

LEASE AGREEMENT
Between
THE CITY OF BOISE CITY, IDAHO
And
WEST END FOOD PARK, LLC

THIS LEASE AGREEMENT (the “Lease,” the “Lease Agreement,” or the “Agreement”), entered into as of the dates identified herein, between the city of Boise City, an Idaho municipal corporation (“Lessor”) and West End Food Park, LLC, an Idaho limited liability company (“Lessee”);

WITNESSETH: In consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

ARTICLE I: PREMISES

1.01 Premises. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the real property located in Ada County, Idaho, as depicted on **Exhibit A**, which is attached hereto and incorporated herein by reference. The property is hereinafter referred to as the "Premises" or the "Leased Premises.”

1.02 Parking. Lessor also grants Lessee a non-exclusive, temporary, unrecorded easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over, and across the adjacent parking lot (depicted on **Exhibit A**, attached hereto and incorporated herein by reference) owned by Lessor and located immediately east of the Premises, subject to the terms and conditions contained herein, including (but not limited to) the following:

A. Parking in the adjacent parking lot by Lessee’s patrons and customers shall be based upon availability; and

B. Lessee and Lessee’s subtenants, patrons, and customers shall not be guaranteed a minimum number of available parking stalls on any specific day or at any specific time.

C. Lessor may re-arrange, reconfigure, or re-paint the adjacent parking lot from time to time, without notice to, or consent from, Lessee; and

D. The only authorized use of the adjacent parking lot by Lessee is for the temporary parking of passenger vehicles by Lessee, its patrons and customers, its sub-lessees, and its sub-lessees' patrons and customers; and

E. Lessor is under no obligation to maintain or guarantee the condition of the parking lot described herein; and

F. Any and all liability legally belonging to Lessee or imputed to Lessee by the terms of this Lease for Lessee's use of the Premises shall also apply to Lessee's use of the adjacent parking lot; and

G. Lessee shall not charge a monetary fee for access to or use of the adjacent parking lot; and

H. This easement shall not be recorded; and

I. This easement is temporary, and shall automatically terminate, without action by or notice from either Party, upon the cancelation, termination, or expiration of this Agreement.

ARTICLE II: LEASE TERM

2.01 Term. This Lease shall be for a term of six (6) months and shall commence on the **1st day of June, 2014**, and shall end on the **30th day of November, 2014** (the "Initial Term"). At the end of the Initial Term, and subject to the provisions of paragraph 2.03 (below) governing written termination and/or sale of the Premises, this Lease Agreement shall continue for successive terms of one (1) month, on a month-to-month basis. After the Initial Term, this Lease shall be freely terminable at any time by either Party by providing a minimum of thirty (30) days written notice to the other Party.

2.02 Holding Over. Holding over is expressly prohibited; provided, however, that the Parties understand and agree that any holding over by Lessee of the Leased Premises at the expiration, termination, or cancellation of this Lease, for any reason, including, but not limited to, default for any reason, or natural expiration, shall operate, and be construed as a tenancy from month-to-month at the same monthly rental rate as during the Initial Term. Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will or in violation of this provision after the expiration, termination, or cancellation of this Lease, regardless of whether such loss or damage is foreseen or contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration, termination, or

cancellation of this Lease, or after the service of any notice, the commencement of any suit, or final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease or affect any such notice, demand, or suit, or imply consent for any action for which Lessor's consent is required, or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

2.03 Transfer of Lessor's Interest. Lessee understands that Lessor intends to sell the Premises.

A. Lessor shall provide Lessee with a minimum of sixty (60) days' notice of the City's intent to actively market the Premises, or any part thereof, for sale.

B. In the event the Premises or any part thereof, or adjacent parking lot or any other real property contiguous or adjacent to the Premises, is sold, exchanged, conveyed, or transferred by the Lessor, other than a transfer for security purposes only, the Lessor shall be relieved from all obligations and liabilities on the part of the Lessor accruing from the date of closing of the sale, exchange, conveyance or transfer.

C. Lessee understands and agrees that, following the Initial Term, this Lease may be terminated by either Party, or by the successors, assigns, legal representatives, heirs, executors, or administrators of either party, upon thirty (30) days written notice.

