

RIVERFRONT FORT WAYNE – TEDS SNACK + BAR

LEASE AGREEMENT

This Lease Agreement (the “Lease”) is entered as of January 23, 2023 (the “Effective Date”) by and between **PERRY ST. MARKET TO GO, LLC d/b/a teds Snack + Bar**, an Indiana limited liability company, 12628 Coldwater Road, Fort Wayne, Indiana 46845 (“Tenant”) and THE CITY OF FORT WAYNE BOARD OF PARK COMMISSIONERS by and through its **PARKS AND RECREATION DEPARTMENT**, 705 East State Boulevard, Fort Wayne, Indiana 46805 (“Landlord”). The Landlord and the Tenant are collectively referred to herein as the “Parties”.

RECITALS:

The Landlord owns and operates Promenade Park, including an enclosed pavilion, located in downtown Fort Wayne, Indiana. Landlord desires to offer quality food and beverage services to patrons, guests, and attendees of Promenade Park in the café located within the pavilion. The Tenant desires to lease the café and designated outdoor space for the purpose of offering such food and beverage services. The Tenant also desires to provide food and beverage catering services at certain scheduled events in Promenade Park for which The Tenant is the selected caterer. In consideration of the mutual covenants herein set forth, the Parties hereto agree as follows:

A. DEFINITIONS

- A.1 “Promenade Park” means the approximately four (4) acre public park owned and operated by The Landlord located on the north and south shores of the St. Mary’s River between the Harrison Street and Old Wells Street Bridges in downtown Fort Wayne, Indiana.
- A.2 “Pavilion” means the Six Thousand Seven Hundred (6700) square foot enclosed structure in Promenade Park known as The Park Foundation Compass Pavilion which is made available by The Landlord for private rentals, as depicted in attached **Exhibit A**.
- A.3 “Premises” means the Café (as defined herein) together with the patio space located immediately adjacent to the entrance to the Cafe (the “Patio Space”) and the outdoor garden dining space located adjacent to the southwest corner of the Café (the “Dining Garden Space”) I, as depicted on attached **Exhibit B**. The Premises is comprised of the total indoor and outdoor space leased by The Landlord to the Tenant hereunder. Tenant acknowledges and agrees that Tenant’s rental of the Dining Garden Space under this Lease is non-exclusive and shall not preclude the occupancy and use of the Dining Garden Space by members of the public who frequent the Dining Garden Space to consume their own food and non-alcoholic beverages.

A.4 "Cafe" means the Eight Hundred Seven (807) square foot café area located at the southwest corner of the Pavilion as depicted on attached **Exhibit B**.

B. TERMS AND CONDITIONS

B.1 **PERMITTED USE.** The Café shall be used by Tenant for the preparation and retail sale of quality food and non-alcoholic beverage products to patrons, guests, and attendees of Promenade Park for consumption in the Café, the Patio Space, and the Dining Garden Space, and for the providing of catering services for certain catered events in Promenade Park for which Tenant is the selected caterer. Tenant shall use the Café, Patio Space, and Dining Space for no other purpose without Landlord's express written consent. The use of any portion of the remainder of Promenade Park by Tenant for any purpose shall require a separate written agreement between the Parties. Tenant shall at all times employ high professional standards and exercise due care in the operation of Tenant's business on the Premises and the occupancy, management, operation, maintenance, and repair of the Premises during the Lease Term (as herein defined). The rights granted to Tenant hereunder, shall not prohibit or restrict Landlord from managing, occupying, operating, and using Promenade Park in the normal cause and in accordance with Landlord's established policies, rules, and regulations as the same may change or be adapted from time to time.

B.2 **LEASE TERM.** The term of this Lease shall commence on January 23, 2023 (the "Commencement Date") and continue through December 31, 2026, unless earlier terminated by The Landlord or The Tenant as provided herein. Provided Tenant is not then in default hereunder, the Lease may be renewed for one consecutive three (3) year term at the expiration of the Lease Term upon the written agreement of the Parties executed at least ninety (90) days prior to the expiration of the Lease Term ("Renewal Period"). The Lease Term and the Renewal Term (if applicable) are referred to herein collectively as the "Lease Term".

B.3 **MONTHLY RENT AND PAYMENT TERMS.** Tenant shall pay rent to Landlord in the following monthly amounts on the first (1) day of each month during the Lease Term ("Rent"):

May through September \$ \$900 per month
October through April \$ \$250 per month

B.4 **LATE FEE, SERVICE FEE, AND INTEREST ON DELINQUENT PAYMENTS.** A late fee equal to ten percent (10%) of any monthly rental payment due will be assessed against Tenant if such rental payment has not been received by Landlord on or before the fifteenth (15th) day of the calendar month on which such rental payment is due. Additionally, a service fee in the amount of Twenty-Five and 00/100 Dollars (\$25.00) will be assessed against the Tenant on any payment returned to Landlord as NSF (non-sufficient funds). Delinquent rental payments, service fees, and any other amounts owing by Tenant to Landlord under this Lease shall bear interest at the rate of ten percent (10%) per annum, calculated as of the due date for such payment.

- B.5 **TENANT BUILD-OUT.** Following the Commencement Date, Tenant shall make the improvements to the Premises as described in attached **Exhibit C** (“Build-out”) which shall be completed prior to May 31, 2023 (the “Build-out Deadline”) subject to inspection and written approval by Landlord. Should supply or construction delays beyond the Tenant’s control prevent the completion of the Build-out on or before the Build-out Deadline, the Tenant and Landlord shall negotiate in good faith an extension of the Build-out deadline. The design and materials to be used by Tenant for the Build-out described in attached **Exhibit C** are approved by Landlord. The Landlord may require corrections to the Build-out should, in the Landlord’s determination, the materials, installation, or workmanship used to construct the Build-out deviate from the Build-out specifications described in attached **Exhibit D** or otherwise be of substandard quality. Tenant shall be provided a reasonable period to make any required corrections to the Build-out.
- B.6 **FOOD AND NON-ALCOHOLIC BEVERAGE CATERING PRIVILEGES.** Provided Tenant is not in default hereunder, Landlord shall include Tenant on Landlord’s list of approved food and non-alcoholic beverage caterers for third-party-sponsored and third-party-hosted events held in Promenade Park during the Lease Term. Landlord’s standard catering fees shall be charged to the Tenant by the Landlord for all third-party sponsored events catered by Tenant. The landlord reserves the right to select caterers of the Landlord’s choice to cater food and non-alcoholic beverages at all Landlord-sponsored and Landlord-hosted (but not Landlord-booked) events held in Promenade Park during the Lease Term. Nothing in this Section B.7 shall modify Tenant’s alcohol vending rights described in Section B.8 hereof. A catering fee shall be charged by the Landlord to the Tenant described in attached Exhibit E for any Landlord-sponsored, Landlord-hosted, or Landlord-booked event for which the Tenant is the selected caterer.
- B.6.A Catering fees paid by approved caterers may be adjusted periodically by Landlord.
- B.6.B Catering fees for events described in this Section B.7 shall be paid by Tenant on or before the 15th day of each calendar month for events catered by Tenant in the preceding month.
- B.7 **FOOD CATERING AND NON-ALCOHOLIC BEVERAGE REQUIREMENTS.** Tenant shall provide full-service catering services for all events on the Premises, the Pavilion, and the remainder of Promenade Park for which Tenant is the selected caterer. Full-service catering services shall include but are not limited to, the following: preparation of catered food and non-alcoholic beverages at the Café or an off-site commissary; delivery, setup, and serving of catered food and non-alcoholic beverages at the event; providing supplies, including linens, glassware, and tableware at the catered event; maintenance and cleaning of all equipment, work prep areas, food, and beverage service areas and bussing areas used in connection with a catered event; sanitary disposal at Landlord-approved locations of all trash generated by the catered event; and compliance with all applicable Allen County Board of Health regulations including the on-site presence of a certified food handler during each catered event.
- B.8 **ALCOHOL VENDING RIGHTS.** Provided Tenant is not in default or has not received notice of default under this Lease, Tenant shall have the following alcohol vending rights in Promenade Park during the Lease Term:

