

## COMMERCIAL LEASE AGREEMENT

by and between

The City of Boise

and

The Chicago Connection, LLC

**THIS COMMERCIAL LEASE AGREEMENT** is made and entered into this \_\_\_\_\_ day of February 2011, (the "Effective Date"), by and between the City of Boise, an Idaho municipal corporation ("City" or "Lessor"), and The Chicago Connection, LLC, an Idaho limited liability corporation ("Lessee").

**1. Leased Premises.** The Lessor does hereby lease to Lessee, and Lessee does hereby let as tenant from the Lessor, commercial restaurant space located in the southwesterly corner of the first floor within Idaho IceWorld ("IIW"), a Lessor-owned and -operated facility at 7072 South Eisenman Road, Boise, Ada County, Idaho, managed by the Boise Department of Parks and Recreation ("Leased Premises"). The Leased Premises is more particularly shown on the floor plan attached hereto as **Exhibit A**, and incorporated herein, by reference (the "Leased Premises"). The total square footage of the Leased Premises is approximately five thousand seven hundred and eight (5,708) square feet.

**2. Term of Lease.** The term of the Lease shall be three (3) years beginning upon approval of this Lease by Lessor and Lessee, ("Lease Commencement Date") and ending March 31, 2014 ("Expiration Date"), unless such Lease is extended or terminated as provided herein. If Lessee is not in breach or default of the Lease, Lessee may renew the term of the lease for two (2) additional three (3) year terms upon the mutual, written agreement of the parties. A "Lease Year" is defined as twelve months beginning April 1 and ending on March 31 of the following year.

### **3. Use of Leased Premises.**

#### **A. Permissible Uses.**

i. Lessee shall use the Leased Premises for the purpose of preparation and sale of pizza and other food products (including sandwiches and salads), ethnic foods, open-face and flatbread-style sandwiches and beverages, for off-premises consumption (by pickup or delivery), or for on-premises consumption, or both, for catering services, and for any other purpose or use allowed by state and local laws, ordinances and regulations. During Lessor's operating hours, Lessor shall provide direct public access to the dining area from within IIW. Lessee may serve beer and wine for on-premises consumption within the Leased Premises only and for off-premises consumption outside the IIW building and outside the boundaries of the adjacent real property under the Lessor's ownership or control subject to

compliance with applicable state beverage law and local zoning regulations. Lessee's sale of such alcoholic beverages shall be accessory to the sale of pizza and other food products sold within the Leased Premises. Lessee shall not serve, or permit the consumption or possession of, alcoholic beverages outside of the Leased Premises. Lessee shall not use the Leased Premises, nor permit any other person or entity to use the Leased Premises, for any purpose other than a dining area for products sold by Lessee, as permitted herein, without Lessor's prior, written consent.

ii. Lessor shall not lease any space to, grant any right or concession to, or otherwise permit any person or entity other than Tenant to sell or provide pizza at the Leased Premises within Idaho IceWorld.

B. Limit On Sales. Based upon the Lessor's pre-existing contractual obligations, Lessee shall not sell submarine or deli style sandwiches, ice cream or ice cream cakes.

C. Exclusives. The parties understand and agree that Lessor has previously entered into a sponsorship agreement with a single branded soft drink company and, accordingly, Lessee shall offer for sale only soft drinks and related products, including waters, energy drinks, ready to drink teas, juice and juice drinks, dairy based drinks, ready to drink coffees and energy drinks permitted by that sponsorship agreement and authorized from time to time by Lessor.

D. Improvements.

i. Based upon the Leased Premises' previous use as a dine-in pizza restaurant, the Leased Premises is substantially ready for Lessee's occupancy. The parties understand and agree that Lessee may request to make changes that will result in décor and equipment changes, all of which shall be carried out at Lessee's sole cost and expense, including obtaining from the City's Planning and Development Services Department all necessary building permits and approvals associated with the Leased Premises and paying all applicable permitting and impact fees, if any, associated therewith. Prior to commencement of such changes, Lessee shall provide the Lessor with a complete set of specifications in writing for proposed décor and equipment changes together with any additional proposed tenant improvements, which shall require written approval by the Lessor, which approval shall not be unreasonably conditioned, denied or delayed. No approval by Lessor of any changes to the Leased Premises shall constitute a representation, warranty or opinion as to the compliance thereof with applicable building, health, environmental, or safety codes or other applicable state, federal or local laws, codes or regulations including the Americans with Disabilities Act, and the entire responsibility for such compliance shall lie with Lessee. No approval given by Lessor pursuant to this Lease with respect to any plans, specifications, materials or contractors of Lessee shall create or be regarded as grounds for any liability on Lessor's part (a) to any contractor, subcontractor, laborer, materialman, or vendor performing work on or furnishing materials for the Leased Premises for Lessee's account; (b) to any governmental agency for any legal or code violations or use of improper materials or the like; or (c) to any third party sustaining an injury due to

poor workmanship, improper design or improper materials. Upon completion of any renovations Lessee undertakes, it shall provide Lessor with written lien releases from each contractor or sub-contractor who performed construction or other services or provided materials to the Leased Premises.

ii. Changes to the Leased Premises shall be performed and completed by an Idaho licensed contractor in compliance with applicable building codes and shall be completed in a workmanlike manner. Upon completion renovations to the Leased Premises, Lessee shall furnish Lessor with two (2) sets of as-built drawings of the Leased Premises.