ARTICLE III: RENTAL

3.01 Ground Rental. The monthly rental (Base Rent) for the Leased Premises shall be Five Hundred Dollars (\$500.00) per month during the Initial Term of the Lease and any successive one (1) month terms until this Lease Agreement is terminated, pursuant to Paragraph 2.01, above.

3.02 Commencement of Base Rent - Three (3) Month Abatement of Base Rent. Payment of Base Rent by Lessee to Lessor shall commence on **September 1, 2014**. This represents a three (3) month abatement of the Base Rent payment required pursuant to this Lease, and shall affect only the Initial Term of the Lease. This three (3) month abatement of Base Rent payments shall not release either Party from any obligation, duty, or responsibility it has under this Lease.

3.03 Time of Payment. The payment of Base Rent by the Lessee shall be made monthly, in advance, on or before the first day of each and every month during the term of this Lease, without notice from Lessor.

3.04 Security Deposit. Contemporaneous with the execution of this Agreement, Lessee shall deposit the sum of One Thousand Dollars (\$1,000.00) as a security deposit to serve as a guarantee that Lessee will comply with all of the terms, covenants, and conditions of this Agreement. In the event Lessee breaches any of the terms, covenants, or conditions of this Agreement and Lessor incurs costs, expenses, or other damages as a result thereof, such costs, expenses or other damages may, at Lessor's option, be paid from said security deposit, and Lessee agrees to immediately, upon Lessor's demand, replenish the security deposit to restore it to its original amount. In the event Lessee breaches any of the terms, covenants, or conditions of this agreement, Lessor may, at Lessor's sole option, perform such term, covenant, or condition, or may cause the same to be performed, and any cost or expense incurred by Lessor (including reasonable compensation for Lessor's time spent in performing said breached term, covenant, or condition) may, at Lessor's sole option, be paid from the security deposit. Lessee agrees, immediately upon Lessor's demand, to replenish the security deposit to restore it to its original amount. Nothing in this Paragraph 3.04, including the amount of security deposit required, shall be construed as a limit or waiver of damages incurred by Lessor as a result of any breach of this Agreement by Lessee.

3.05 Partial Reimbursement for Improvements. Within five (5) business days of Lessor's completion of the improvements to the Premises specified in Paragraph 4.02 (below), or within five (5) business days of the day on which Lessee, or any of Lessee's sub-lessees, opens for business on the Premises, Lessee shall reimburse Lessor for improvements made to the Premises by Lessor, up to a total maximum amount of five hundred dollars (\$500).

3.06 Unpaid Rent, Fees and Charges. Any installment of Base Rent, fees, or other charges or monies accruing under any provision of this Lease that is not received by Lessor by the 10th day of the month in which payment is due shall bear interest at the rate of eighteen percent (18%) per annum from the date due, according to the terms of this Lease, until paid-in-full by Lessee.

3.07 Place of Payment. All payments required to be made by Lessee shall be paid to Lessor at the following address:

Boise City
Mayor's Office - Economic Development
Post Office Box 500
Boise, Idaho 83701

ARTICLE IV: OBLIGATIONS OF LESSOR

4.01 General. Lessor agrees that upon Lessee's payment of rent and performance of all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised under the terms and conditions provided herein, subject to Lessor's right of access as described in Paragraph 5.14, below. Lessor has no knowledge, or any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder, and to do so throughout the Initial Term and any renewals or extensions thereof, subject to the provisions of Article II, above.

4.02 Condition of Premises. Lessor agrees to make the following improvements to the Premises prior to commencement of the Initial Term, or as quickly thereafter as reasonably possible:

A. Provide an electrical power connection to the Premises and repair a minimum of four (4) lights total within the Premises and the adjacent parking lot.

B. Provide a usable potable water connection to the Premises.

C. Repair existing light poles on the Premises to accommodate the lights repaired pursuant to 4.02 A., above.

D. Paint lines specifying food truck locations, which shall be jointly determined and agreed upon by the Parties.

E. Install and maintain such traffic control devices as will clearly outline, delineate, and separate appropriate ingress and egress from the Premises. Such traffic control devices shall be placed as required to maintain traffic flow and secured in such a manner as will reasonably prevent ingress or egress except through designated entrance(s) and exit(s), respectively.