a. 3-Way Alcohol Vending Rights. Tenant shall have exclusive 3-way alcohol vending rights (as defined in attached **Exhibit D**) to the Premises and such portions of the remainder of Promenade Park described in attached **Exhibit D** for which Tenant holds a 3-way Excise Permit. The Landlord may elect to purchase alcohol from Tenant for Landlord-sponsored, and Landlord-hosted (but not Landlord-booked) events held in locations subject to Tenant's 3-way Excise Permit at an agreed upon price which is below the price offered by Tenant at Tenant-sponsored, Tenant-hosted, and Tenant-booked events. The Landlord may provide staff and bar service for such Landlord events.

b. 2-Way Alcohol Vending Rights. Subject to Landlord's rights provided herein, the Tenant shall have exclusive 2-way alcohol vending rights (as defined in attached **Exhibit E**) to the Premises and such other portions of Promenade Park described in attached **Exhibit E** for which the Tenant holds a 2-way Excise Permit. The Landlord may purchase alcohol from Tenant for Landlord-hosted and Landlord-sponsored (but not Landlord booked) events held at locations subject to Tenant's 2-way Excise Permit at an agreed price which is below the price offered by Tenant at Tenant-sponsored, Tenant-hosted, and Tenant-booked events. The Landlord may provide staff and bar service for such Landlord events.

c. Subject to obtaining the applicable 3-way or 2-way excise permitting, the Landlord may hold Landlord-hosted, Landlord-sponsored, and Landlord-booked events in all portions of Promenade Park for which the Tenant does not have a 3-way or 2-way Excise Permit. The Landlord may purchase alcohol for such events from the Tenant at an agreed price that is below the price offered by the Tenant at Tenant-hosted, Tenant-sponsored, and Tenant-booked events. The Landlord may provide staff and bar service at such Landlord events.

d. Landlord shall charge Tenant Landlord's standard alcohol catering fee as described in attached **Exhibit F** for each event described in Sections B.8.a. and B.8.b., which fee may be adjusted by the written agreement of the Parties as provided by an amendment to attached **Exhibit F**. No alcohol catering fee will be charged to Tenant for Landlord-hosted, Landlord-sponsored, and Landlord-booked events.

e. This Section B.9 shall not modify the food and non-alcoholic beverage catering rights reserved to Landlord in Section B.7 hereof.

B.9 **POSSESSION.** Tenant shall take possession of the Premises on the Commencement Date and shall deliver possession to Landlord on the last day of the Lease Term.

B.10 **ADDRESS FOR PAYMENTS.** All payments shall be personally delivered or mailed by U.S. Mail to Landlord at the following address:

Fort Wayne Department of Parks and Recreation
705 East State Boulevard
Fort Wayne, In 46805
Attn: Riley Hollenbaugh

B.11 **OPERATION AND HOURS OF BUSINESS.** Tenant shall commence the operation of business on the Premises on the latter of May 1, 2023, or the date of Landlord's approval of the completed Build-out pursuant to Section B.5 hereof. Thereafter, Tenant shall continuously operate its business on the Premises during the following days and hours, subject to (a) any adverse event described in Section C.26 of this Lease which prevents the normal operation of Tenant's business in the Cafe or (b) such modification of days and/or hours of operation to which Landlord and Tenant may agree in writing.

May 1 – September 30th

Tuesday, Wednesday, and Thursday 10:00 A.M. - 7:00 P.M.

Friday, Saturday 10:00 A.M. - 9:00 P.M.

Sunday 10:00 A.M. - 4:00 P.M.

Closed Monday

October 1 – April 30

Tuesday through Saturday 10:00 A.M. - 4:00 P.M.

Closed Sunday and Monday

The Tenant's failure to operate its business as required under this Section B.12 shall constitute a default under this Lease and result in termination of the Lease upon fifteen (15) days prior written notice from Landlord.

B.12 **IMPROVEMENTS TO PREMISES; BY LANDLORD; LANDLORD'S PROPERTY.** A Landlord agrees to make improvements to the Premises to facilitate the operation of The Tenant's business as described in attached **Exhibit G**. All improvements made to the Premises by the Landlord or Tenant and all fixtures and personal property purchased by the Landlord for the Premises shall be the property of Landlord and shall remain a part of the Premises following the expiration or earlier termination of the Lease.

B.13 **TENANT'S PROPERTY.** Tenant shall provide all removable equipment, furniture, and other personal property for the Premises required in the operation of Tenant's business as listed on attached **Exhibit H**, shall maintain the same in good working order and repair, and shall remove all such equipment, furniture, and personal property from the Premises at the expiration or earlier termination of the Lease, all at Tenant's expense. Any damage to the Premises caused by the Tenant's removal of such equipment, furniture, and personal property shall be repaired by the Landlord at Tenant's cost.

B.14 **BOARD OF HEALTH PERMIT.** Tenant shall provide Landlord with a true and correct copy of Tenant's current Food/Restaurant Permit issued by the Allen County Board of Health ("Permit") for the operation of Tenant's business on the Premises. The Permit shall remain current and in public view at all times during the Tenant's operation of the business on the Premises.

- B.15 **CAFÉ MENU**. The selection and pricing of food and non-alcoholic beverage menu items offered by the Tenant to the public at the Café will be determined by the Tenant. The Landlord reserves the right to review the selection and pricing of non-alcoholic beverages and menu items with the Tenant in response to public comment concerning the same and to suggest selection and pricing adjustments for the Tenant's consideration.
- B.16 **ACCESS TO THE PREMISES**. The Tenant shall have access to the Premises at all times during the Lease Term. Non-transferable, individual keys for the Cafe shall be provided only to those employees of the Tenant authorized by the Tenant to possess the same during their employment with the Tenant. Tenant shall provide Landlord with the names and contact information of all employees of Tenant in possession of a Café key during the Lease Term. Tenant shall require any such employee to return the Café key to Tenant upon the termination of employment with Tenant or upon such employee no longer being permitted by Tenant to possess the Café key. Tenant shall notify Landlord if Tenant is unable to retrieve a Café key from any employee or former employee from whom Tenant has requested the key's return in order to determine whether a modification of the locks or security codes for the Café is required. All material, labor, and service costs incurred in connection with Café key or lock replacements or repairs shall be arranged by the Landlord at Tenant's cost.
- B.17 **SIGNAGE**. Tenant's right to install signage within the Premises shall be in accordance with the following terms and conditions:
- a. Tenant shall have the right to install signage on the interior walls of the Cafe which is not visible to the general public from outside the Cafe subject to the Landlord's prior approval of the design, size, content, and placement of such interior signage.
 - b. Tenant shall have the right to install signage on the interior walls and interior or exterior windows of the Café which is visible to the general public from outside the Café subject to Landlord's prior approval of the design, size, content, and placement of such interior or exterior signage
 - c. At Tenant's request Landlord shall install alcohol boundary signs around the Premises bearing such design and to be installed at such locations as the Tenant shall propose and Landlord shall approve. The cost of producing, maintaining, and replacing the alcohol boundary signs shall be borne by Tenant.
 - d. The Landlord shall update the existing wayfinding signs in Promenade Park at Landlord's cost on or before May 31, 2023, to inform the general public of the location of the Tenant's business. Any subsequent modifications to the wayfinding signs shall be subject to Landlord's reasonable approval and shall be at Tenant's cost.
 - e. Except as set forth in this Section B.17.e., the Tenant shall not install any signage in, on, or about the Café, the Pavilion, or the remainder of Promenade Park without the prior written approval of the Landlord. This provision shall not prohibit the Tenant from utilizing temporary signage, such as an a-frame sign, within Promenade Park. The Landlord reserves the right to restrict the location and direction of such temporary signage in order to avoid interference with regular activities or special events occurring in Promenade Park.

