection.

21. There was no pricing information for any of the Filing Cabinet Products or any other Flavored Tobacco Product on the Premises during the January 2023 Inspection.

22. The City did not observe any sale of Flavored Tobacco Product at the Premises during the January 2023 Inspection.

23. The City did not observe any distribution of Flavored Tobacco Product at the Premises during the January 2023 Inspection.

24. On or about February 27, 2023, the City issued a Notice of Violation to Peters Market (the "2023 Notice").

25. The only code provision that the City alleges that Peters Market violated in the 2023 Notice was an alleged violation of Saint Paul Legislative Code § 324.07(j).

26. On March 10, 2023, Peters Market timely requested a hearing before an Administrative Law Judge regarding the 2023 Notice.

27. On June 15, 2023, the City served discovery requests on Peters Market that requested, among other things,

    a. To produce all non-privileged correspondence, internal memos, e-mails, and other documents evidencing or related to the acquisition, inventory or sale of the tobacco products identified in the Inspector's Report;

    b. To identify the source (supplier, distributor, wholesaler or other) from which you acquired each of the tobacco products identified in the Inspector's Report;

    c. To identify all invoices, spreadsheets, logs, books, receipts, and other documents that evidence or relate to your acquisition, inventory or sale of Newport Menthol tobacco products from May 13, 2022, through January 27, 2023;

    d. To identify all invoices, spreadsheets, logs, books, receipts, and other documents that evidence or relate to your acquisition, inventory or sale of Flavored Tobacco Products from May 13, 2022, through January 27, 2023.

28. On July 28, 2023, Peters Market responded to the City's discovery requests and provided invoices only from Core-Mark and Golden Valley Wholesale. These invoices did not include any purchases of Newport Menthol tobacco or any other Flavored Tobacco Product. The documents produced by Peters Market and the Interrogatory responses did not provide any data or information from Costco Wholesale Corporation ("Costco") nor did Peters Market identify where the Newport Menthol tobacco products

had been purchased, stating only that "[t]he majority of the items listed in the Inspector's Report . . . had been purchased by Peters Market before the May 12, 2022 inspection that led to the earlier suspension" and then placed below the counter out of sight and "no longer sold, distributed, or offered for sale."

29. On June 7, 2024, the City obtained a subpoena from Administrative Law Judge Kimberly Middendorf issued to Costco and requested that all receipts, invoices, or documents regarding the sale of tobacco products to Peters Market between May 13, 2022, and June 5, 2024.

30. On June 25, 2024, Costco provided documents in response to the subpoena and these documents established that Peters Market, from May 13, 2022, through June 5, 2024, purchased 421 units of Flavored Tobacco Products, totaling $45,275.15 (the "Costco Flavored Tobacco"). The Costco Flavored Tobacco products consisted of:

    a. 371 cartons of Newport Box 100; each carton contained 10 packs of Menthol cigarettes. The total cost for these products was $40,286.99.

    b. 44 cartons of Newport King Box; each carton contained 10 packs of Menthol cigarettes. The total cost for these products was $4,781.82.

    c. Six logs/rolls of Grizzley Wintergreen Flavored Tobacco. The total cost for these products was $206.34.

31. Before Costco produced evidence of the Costco Flavored Tobacco, Peters Market never provided any documents or information that it purchased any tobacco or Flavored Tobacco Products from Costco, despite specific discovery requests.

32. Peters Market did not provide the Costco Flavored Tobacco documents in response to the City's discovery requests even though the Costco records are responsive to the City's discovery requests.

33. Peters Market sold, offered for sale, or otherwise distributed Flavored Tobacco Products, specifically menthol cigarettes, within the City and in violation of St. Paul Legislative Code 324.07(j).

34. In consideration of the stipulations stated above, Peters Market agrees to withdraw (and in fact has withdrawn) its request for a hearing before the Office of Administrative Hearings. Pursuant to that request, the Office of Administrative Hearings dismissed the proceeding on August 21, 2024.

35. Nothing in this Joint Statement of Stipulations should be construed as an agreement between the Parties as to the propriety of any sanction for Peters Market's violation of St. Paul Legislative Code § 324.07(j) or any award of attorney fees under St. Paul Legislative Code § 324.03(k). For avoidance of doubt, Peters Market understands that this matter will be calendared before the City Council by resolution that may contain the facts as stipulated above as well as the recommendation of DSI for imposition of the presumptive penalty (revocation of the License) and for the imposition of costs in the form of outside attorney fees under Section 310.03(k); and Peters Market reserves its right to argue before the City Council against the imposition of that (or any) penalty and award of costs. Notwithstanding anything to the contrary, the City agrees not to seek any further imposition of costs – other than outside attorney fees – under Section 310.03(k) or fines under Section 310.03(*l*).

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Dated: December 10, 2024

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