ARTICLE V: OBLIGATIONS OF LESSEE

5.01 Net Lease. This Lease shall be without cost to Lessor, excepting Lessor's obligations specifically set forth in Article IV, above, and elsewhere in this Lease Agreement.

5.02 Obligations of Lessee. Lessee shall do all of the following:

A. Prior to occupying, using, or improving the Premises, at Lessee's sole expense, apply for and receive any and all permits required by any governmental entity in order to occupy, use, and improve the Premises for its permitted uses, as those uses are

set forth herein; and

B. Keep and maintain the Leased Premises and improvements located thereon in a good state of repair at all times; and

C. Pay all *ad valorem* taxes and similar taxes assessed against Lessee's interest in the Leased Premises and improvements, and all of Lessee's personal property located on the Leased Premises; and

D. Pay all casualty and liability insurance premiums required in accordance with Article VI, below; and

E. Comply with traffic control devices placed by Lessor regarding ingress and egress from Premises; and

F. Comply with all health and safety laws, statutes, ordinances, rules, and regulations.

5.03 Temporary Signs, Advertisements, or Banners. Subject to the terms, conditions, and restrictions of this Lease and any all requirements and restrictions for signs contained in the Boise City Code or applicable rules and regulations, Lessee may place or install temporary signs, advertisements, or banners on the Premises.

A. The number, size, design, and contents of all signs, advertisements, and banners on the Premises shall be subject to prior review and approval by the Lessor, after review and approval by any authorized regulatory agencies (such as Boise City Planning & Development Services).

B. All advertisements and signage shall clearly indicate the temporary nature of Lessee's use of the location as the West End Food Park.

5.04 Additional Services at Lessee's Expense. At Lessee's sole expense, Lessee may obtain phone, electrical, or other services consistent with any recorded utility easement obtained by the Lessee. Lessor shall cooperate with Lessee and utility service provider. The Lessee shall pay for any and all costs resulting from the installation, maintenance, or use of utilities in connection with its use of the Premises and its sub-lessees' use of the Premises, except as otherwise provided in Article IV, above. The Lessee shall pay all costs for using all utilities including, but not limited to, telephone, Internet, electricity, sewer, etc. on and for the Premises.

5.05 Electricity Charges - Lights for Adjacent Parking Lot. The Lessee shall pay the total cost for electricity for the operation of the pole-mounted overhead lights located within the

adjacent parking lot (as depicted in **Exhibit A**).

5.05 Condition of Premises. Subject to completion of improvements addressed in section 4.02, above, Lessee accepts the Leased Premises in their present condition. Any and all improvements by Lessee related to configuration, set-up, and arrangement of food trucks are subject to the prior written approval of Lessor. Lessee has the right to make the following improvements to the Premises:

A. Install electrical connections and outlets near individual food truck parking stalls; and

B. Adapt the existing sewer connection on the Premises to a greywater dumpsite, appropriate to accommodate the intended use, in the approximate location shown on the site plan on **Exhibit A**; and

C. Remove remaining tree stumps, if any, on the Premises.

5.06 Suitability of Leased Premises. Subject to completion of the improvements described in this Lease, Lessee agrees that the Leased Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon.

5.07 Maintenance of Premises. Lessee agrees to maintain any improvements upon the Leased Premises in a good state of repair and condition, including the appearance of the improvements. Lessee further agrees to keep the grounds in a neat and orderly condition. Landscaped areas, if any, shall be watered, trimmed, and weeded as necessary to maintain a healthy, neat appearance. Weeds in non-landscaped areas shall be kept cut close to the ground. Lessee shall not allow any trash or litter to accumulate on the Premises. If, following notice from Lessor, Lessee fails to make any necessary repairs or perform any necessary maintenance for which Lessee is responsible under this Lease, Lessor may cause such repairs or maintenance to be performed, and Lessor's costs of doing so will be payable as additional rent, due by the 10th day of the month following Lessee's receipt of Lessor's invoice.