B.18 ADDRESSES FOR NOTICES.

<p>Tenant:</p> <p>Perry St. Markets to Go, LLC 12628 Coldwater Road Fort Wayne, Indiana 46845 Phone: _____</p> <p>With a copy to: Barrett McNagny, LLP 215 E. Berry St. Fort Wayne, IN 46802 Attn: Mark H. Bains</p>	<p>Landlord:</p> <p>Department of Parks and Recreation 705 East State Street Fort Wayne, IN 46805 Phone: 260/427-6009 Fax: 260/427-6020</p>
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C. ADDITIONAL COVENANTS OF PARTIES

C.1 **COMPLIANCE WITH LAWS.** Tenant shall comply with all federal, state, and local laws, ordinances, codes, rules, regulations, and codes which govern Tenant's use of the Premises during the Lease Term, including environmental laws. Tenant shall comply with such rules and regulations as may be adopted by Landlord from time to time for the operation, safety, maintenance, and cleanliness of the Premises and Promenade Park. Tenant shall not engage in or permit engagement in any activity on or about the Premises or Promenade Park which may be deemed illegal or a nuisance, which may endanger persons or property, or which disturbs the patrons, guests, and attendees of Promenade Park all as determined by Landlord or Promenade Park staff. Tenant shall not use or permit the use of the Premises in any manner that may increase Landlord's insurance risk to the Premises or Promenade Park.

C.2 **UTILITY SERVICE.** The Landlord shall cause the Café to be furnished with connections for accessible utility service, including electrical, gas, water, and sewer, as are generally available to similar businesses to Tenant's business.

The Landlord shall pay for the normal and customary use of electricity, natural gas, water, sewer, trash removal, snow removal, stocking and cleaning of restrooms, and Wi-Fi services to the Café. Tenant shall pay for any increased level in the aforesaid services and for all other services required to operate Tenant's business in the Café, including telephone and other telecommunications services used by Tenant or charged against the Café during the Lease Term.

The Landlord is responsible for the routine maintenance and repair of all equipment providing electrical, gas, water, and sewer service to the Café. Tenant shall be responsible for the maintenance and repair of all other utility services supplied to or otherwise serving the Café at Tenant's cost. The Tenant may elect to provide the

foregoing services at Tenant's own expense or may request such services to be provided by Landlord, if available, at Tenant's cost.

- C.3 **NO GUARANTEED SUPPLY.** The Landlord does not warrant that any of the connections for utility services to be provided by the Landlord in Section C.2 will be free from interruption, but Landlord will take such reasonable steps available to the Landlord to restore utility service if interrupted. Interruption of utility services shall not be deemed an eviction and shall neither excuse the performance of any of Tenant's obligations under this Lease nor render Landlord liable for damages to Tenant.
- C.4 **QUIET ENJOYMENT.** Subject to the rights reserved by Landlord hereunder with respect to Landlord's ownership, occupancy, management, control, operation, and use of Promenade Park (including the Premises) in accordance with Landlord's practices and procedures, Tenant shall have the right to peaceably and quietly enjoy the Premises during the Lease Term in accordance with the rights granted to Tenant hereunder.
- C.5 **TAXES.** Tenant shall pay all taxes assessed against Tenant's personal property located on the Premises during or following the expiration of the Lease Term.
- C.6 **ACCEPTANCE AND CARE OF PREMISES.** Tenant shall keep and maintain the Premises in a neat, clean, and sanitary condition and shall make repairs to the Premises as set forth in Section C.7, except for maintenance and repairs to be made by Landlord hereunder. If Tenant fails to keep the Premises neat, clean and sanitary, and in good condition and repair, Landlord may perform such obligations on Tenant's behalf and at Tenant's cost. At the expiration or earlier termination of this Lease, the Tenant shall deliver possession of the Premises in the same condition as when received from Landlord, excepting such ordinary wear and tear not inconsistent with Tenant's maintaining the Premises in a neat, clean, and sanitary condition and good repair.
- C.7 **MAINTENANCE AND REPAIRS.** Tenant shall be responsible for the daily cleaning and regularly scheduled major cleaning of the Premises during the Lease Term together with the maintenance, repair, and replacement of all equipment, fixtures, and furniture supplied by Tenant and Landlord and used by Tenant in the operation of its business on the Premises.

The Landlord shall maintain and repair at its cost the roof, foundation, and structural components of the Café including but not limited to floors, windows, doors, and all additional items. Tenant shall immediately provide Landlord written notice of Landlord's need to maintain or repair items which Landlord is obligated to maintain and repair, and Landlord shall thereafter have a reasonable opportunity to maintain or repair the same. Landlord's liability to the Tenant with respect to such maintenance and repairs shall be limited to the direct cost incurred by the Landlord for such maintenance and repairs.

Notwithstanding the foregoing allocation of responsibility for maintenance and repair, Tenant shall repair, at Tenant's expense, any damage to any portion of the Premises caused by Tenant, its employees, customers, agents, business invitees, customers, or guests. The Landlord shall repair, at its expense, any damage to any portion of the Premises caused by the Landlord, its employees, agents, business invitees, or park visitors.

C.8 **DAMAGE OR DESTRUCTION.** Subject to the termination rights contained in this Section C.8, if the Premises are damaged or destroyed by fire or other casualty during the Lease Term, the Landlord may, at its option and as hereinafter provided, repair the Premises to as nearly as practicable substantially the same condition as existed prior to such damage or destruction, with the exception of Tenant's personal property listed in attached Exhibit J, the repair or restoration of which shall be Tenant's sole obligation and expense.

Total destruction of the Premises as determined by Landlord shall result in the immediate termination of this Lease upon notice to Tenant.

If in Landlord's reasonable determination, the Premises are not totally destroyed but cannot be repaired within sixty (60) days of the date of such partial destruction, the Landlord shall provide written notice to the Tenant estimating the length of time necessary to complete such repairs, and Tenant shall have fourteen (14) business days thereafter to elect to terminate this Lease upon written notice to Landlord. If Tenant does not so elect to terminate this Lease or does not provide Landlord with written notice of Tenant's election to terminate, Tenant shall be deemed to have irrevocably waived its termination rights under this Section C.8. If the Premises are damaged to the extent that Landlord deems it is not economically practical to repair the same, in Landlord's sole judgment, Landlord shall so notify Tenant in writing and this Lease shall terminate effective as of the date of such damage or destruction.

If Tenant has no right to terminate this Lease or waives the right of termination pursuant to this Section C.8, and if Landlord elects to repair such damage, repairs shall commence as soon as practicable after the occurrence of such damage following Tenant's irrevocable waiver of its rights of termination hereunder. Landlord shall not, in any event, be liable to Tenant for lost profits or direct, indirect, consequential, or incidental damages suffered by Tenant resulting from any casualty damage. Rent shall be pro-rated as the result of any damage or repairs to the Premises.

C.9 **TENANT INSURANCE.** During the Lease Term, the Tenant shall maintain at its sole expense the following insurance policies:

- (a) "Special" form (all-risk) property insurance policy covering all of Tenant's personal property as listed in **Exhibit H** on a one hundred percent (100%) replacement cost basis;
- (b) Basis. In the event of loss, the proceeds of any such policy shall promptly be used by Tenant for the restoration of its improvements, alterations, and trade fixtures and the replacement of its personal property, except in the event of total destruction of the Facility or partial destruction resulting in the Tenant's right to terminate the lease in accordance with Section C.8;
- (c) Commercial general liability and liquor liability policy, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence;
- (d) Workers' compensation and employers' liability insurance with limits as required by law.

During the Lease Term, such insurance shall be issued by carriers reasonably acceptable to Landlord, shall name Landlord as an additional insured thereon and permit recovery on such policies by the Landlord on a primary, non-contributing basis,

and shall contain a provision whereby the carrier agrees/not to cancel or modify the insurance without forty-five (45) days prior written notice/to Landlord. Proof and certificate of such coverage shall be delivered to Landlord prior to the commencement of this Lease and annually thereafter upon annual renewal of the policies during the Term. Tenant shall be solely responsible for payment of premiums, deductibles, and co-payments. If Tenant fails to procure or maintain the insurance required by this Section C.a., Landlord may (but is not required to) obtain and maintain insurance for the protection of its own interest, and all premiums paid or payable by Landlord therefore shall be deemed to be additional Rent and shall be due on the payment date of the next installment of Rent under this Lease. The Tenant's failure to obtain or maintain any insurance required under this Lease shall constitute a material breach of the Lease. Tenant agrees to waive subrogation against Landlord.

C.10 **HAZARDOUS MATERIALS.** Tenant shall not receive, store, use or dispose of (or permit the receipt, storage, use, or disposal of) any product, material, item, or substance on or about the Premises which is toxic, explosive, highly flammable, or classified by federal or state law as hazardous (each, a "Hazardous Substance"). The Tenant may use Sterno, beverage gas tanks, and related equipment related to Tenant's normal business operations. To the extent permitted by law, Tenant shall defend and hold harmless Landlord, the City of Fort Wayne, Indiana, and their respective officers, employees, members, representatives, agents, departments, and divisions from and against any and all claims, liabilities, losses, damages, cleanup costs and expenses (including reasonable attorneys' fees) arising out of or in any way related to the presence, storage, use, transportation, disposal or handling of any Hazardous Substance in, on or about, the Premises during the Lease Term. This covenant of indemnification by Tenant shall survive the expiration or earlier termination of this Lease for any reason.

C.11 **DEFAULT; NOTICE OF DEFAULT.**

Monetary Default: If Tenant defaults in any rental payment or other charges or costs due hereunder, Landlord may issue written notice of such monetary default to Tenant. If Tenant does not cure such monetary default within thirty (30) days following receipt of Landlord's notice, then Landlord may elect to terminate this Lease upon fifteen (15) days written notice to Tenant as provided in Section C.12 hereof.

Non-Monetary Default: If Tenant defaults in the performance of any of the covenants, obligations, or conditions to which Tenant is subject under this Lease, Landlord may issue written notice of such non-monetary default to Tenant. If Tenant does not cure such non-monetary default within thirty (30) days after receipt of Landlord's notice, then Landlord may elect to terminate this Lease upon fifteen (15) days written notice to Tenant as provided in Section C.12 hereof.

C.12 **NONCURABLE DEFAULTS.** If within any twelve (12) month period during the Lease Term Tenant is provided two (2) or more written notices by the Landlord of any monetary or non-monetary default under this Lease, then regardless of whether such defaults are being or have been timely cured, the issuance of the next succeeding written notice of default by Landlord (regardless of the nature of such third (3rd) default) shall constitute a nondurable default and Landlord may terminate this Lease and extinguish all of Tenant's rights hereunder upon ten (10) days written notice to Tenant.

- C.13 **TERMINATION OF LEASE.** This Lease shall be terminated and all rights of the Tenant hereunder shall extinguish following an event of default described in Section C.11, and Tenant's failure to timely cure such default upon fifteen (15) days written notice of termination to the Tenant by Landlord. This Lease may be terminated forthwith by Landlord, notwithstanding any obligation of the Landlord in this Lease to provide written notice to the Tenant, immediately upon the Landlord's written notice of termination to the Tenant in the event of the Landlord's determination that the Tenant is engaged in or is permitting an activity or condition to exist in, on or about the Premises or Promenade Park which Landlord deems is materially harmful or potentially materially harmful to Property or person.
- C.14 **REMEDIES AND REENTRY UPON TERMINATION OF LEASE.** In the event of a termination of this Lease, the Landlord shall have the remedies described in this Section C.14, in addition to any remedies now or hereafter available at law. All rights available to Landlord herein shall be cumulative, and none shall exclude any other right or remedy allowed by law or in equity, all of which may be exercised with or without legal process as then may be provided or permitted by law. Upon termination of the Lease and Tenant's rights hereunder, the Landlord may recover from the Tenant: (a) the amount of any unpaid rent and other costs and charges owing at the time of termination of the Lease' hereunder, plus (b) the amount by which the unpaid rent and other charges which would have been earned after the date of termination of 'the Lease hereunder until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (c) all other amounts, including documented expenses of reletting, court, brokerage, attorney and collection costs, necessary to compensate Landlord for all loss or damage proximately caused by Tenant's default.
- C.15 **REMOVAL OF PROPERTY.** Tenant shall remove all of its personal property and Tenant's signage, if any, from the Premises upon expiration or earlier termination of this Lease. Title to any personal property and signage remaining on the Premises ten (10) days thereafter shall be deemed to have been conveyed by Tenant to Landlord, and Landlord may dispose of such personal property and signage in its sole discretion. Tenant shall reimburse Landlord for actual costs and expenses incurred to remove or dispose of such personal property and signage within thirty (30) days after receipt of the invoice for same.
- C.16 **HOLDOVER.** If Tenant continues to occupy or hold the Premises after expiration or earlier termination of the Lease, such occupancy shall constitute a month-to-month tenancy subject to all of the terms of this Lease, except the Rent which shall automatically and without notice accelerate to one hundred twenty-five percent (125%) of the Rent payable during the Lease Term. Any such holdover tenancy may be terminated as provided by law. The Landlord also reserves the right to claim such damages as may accrue due to the Tenant's holding over, which may exceed the amount of rent otherwise applicable to the holdover period.
- C.17 **INDEMNIFICATION.** Tenant forever releases, waives and discharges Landlord, the City of Fort Wayne, Indiana and their respective officers, employees, members, representatives, agents, departments and divisions (collectively, the "Releasees") and, to the extent permitted by law, agrees to protect, defend, indemnify and hold Releasees

and each of them harmless from and against any and all claims, debts, demands, obligations, losses, liens, damages, judgments, liabilities, fines, costs and expenses of every kind and nature (including reasonable attorney fees) asserted by or against Tenant or against Landlord, both known and unknown and whether now existing or hereafter, arising from or directly or indirectly associated with: (a) Tenant's leasing, possession, occupancy, management, control, operation and use of the Premises and Promenade Park (b) the management and operation of Tenant's business on or about the Premises; (c) any activity undertaken, work performed or thing done, permitted or suffered by Tenant or any other person on or about the Premises; and (d) any and all claims arising directly or indirectly from any breach or default in the performance of any covenant, obligation or condition made or assumed by Tenant under the Lease, whether brought by Tenant or any third party, unless caused by the intentionally willful or grossly negligent acts or omissions of Landlord. The foregoing covenants of release and indemnification by Tenant shall survive the expiration or earlier termination of this Lease for any reason. These covenants of release and indemnification are for the sole benefit of Releasees and shall not inure to the benefit of any third party.