5.08 Trash, Garbage, Etc. Lessee shall make suitable arrangements for the storage, collection, and removal of all trash, garbage, and other refuse on the Leased Premises. Lessee shall provide appropriate, covered, commercial-type receptacles for such trash, garbage, and other refuse, and shall maintain the receptacles fully screened from view from adjoining properties or public streets and in an attractive, safe, and sanitary manner.

5.09 Permitted Uses. Lessee will not enter into any business activities on the Leased

Premises other than those stated as follows:

The temporary parking and operation of a food truck park.

5.10 Outdoor Storage. Lessee shall be permitted to store equipment and materials on the Leased Premises. Outdoor storage shall be within a locked fenced enclosure. This clause shall not be construed as approval for Lessee to maintain, either in reality or appearance, a junkyard or salvage yard.

5.11 Environmental Compliance. In conducting any activity or business on the Leased Premises or in conducting any environmental response or remedial activities, Lessee shall comply with all environmental laws. If the Lessee fails to comply with any applicable environmental law, the Lessor may enter the premises and take all reasonable and necessary measures, as determined solely by the Lessor, to ensure compliance with environmental laws. Any and all measures taken by Lessor pursuant to this paragraph shall be at the Lessee's expense. In the event of a release or a threatened release of hazardous materials, hazardous wastes, or other contaminants into the environment relating to or arising out of Lessee's use or occupancy of the Leased Premises, or in the event of any claim, demand, action, or notice is made against the Lessee regarding the Lessee's failure or alleged failure to comply with any environmental law, the Lessee immediately shall notify the Lessor in writing and shall provide the Lessor with copies of any written claims, demands, notices, or actions so made.

5.12 Environmental Remediation. The Lessee shall undertake such steps to remedy, remove, and/or remediate any hazardous materials or hazardous wastes or any other environmental contamination caused by the Lessee on or under the Leased Premises, as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Leased Premises into compliance with all environmental laws. Such work is to be performed at the Lessee's sole expense after the Lessee submits to the Lessor a written plan for completing the work and receives the prior written approval of the Lessor, which approval shall not be unreasonably conditioned, delayed, or denied. The parties mutually agree that Lessee's liability for Environmental Remediation shall be limited to damages directly caused by Lessee's use and/or occupancy. Lessee shall not be responsible for remediation and/or increased remediation costs as a result of the conditions existing on the real property at the time this Lease is entered into.

5.13 Limitation of Environmental Liability. The terms and provisions of Paragraphs

5.11 and 5.12, above, shall not apply to existing environmental issues or problems on the Premises that occurred prior to Lessee occupying, using, and/or improving the Premises or pre-date this Lease Agreement.

5.14 Right of Access. Lessor shall have the right to access the Premises for the purposes of showing the Premises to prospective buyers, posting signs advertising the sale or other disposition of real property (including, but not limited to, the Leased Premises), and/or for the purpose of conducting any inspection of the Premises.

5.15 Temporary Lease - Not a Permanent Location. Lessee understands the temporary nature of this Lease. Lessee further understands that is the Lessor's express intent to sell the real property that comprises the Premises. As such, Lessee shall take no actions and make no statements that may reasonably be construed as negative or disparaging either to the temporary nature of this Lease or to the Lessor's express intent to sell the Premises. During the Initial Term of this Lease, and expressly continuing thereafter, the Lessee shall not advocate for the permanent location of the food truck park on the Premises. This provision shall be deemed as separate and independent from the Lease in the event there is any default, termination, or expiration of the Lease, and shall survive such default, termination, or expiration of this Agreement.

ARTICLE VI: INDEMNIFICATION AND INSURANCE

6.01 Indemnification. To the fullest extent permitted by law, Lessee shall indemnify, save, and hold harmless Lessor, its elected officials, officers, employees, agents, and volunteers, from and for any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property, and all losses and expenses, including reasonable attorney fees, arising from all acts or omissions to act of Lessee or its servants, officers, agents, employees, sub-lessees, guests, and business invitees, patrons, and customers or otherwise caused or incurred by Lessee, its servants, officers, agents, employees, sub-lessees, guests, and business invitees, patrons, and customers, including, but not limited to, events occurring on the Premises and any use of the easement on the adjacent parking lot (which easement is granted pursuant to Paragraph 1.02, above), and not caused by or arising out of the tortious conduct of Lessor or its elected officials, officers, employees, agents, servants, or volunteers. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and to save and to hold harmless Lessor, its elected officials, officers, employees, agents, servants, and volunteers. If, as a result of any incident or

occurrence based upon or arising out of any use of the Premises pursuant to this Agreement, the Lessor becomes liable for an amount in excess of the Lessee's insurance limits, Lessee expressly covenants and agrees to indemnify and to save and to hold harmless Lessor, its elected officials, officers, employees, agents, servants, and volunteers, from and for any and all liability, losses, claims, actions, judgments for damages, and/or injury to persons or property and losses, and all expenses, including but not limited to events occurring on the Premises and use of the easement on the adjacent parking lot (which easement is granted pursuant to Paragraph 1.02, above), including reasonable attorney fees, to the extent permitted by law. This provision shall be deemed as separate and independent from the Lease in the event there is any default, termination, or expiration of the Lease, and shall survive such default, termination, or expiration of this Agreement.

6.02 Insurance. The Lessee shall procure and maintain at its expense the following insurance coverage from an insurance company or companies possessing a financial strength rating of at least A- and a financial size category of VII or higher from A.M. Best or an equivalent rating service. Every insurance coverage requirement herein shall be in full effect at all times during the Initial Term of this Agreement and at all times during any and all months of the subsequent month-to-month tenancy that follows the Initial Term. The Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of the Lessee may acquire against the Lessor by virtue of the payment of any loss. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, and this provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer. All of Lessee's policies of insurance shall be primary, and Lessee agrees that any insurance maintained by the Lessor shall be non-contributing with respect to the Lessee's insurance. Lessee shall advise the Lessor of any cancellation, non-renewal, or material change in any policy of insurance within five (5) business days of the Lessee receiving notification of such action.

A. By requiring Lessee to maintain insurance with the Lessor named as an additional insured, herein, the Lessor does not agree that such coverage and limits will necessarily be adequate to protect Lessee and/or Lessor. The Parties expressly agree that such coverage and limits are not a limitation on Lessee's liability under the indemnities granted to the Lessor in this Agreement. The Lessee may use commercial umbrella/excess liability insurance to provide Lessee with the flexibility to select the best

combination of primary and excess limits to meet the total insurance limits required by this Agreement. Any deductibles or self-insured retentions must be declared to and approved in writing by the Lessor. The Lessor may, at the Lessor's sole option, require the Lessee to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The Lessor reserves the right at any time throughout the term of this Agreement to adjust the aforementioned insurance requirements if, in Lessor's reasonable judgment, the insurance required by this Agreement is deemed inadequate to properly protect the Lessor's interests. The Parties both expressly agree that the Lessor reserves the right to modify any portions of the insurance requirements for good cause by providing written notice of the changes to the Lessee.

B. Any failure of the Lessor at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions, nor shall it in any respect reduce the obligations of the Lessee to maintain such insurance or to defend and hold Lessor harmless with respect to any items of injury or damage covered by this Agreement.

C. At the time this Agreement is executed by the Lessee, the Lessee shall provide the Lessor's Risk Manager (currently Corey Pence) with a valid Certificate of Insurance with all amendatory endorsements (or copies of the applicable policy language affecting coverage) exhibiting coverage as required by the Lessor's contract terms and conditions. Failure to obtain and provide the required documentation at the time of execution of this Agreement shall not waive the Lessee's obligation to provide them. The Lessor reserves the right to require complete certified copies of all required insurance policies, including all endorsements required by these specifications, at any time. The Lessee shall be responsible for ensuring that all sub-lessees independently carry insurance appropriate to cover their respective exposure or that all such liabilities are covered under the Lessee's policies of insurance. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25) or other form acceptable to the Lessor. Certificates of Insurance required hereunder shall be issued to the city of Boise City, Office of the Mayor, Department of Economic Development and to Boise City

Purchasing Department, Post Office Box 500, Boise, Idaho 83701.