- C.18 **ASSIGNMENT OR SUBLEASE.** Tenant shall not assign this Lease or sublet the Premises or any portion thereof during the Lease Term without the prior written consent of the Landlord, which consent may be denied or withheld at the Landlord's sole discretion.
- C.19 **ACCESS.** The Landlord may enter the Premises at any time without notice to Tenant for the purposes of inspecting or responding to emergency situations or conditions which pose a threat to property or person on or about the Premises or other areas of Promenade Park as determined by the Landlord. The Landlord may enter the Premises at all reasonable times in the company of departments and agencies including police, fire, and Homeland Security to inspect and assess the safety and security of the Premises or other areas of Promenade Park. The Landlord may enter upon the Premises upon twenty-four (24) hours written notice to the Tenant to inspect, maintain, repair, or restore the Premises pursuant to the Lease. In addition, the Landlord may enter the Premises during normal business hours for the purpose of showing the Premises to prospective tenants during the ninety (90) day period prior to the expiration of the Lease Term and for a final inspection of the Premises prior to the expiration of the Lease Term.
- C.20 **BROKERS.** Landlord and Tenant agree that neither Party has retained a broker or finder with respect to this transaction. Tenant agrees to defend and hold harmless Landlord, to the extent permitted by law, from and against any commissions or other fees claimed by any broker or finder asserting he or she has represented Tenant.
- C.21 **LIENS.** Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Tenant. If a lien is filed, the Tenant shall cause the same to be discharged of record within thirty (30) days thereafter and to provide the Landlord with evidence thereof. The provisions of this Section C.21 shall survive the expiration of the Lease Term and any holdover of this Lease by the Tenant.
- C.22 **NON-WAIVER.** The failure of either the Landlord or Tenant to insist upon strict performance of any of the covenants and agreements of this Lease shall not be

construed as a waiver thereof. Waiver of a particular breach or default shall not be deemed to be a waiver of any subsequent breach or default.

- C.23 **NOTICES**. Notices under this Lease shall be in writing and delivered in person, sent by registered or certified mail, e-mail, and/or via a nationally recognized overnight carrier with guaranteed next-day delivery to the Parties at their respective addresses as set forth above, or to such other place as may hereafter be designated by either Party in writing, effective three (3) days after the postmark date.
- C.24 **GOVERNING LAW**. This Lease shall be governed by the laws of the State of Indiana, with the venue lying in Allen County.
- C.25 **AUTHORITY TO EXECUTE**. The individuals executing this Lease on behalf of the Landlord and Tenant each represent and warrant that he or she is duly authorized to execute and deliver this Lease on behalf of such entity and that this Lease shall be binding upon such entity in accordance with its terms.
- C.26 **FORCE MAJEURE**. In the event either Party is delayed or prevented from performing any of its respective obligations under this Lease by reason of acts of God, governmental requirement, fire, floods, or strikes, then the time period for performance of such obligations shall be extended for the period of such delay; provided that if any such Force Majeure event shall continue to exist for an uninterrupted period of sixty (60) days, either Landlord or Tenant may terminate the Lease upon ten (10) days written notice to the other Party.
- C.27 **RULES AND POLICIES**. (a) Tenant shall comply with and operate within the rules, guidelines, and policies established by Landlord for renters of facilities owned by Landlord, including the rules, guidelines, and policies applicable to renters of facilities located in Promenade Park (refer to the link below):

<https://www.fortwayneparks.org/parks/riverfront/rentals/ready-to-book.html>

Additionally, the Tenant shall comply with the City of Fort Wayne Municipal Code in the exercise of the Tenant's rights and the performance of the Tenant's obligations under this Lease.

(b) Tenant acknowledges that Landlord's management of Promenade Park requires Landlord to periodically incorporate advice and directives received from other City of Fort Wayne departments including Fire, Police, Legal, and Homeland Security, with Landlord's existing rules, guidelines, policies, and agreements, which may require the modification of the rules, guidelines, policies, and agreements applicable to Tenant under the Lease. The Parties shall convene regularly during the Lease Term in order for the Landlord to apprise Tenant of any proposed modifications under consideration that are applicable to the Landlord's management of Promenade Park and to Tenant as a renter of a Promenade Park facility. The Parties shall discuss any concerns which Tenant may have concerning the effect of such modifications on Tenant's business operations, and Landlord shall attempt to implement such modifications in a manner which minimizes or eliminates the effect of such modifications on Tenant's business operations; provided, however, that if the Parties are unable to reach agreement on such implementation, Landlord's decision on the implementation of such modifications shall in all events control.

(c) If, in Tenant's reasonable opinion, any modifications or additions to the rules, guidelines, and policies detailed in this Section which are implemented by Landlord following the Effective Date materially interfere with Tenant's ability to profitably operate the Café, Tenant shall be entitled to, upon ninety (90) days written notice, terminate the Lease.

C.28 **PERMITS AND LICENSES.** Tenant shall obtain and maintain during the Lease Term all licenses and permits as required by law to operate its business and on the Premises.

C.29 **EXCISE PERMIT.** The Tenant may serve beer and wine on the Premises as indicated in attached Exhibit H via a State Excise Permit Type 112 to be obtained by Landlord and transferred to Tenant (the "Excise Permit". Upon termination of this Lease, the Excise Permit shall be forthwith transferred back to Landlord. The Landlord shall pay for the initiation and annual fee for the Excise Permit. Any penalty or fines assessed to the Excise Permit by the Alcohol & Tobacco Commission will be the responsibility of the Tenant.

Tenant shall be responsible to obtain its own 2-way or 3-way permit at Tenant's cost. Tenant shall comply with all Indiana excise laws, rules and regulations and pay any penalty or fine Resulting from Tenant's non-compliance with any of the foregoing.

C.30 **ENTIRE LEASE AGREEMENT AND INTERPRETATION.** There are no oral or written agreements affecting this Lease which, together with its attached Exhibits which are incorporated herein by reference, supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the Parties, whether oral or written, including but not limited to, Tenant's agents, and employees. No alteration, amendment, change, or addition to this Lease shall be binding upon either Party unless reduced to writing and signed by both Parties.

C.31 **COUNTERPARTS:** This Lease may be executed in counterparts and each counterpart constitutes an original document.

Dated this _____ day of _____, 20____.

CITY OF FORT WAYNE BOARD OF PARK COMMISSIONERS

WILLIAM ZIELKE, PRESIDENT AND COMMISSIONER

JUSTIN SHURLEY, VICE-PRESIDENT/COMMISSIONER

CORY D. MILLER, COMMISSIONER

RICHARD BRILEY, COMMISSIONER

STEVE MCDANIEL, DIRECTOR/SECRETARY TO THE BOARD OF PARK
COMMISSIONERS

PERRY ST. MARKETS TO GO, LLC (D/B/A TEDS SNACK + BAR)

BY: _____

BRIAN HENCH, PRESIDENT, AND MANAGING MEMBER

STATE OF INDIANA

} SS:

COUNTY OF ALLEN

Before me, a Notary Public in and for said State and County, this ____ day of _____, 20____, the undersigned, personally appeared the Board of Park Commissioners,

_____, _____, _____,

_____, and _____, the Director of Fort Wayne Parks & Recreation Department/Secretary for the Board of Park Commissioners, the Owner of **PERRY ST. MARKETS TO GO, LLC (D/B/A TEDS SNACK + BAR)**; all said parties have hereunto set their hands and acknowledged the execution of the foregoing document.

I have, in witness thereof, subscribed my name and affixed my official seal.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

Printed or typed name of Notary Public

County of:

Signature of Notary Public

EXHIBIT A

PARK FOUNDATION COMPASS PAVILION

FACILITY BACKGROUND

The Park Foundation Pavilion is owned and operated by the Fort Wayne Parks and Recreation Department, a subdivision of the local government, City of Fort Wayne, Indiana.

LOCATION

Located within the stunning new glass and limestone pavilion constructed at the river's edge in downtown Fort Wayne, the Parks and Recreation Department has constructed a high-end, intimate, and attractive space for the purveyance of food and beverage. The café space is complemented by a gorgeous dining garden and unparalleled views of the river, downtown skyline, and premier new park located at 312 South Harrison Street, Fort Wayne, IN 46802.

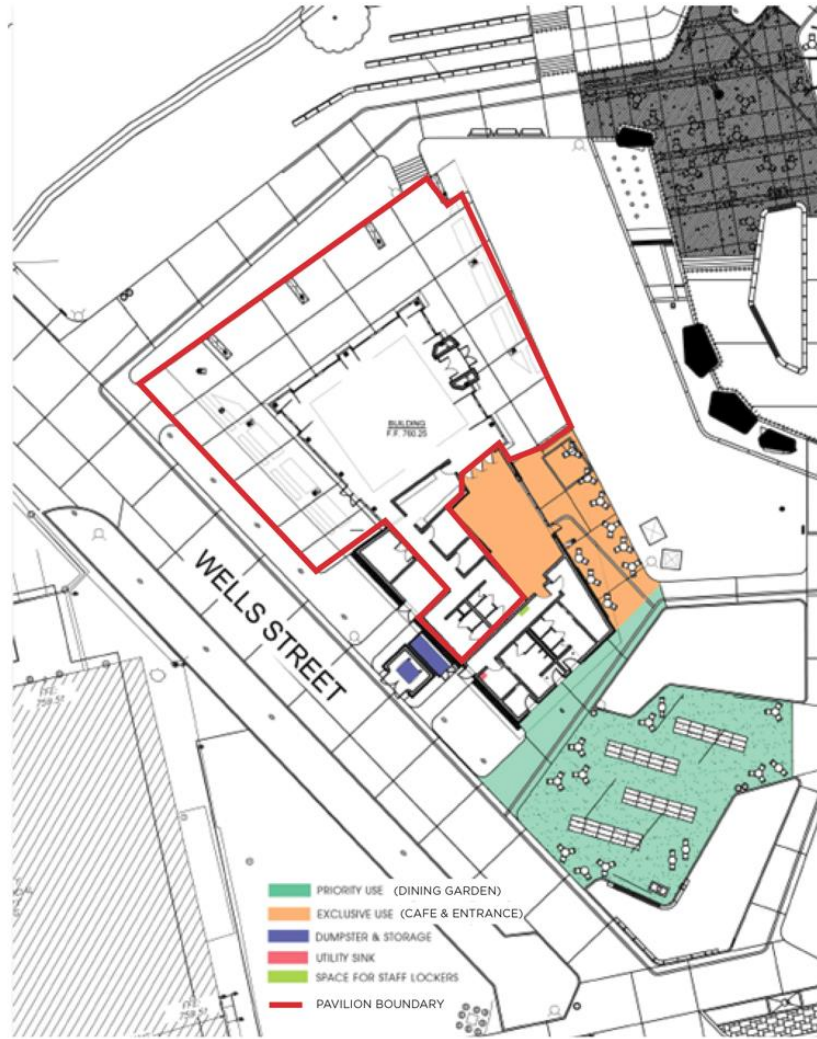
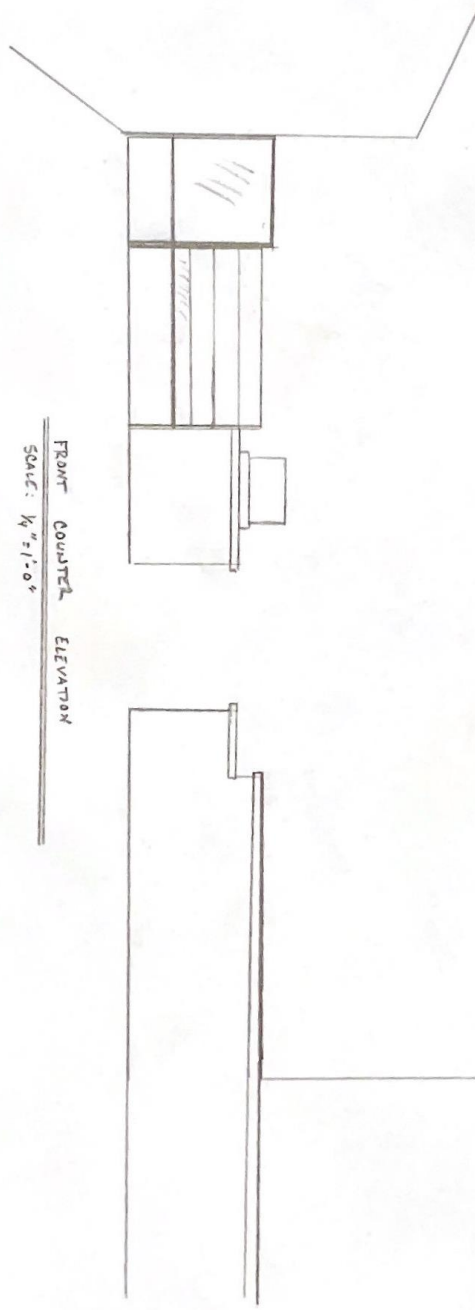