D. The insurance Lessee is required by this Agreement to carry shall include, at a minimum, the following:

1. Lessee shall carry:

a. A program of workers' compensation insurance in an amount and of a form that meets all applicable statutory requirements, and that specifically covers all employees who provide services by or on behalf of the Lessee and all risks to such persons under this Agreement; and

b. Employers' liability insurance in an amount of the greater of the statutory limit or \$500,000.00.

2. The Lessee shall require every sub-lessee and subcontractor on the Premises to carry workers compensation insurance for himself or herself and for all the sub-lessee's employees working for that sub-lessee. Proof of sub-lessees' insurance shall be provided to Lessor by each sub-lessee prior to entering into a sub-lease with Lessee. Lessor shall have the right, at any time and with reasonable notice, to see, review, and copy all documentation and proof of sub-licensees' insurance required by this Agreement, which documentation and proof the Lessee shall promptly provide to Lessor.

3. Commercial General Liability. Lessee shall carry Commercial General Liability insurance, on an occurrence form, with limits not less than \$1,000,000 per occurrence, with at least a \$2,000,000 general aggregate. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Products-Completed Operations, Personal Injury, and Advertising Injury Liability (\$1,000,000 limit), Premises-Operations, Independent Contractors and Subcontractors, and Fire Legal Liability (\$100,000 limit). Explosion, Collapse, and Underground Property Damage Liability Coverage shall not be excluded. Where applicable, the Products-Completed Operations coverage shall be provided for a minimum of one (1) year following the expiration, termination, or cancelation of this Agreement. Lessor shall be named as an additional insured on the Commercial General Liability (including

completed operations).

4. Commercial Automobile Liability. Lessee shall carry automobile liability insurance with limits not less than \$1,000,000 per occurrence for owned, non-owned and hired vehicles. Where applicable, the Lessor shall be named as an additional insured on the commercial automobile liability insurance.

5. Environmental Impairment Liability. Lessee shall carry Environmental Impairment Liability insurance with limits not less than \$1,000,000 per occurrence for bodily injury, property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden. This requirement can be satisfied by either a separate environmental liability policy or through a modification to the Commercial General Liability policy. Evidence of either must be provided. The Lessor shall be named as an additional insured on the Environmental Impairment Liability.

E. Lessee shall provide a Certificate of Insurance and amendatory policy endorsement or copies of the applicable policy language evidencing Lessee's compliance with the insurance requirements.

ARTICLE VII: EXPIRATION, CANCELLATION, ASSIGNMENT, & TRANSFER

7.01 Expiration. This Lease shall expire at the end of the term or any extension or renewal thereof.

7.02 Cancellation.

A. At any time during the Initial Term or any subsequent month-to-month term, this Lease shall be subject to cancellation by Lessor in the event Lessee:

1. Is in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due; or

2. Holds over its tenancy beyond this Lease and any options expressly identified herein; or

3. Makes any general assignment for the benefit of creditors; or

4. Abandons the Leased Premises; or

5. Defaults in the performance of any of the covenants and conditions

required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee commences and thereafter diligently performs such action as may be reasonably necessary to cure such default; or

6. Is adjudged bankrupt in involuntary bankruptcy proceedings; or

7. Is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

B. In any of the aforesaid events, Lessor may take immediate possession of the Leased Premises, including any and all improvements thereon, and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

C. Failure of Lessor to declare this Lease cancelled upon the default of Lessee shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent default or violation of the terms of this Lease.

D. No receipt or acceptance of money by Lessor from Lessee after the expiration, termination, or cancellation of this Lease, or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease or affect any such notice, demand, or suit or imply consent for any action for which Lessor's consent is required, or operate as a waiver of any right of the Lessor to retake and resume possession of the Leased Premises.

7.03 Repossessing and Re-letting. In the event of default by Lessee that remains uncured after the required notice has been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

A. Enter into and upon the Leased Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and

B. Either cancel this Lease by notice or, without canceling this Lease, re-let

the Leased Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to re-let the Leased Premises and the amounts received from re-letting the Leased Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of re-letting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

7.04 Assignment and Transfer.

A. Lessee shall have the right and privilege to assign or transfer this Lease, subject to the prior written approval of Lessor, which approval may be withheld in the sole discretion of Lessor.

B. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. §§101 *et seq.*, shall be deemed, without further act or deed, to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

7.05 Subleasing. Lessee shall have the right to sublease all or any part of the Premises for the same purposes permitted under the terms and provisions of this Lease. Any such sublease shall be subject to the conditions, obligations, and terms set forth herein, and Lessee shall be responsible for the observance by its sub-lessees of the terms and covenants contained in this Lease. Each sublease shall be subject to the prior written approval of Lessor, which approval shall not be unreasonably withheld. Lessee shall promptly report to Lessor any subleases of the Premises or any part thereof, and shall furnish Lessor with a copy of each and every Sublease Agreement. Any damages incurred as a result of a sub-lessee shall be the sole responsibility of the Lessee.

7.06 Lien by Lessor. It is expressly agreed that in the event of default by Lessee hereunder, Lessor shall have a lien upon all goods, chattels, personal property, or equipment, save and except delivery vehicles or rolling stock, or any other items specifically exempted under law, belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not

be in lieu of or in any way affect any statutory lien given by law, but shall be cumulative thereof. Lessee shall seek permission of the Lessor to subordinate its lien to potential lenders of the Lessee for improvements or for any other reason, which permission shall not be unreasonably withheld by Lessor.

ARTICLE VIII: GENERAL PROVISIONS

8.01 New Construction/Remodel of Existing Improvement. This Agreement is specifically written for the Lease of the Premises, which may or may not have any existing improvements. Proposed construction or remodeling by Lessee must be in accordance with all applicable State and local codes and laws and will require the specific approval of Lessor, and Lessor may require an amendment to the Lease, which may include, but need not be limited to, construction and landscaping standards (such as building-to-land ratios, drainage plans, etc.), additional insurance requirements, rights of Lessee to encumber improvements, and the like. Lessee shall obtain all required permits.

8.02 Return of Land to Pre-lease condition. Upon the expiration, termination, or cancelation of this Lease, the Lessee shall return the Premises to Lessor in the same condition as existed when initially leased, subject to the provisions of this paragraph. Lessor may require Lessee to conduct reasonable, commonly accepted testing procedures, at Lessee's expense, to demonstrate that the Premises have not been degraded during the Lessee's tenancy. Any remediation, repairs, or other actions required to return the property to its original condition shall be solely at Lessee's expense. Any improvements or alterations made to the property by Lessee may be offered to Lessor, at no cost to the Lessor, rather than be removed by Lessee. Acceptance by Lessor may be subject to testing, as stated above, and is at Lessor's sole option.

8.03 Prohibited Uses. The following uses shall not be permitted on the Leased Premises at any time: Residential; trailer courts or mobile home parks; labor camps; junkyards; mining or quarrying; dumping, disposal, incineration, or reduction of garbage, offal, dead animals, or refuse; storing, destroying, or transporting hazardous material or hazardous waste; fat rendering; stockyards or slaughtering of animals; smelting of iron, tin, zinc or any other ore; or large animal raising, feeding, or selling.

8.04 Performance Standards.

A. The Leased Premises shall not be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions, including

but not limited to:

1. Hazardous activities; or
2. Vibration or shock; or
3. Smoke, dust, odor, or other forms of air pollution; or
4. Heat or glare; or
5. Electronic or radio interference; or
6. Illumination; or
7. Other substance, condition, or element in such amount or concentration as to unreasonably affect the surrounding area or adjoining premises.

B. Hazardous Activities: No activity shall be conducted on the Leased Premises that is, may be, or may become hazardous to public health or safety, that increases the fire insurance rating for adjoining property, or that is illegal.

C. Vibration or Shock: No vibration or shock perceptible to a person of normal sensibilities shall be permitted within fifty feet (50') of the property line.

D. Noise: Lessee shall comply with all provisions of the Boise City Code governing and/or restricting noise.

E. Air Pollution: Except for the operation of motor vehicles to, from, and on the Leased Premises as incidental to the use thereof, the following requirements shall apply:

1. Any use, other than those associated with normal food preparation and cooking processes, that produces smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building.

2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Ada County Air Quality Board, any local environmental regulatory body, and any successor organizations performing similar functions, as such regulations exist at the date of this Lease or which may be enacted during the term of this Lease.

3. The emission of foul odors that are detectable at any point beyond the property line of the Leased Premises shall not be permitted.

F. Heat or Glare: Any operation or use producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernable from the property line.

G. Refuse and Trash: The storage, collection, and removal of all trash, garbage, and other refuse shall be as set forth in Paragraph 5.08, above.

8.05 Non-discrimination Covenant. Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration, does hereby covenant and agree as follows:

A. That no person, on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.

B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person, on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

C. That, in the event of breach of any of the above non-discrimination covenants by Lessee, Lessor shall have the right to terminate this Lease and re-enter and repossess said land and the facilities thereon.

8.06 Time is of the Essence. Time is and shall be deemed of the essence with respect to the performance of each term, condition, and provision of this Lease.

8.07 Notices. All notices pursuant to this Lease shall be given by Certified Mail or Registered Mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR:

Boise City Mayor's Office
ATTN: Economic Development
Post Office Box 500
Boise, Idaho 83701

With a Copy To:

Joshua Leonard, Asst. City Attorney
Office of the Boise City Attorney
Post Office Box 500
Boise, Idaho 83701

LESSEE:

West End Food Park, LLC
ATTN: Matthew Sorenson
912 N. 28th Street
Boise, Idaho 83702

With a Copy To:

Notice shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. A Party may change the address to which notices shall be given by sending written notice to all other parties in the manner set forth in this paragraph.

8.08 Attorney's Fees. If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

8.09 Agreement Made in Idaho. The laws of the state of Idaho shall govern the validity, interpretation, performance, and enforcement of this Lease. Venue shall be in the Fourth District Court of Idaho, in and for Ada County.

8.10 Cumulative Rights and Remedies. All rights and remedies of Lessor enumerated herein or allowed by law shall be cumulative, and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy enumerated herein or allowed by law shall not be to the exclusion of any other remedy.

8.11 Interpretation. Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural (and vice versa), unless the context indicates or requires otherwise.

8.12 Agreement Made in Writing. This Lease contains all of the agreements and conditions made between the Parties and may not be modified orally or in any manner other than by agreement in writing signed by both Parties or their respective successors in interest.

8.13 Paragraph Headings. The captions of the various articles, paragraphs, and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, context, or intent of this Lease or any part or parts of this Lease.

8.14 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, the Parties specifically and expressly intend that a provision as similar to such provision that was deemed illegal, invalid, or unenforceable as possible, legal, valid, and enforceable shall be added as part of this Lease.

8.15 Successors and Assigns. All of the terms, provisions, covenants, and conditions of this Lease shall inure to the benefit of, and be binding upon, Lessor and Lessee and their

respective successors, assigns, legal representatives, heirs, executors, and administrators.

8.16 Taxes and Other Charges. The Lessee shall pay all taxes, and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor with respect to the Leased Premises during the Initial Term of this Lease and during every subsequent month-to-month term that follows thereafter. The Lessee, in good faith, may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to the Lessor such action will not adversely affect any right or interest of the Lessor.

8.17 Authorization to Enter into Lease. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the state of Idaho, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

8.18 Effective Date. Regardless of the date signed, this Lease shall be effective beginning **June 1, 2014.**

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the dates handwritten below.

[SIGNATURES FOLLOW ON NEXT PAGE]

For Lessor, Boise City:

Dated this ____ day of _____, 2014.

David H. Bieter
Mayor

ATTEST:

Dated this ____ day of _____, 2014.

Jade Riley
Ex-Officio City Clerk

For Lessee, the West End Food Park:

Dated this 16th day of May, 2014.



Matthew Sorenson
Title: Owner; West End Food Park LLC

EXHIBIT A

Depiction of Leased Premises and Adjacent Parking Lot (with Site Plan)