Exhibit A
Pavilion



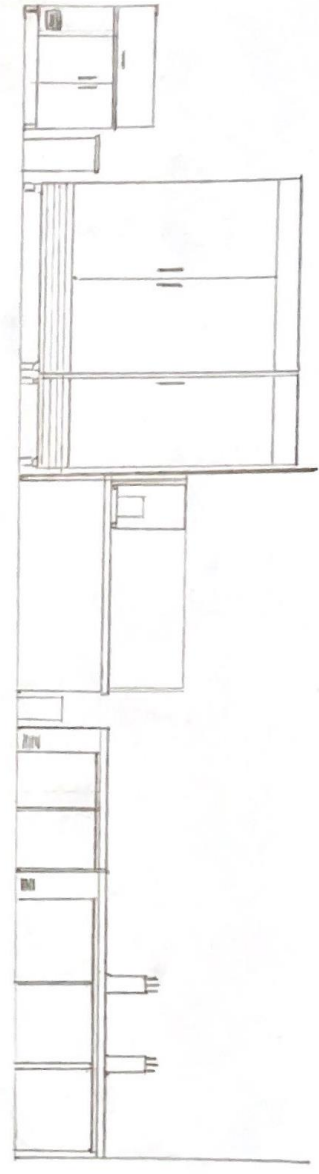
Exhibit B
Premises

EXHIBIT C
TENANT BUILD-OUT

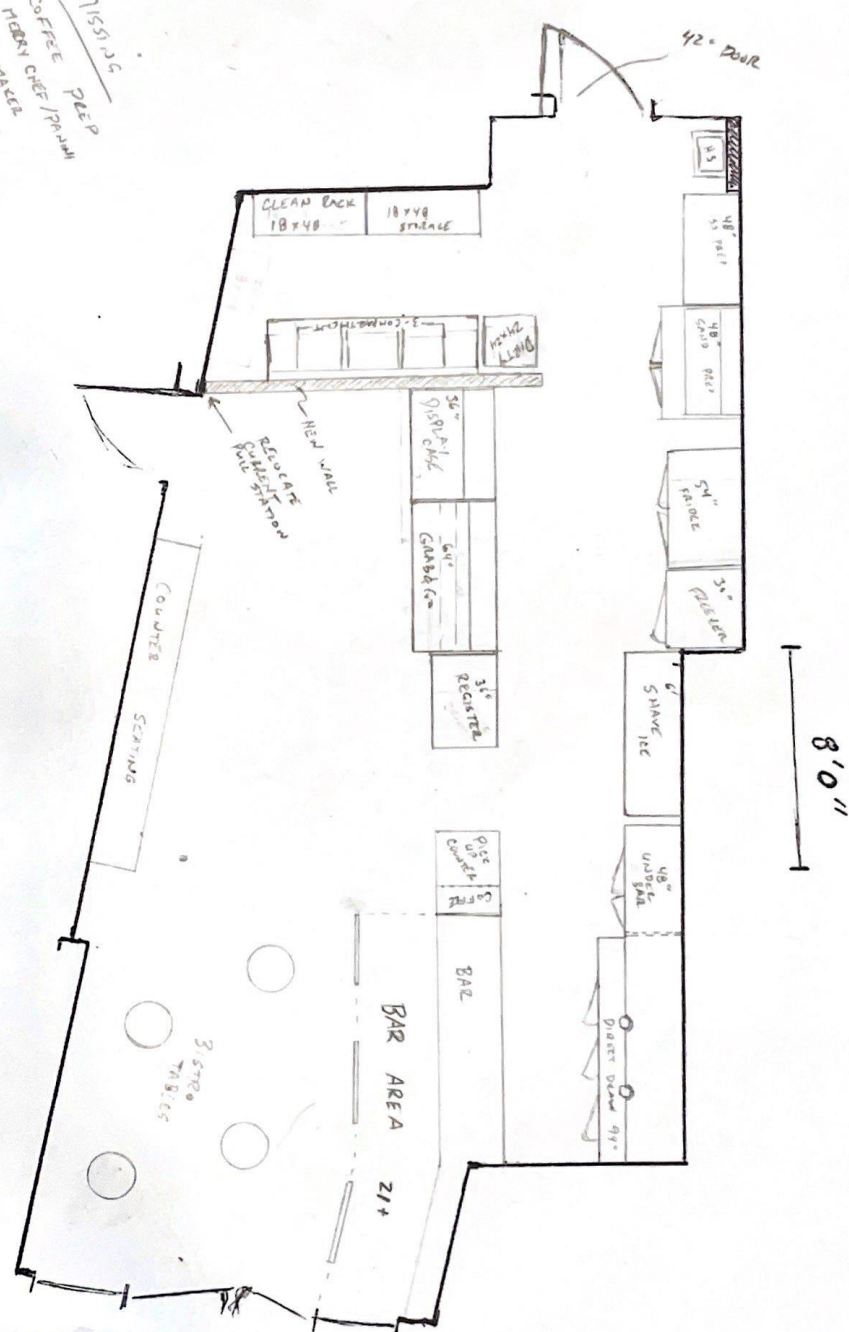


FRONT COURESTEL ELEVATION
SCALE: 1/4" = 1'-0"

BACK WALL ELEVATION
SCALE: 1/4" = 1'-0"



- MISB'S
- COFFEE PREP
 - HEAVY CHEF/STAFF
 - IC MAKER
 - SALES AREA



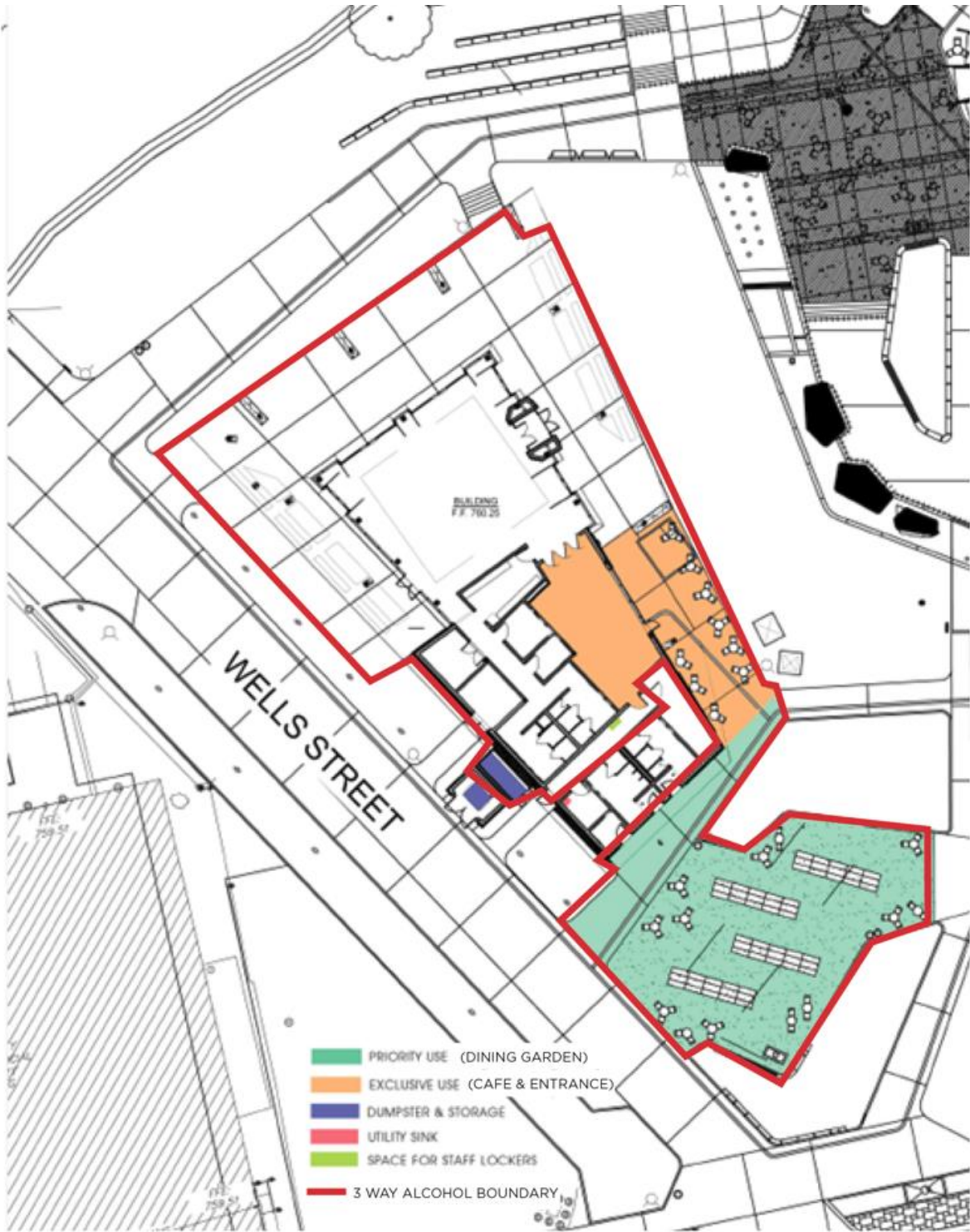


Exhibit D
3 Way Alcohol Vending Rights



Exhibit E
2 Way Alcohol Vending Rights

EXHIBIT F
TEDS SNACK AND BAR FEE PROPOSAL

Effective 1/23/2023

<u>ALL RENTALS</u>	<u>Per 4-hour Rental</u>
Site Alcohol Licensing Fee (to Parks Dept.) ⁺	\$150
Indiana Sales, Food & Beverage Tax	8%
Gratuuity Fee	18%

EVENTS WITH BAR SETUPS

Number of Bartenders	1 per 50 guests
Bartender fee (per each)	\$60
Additional Bartender (if requested)	\$60
Additional Time (per bartender)	\$25/hr.
Number of Bars	1 per 100 guests
Bar Setup/Teardown Fee (per bar)	\$100
Additional Set-Up/Special Requests	Cost + \$25/hr.
Special License / Permitting Fee	Pass through

* Customer may reduce the number of bars/bartenders at their discretion (in writing, in advance of the event).

** Special License/Permit fee may be required by ATC for some events/use of some spaces

<u>BY THE GUEST (Drink Package)</u>	<u>Daytime (Before 5 pm)</u>	<u>Evening (After 5 pm)</u>	<u>Park Fee⁺</u>
Wine & Beer only	\$16	\$20	\$3
Basic Beer, Wine & Mixed Drink	\$20	\$25	\$3
Premium Beer, Wine, & Mixed Drink	\$25	\$30	\$4
Craft Beer, Wine, & Mixed Drink	\$30	\$38	\$4
<i>Minimum Number of Guests</i>	25	30	

* Additional hours may be added at a prorated rate

** If fewer than the minimum number of guests attend, the event will be charged at the minimum number

*** Prices are per person and subject to alcohol vendor price changes up to 14 days prior to the event

**** Available beverage lists will be provided to the customer at the time of booking. Substitutions will be of equal or greater value

<u>BY THE DRINK (ala carte)</u>	<u>Daytime</u>	<u>Evening</u>	<u>Park Fee⁺</u>
Sales Minimum	\$500	\$900	10%

* Drinks sold at posted menu price, and are subject to price changes up to 14 days prior to the event. The Beverage menu is to be determined prior to the event

** Events not achieving the minimum required sales will be charged an additional minimum sales fee, based on the difference

<u>BY THE BOTTLE (Park Events Only)</u>	<u>Daytime</u>	<u>Evening</u>	<u>Park Fee⁺</u>
Alcohol Service Fee	\$200	\$300	--

* Bottles may be purchased at a pre-negotiated price, determined within 14 days prior to the event

** Partial bottles will be charged a full bottle price. Open alcohol may not be removed from the premises

*** Business may reduce/waive bar setup fee for small Park Sponsored Private Events serving only wine & beer

PARK-SPONSORED PRIVATE EVENT

10% discount on posted beverage prices.

All Setup and Hourly rates are to be charged as listed. Special licensing and/or requests are charged as listed above.

* Discount may be applied to pricing at the time of the event, or may be returned to the parks department following the event

** No bar setup fees will be charged for events that utilize the cafe bar space, provided it does not disrupt normal business operations.

PARK EVENT FOR THE GENERAL PUBLIC

- FWPRD-sponsored events open to the General Public will be negotiated in writing with Tenant with approval in writing from Deputy Director or Director

BUSINESS HOSTED SPECIAL EVENTS (PUBLIC OR PRIVATE)

- Business Hosted Special Events (Public or Private) will be negotiated in writing with FWPRD with approval in writing from Deputy Director or Director

⁺ **Park Fees will be submitted to the Parks Department in a timely manner following each event.**

* Licensing Fee will be charged as a separate line item. All other fees will come from sales (ala carte or per person) as listed.

Other Items

- Fort Wayne Parks and Recreation Department (FWPRD) Deputy Director or Director and Tenant may mutually agree in writing to adjust fees in **EXHIBIT F** for unique circumstances for any event held in Promenade Park
- FWPRD Deputy Director or Director may waive fees or commissions in writing that would be received by FWPRD from the Tenant (“Park Fees” or “Site Alcohol Licensing Fee”).
- **EXHIBIT F** may be adjusted or modified in writing with the approval of the Board of Park Commissioners

EXHIBIT G
LANDLORD IMPROVEMENTS

- The Landlord will provide up to \$2,500.00 (two thousand five hundred dollars) for upgrades to electrical, plumbing, and other utilities at the discretion of the Landlord. The Landlord will schedule these improvements
- The Tenant will request any upgrades in a timely manner
- The Landlord will schedule any approved improvements in a timely manner

**EXHIBIT H
TENANT PROPERTY**

Tenant will own all non-installed equipment, including but not limited to the below. The Tenant considers non-installed equipment to be equipment that can be removed from the premise without substantial or irreparable damage to the building and/or permanent contents.

Customer Facing:

1 Table	Service Counter	9 Knives, cutlery, small wares
2 Chairs, Benches, Stools	1 Self-Contained Display cases	10 Freezer(s)
3 Trash & Recycling receptacles	2 Coffee Dispensing equipment	11 Refrigerator(s)
4 Caddies, condiment holders	3 Points of sale	12 Storage racks
5 Art, Signs, Decorations	4 Display items	13 Storage Shelves
6 Display Racks, shelves, stands	5 Menu boards	14 Display Shelves
7 Table	6 Televisions	15 Ice making equipment
Coverings/Catering backdrops	7 Audio /Music Equipment	16 Dishwasher
8 Catering Bar Carts or Service stations	8 Packaging or carry out equipment	17 Small appliances
9 Coffee Carafes or Beverage holders	Back of House	18 Soda equipment
10 Ice bins or buckets	1 Beer dispenser	19 Mops, buckets, waste receptacles, cleaning equipment
11 Remote Bar setups, Pop Tents, etc.	2 Back bar storage	20 Ladder(s), stools
12 Remote Shave ice station	3 Coffee-making equipment	21 Shave Ice enclosure
	4 High-speed ovens	22 Shave Ice Table
	5 Frozen treat machines	23 Dish Racks
	6 Panini press	24 Catering Dishes/Glassware
	7 Sandwich prep station	25 Catering Bar Equipment
	8 Prep Tables	