E. Condition. Upon possession by Lessee, Leased Premises shall be broom clean. Carpets shall be shampooed, bulbs and ballasts operational and walls and woodwork clean, but "as-is." Lessee accepts any and all restaurant equipment owned by Lessor for use by Lessee "as-is, where-is" and in good working condition. Lessee shall be responsible for any equipment it installs on the Leased Premises to be compatible with the electrical and plumbing systems currently installed on the Premises and any alterations to such utilities shall be at the sole cost of Lessee. Prior to execution of this Lease, the parties shall walk the Leased Premises to review these conditions and Lessee shall execute a statement agreeing that the Leased Premises are suitable for their intended purpose and ready for occupancy. The City will deliver the Leased Premises and utilities connected therewith in working condition. Any changes or extension to the present configuration of these utilities shall be at the expense of Lessee. At all times during the lease term or any extension thereof, at its own cost Lessee shall comply with the rules and regulations set forth in **Exhibit B**, attached hereto and incorporated herein by reference.

F. Prohibited Uses. In order to protect the integrity of Idaho IceWorld, its adjacent parking lot and its use and enjoyment by the public, no improvements, including, but not limited to, landscaping, irrigation, lighting, and signs shall be constructed, installed or located upon any portion of Lessor-owned property, except Lessee may install outdoor signage on the Idaho IceWorld building to reflect Lessee's business as set forth in Section 3.H. below. In addition, at all times during the term of this Lease, including, but not limited to, the construction and installation of any improvements upon the Leased Premises, Lessee shall not disturb or interfere with the use of the sidewalks and parking lot adjacent to the Leased Premises, and Lessee shall ensure that during construction and installation of any improvements to the leased Premises, the sidewalks remain in a safe and open condition, free of debris, equipment, construction materials and the like.

G. Furniture, Fixtures and Equipment. In conjunction with Lessee's lease of the Leased Premises, Lessor has agreed to permit Lessee to use certain existing furniture, movable trade fixtures, personal property and equipment (FF&E) belonging to Lessor. Lessor's representations with respect to any such FF&E Lessee elect to use are limited to the FF&E being in good working condition on the Lease Commencement Date. Lessee will be responsible for any repairs to FF&E during the lease term. A full and complete inventory of FF&E belonging to Lessor is attached hereto as **Exhibit C**. Lessee shall keep the FF&E in good condition, normal wear and tear excepted. Lessee shall not remove any FF&E during the Term, including any

extension thereto, at any time and such removal shall be a material breach of this Lease. Throughout the term of this Lease or any extension thereof, any and all repairs, maintenance and replacement of Lessor's FF&E shall be at Lessee's sole expense. All FF&E owned by Lessee or installed in the Leased Premises at Lessee's expense shall be the property of Lessee and at the expiration of this Agreement, Lessee shall remove the same.

#### H. Signs and Antennae.

i. Lessee, in accordance with Lessor's written sign criteria, and subject to Lessor's ability to obtain approval from governmental authorities, shall have the right to exterior and interior signage, as follows: Lessee shall be entitled to exterior signage of equal or greater size than other tenants in the facility, along the walls facing both the outlet mall and the freeway. Lessee shall be entitled to interior signs in front of the food court, at the interior entrance to the Premises and other areas as designated by Landlord. Throughout the Term or any renewal thereof, Lessee shall be entitled at Lessee's expense to remove or replace any of Lessee's signs at the premises and to install, mount, erect, repair, maintain, and replace new signs, awnings and canopies on the premises, provided that Lessee complies with all applicable laws with respect thereto. All new signs shall be subject to review and approval by Lessor, which shall not be unreasonably withheld, conditioned or delayed. Lessor shall, upon request by Lessee, at Lessee's expense, cooperate with Lessee in making applications for and seeking approval of sign permits or other requisite governmental approvals. During the Term and upon termination of this Lease, Lessee shall have the right to remove any signs, awnings or canopies installed by Lessee, but Lessee shall repair any damage to the Premises occasioned by any such removal. Since the Leased Premises is public property owned by the Lessor, political campaign signs are prohibited on the Leased Premises.

ii. Lessee shall have the right to install satellite dishes and/or other electronic devices (collectively "Antennae") on the roof of the premises in compliance with all applicable laws. The cost of installation and maintenance thereof, and the cost of any repairs to the roof which are necessitated by the installation and/or repair of any antenna shall be borne solely by Lessee. Upon the termination of this Lease, Lessee has the right to remove any Antennae, but Lessee shall repair any damage to the roof occasioned by such removal.

I. Liens. The Lessor and Lessee hereby agree, and notice is hereby given to all third parties, that Lessee, in procuring work, labor and materials for improvements to the Leased Premises, is not in any way acting as the Lessor's agent and that the Lessor shall not be liable for any work, labor or materials furnished to Lessee by any contractor, subcontractor, laborer, materialman or vendor, and no mechanic's or other lien for any such work, labor or materials shall attach to or affect the reversionary or other estate or interest of the Lessor in and to the Leased Premises. Lessee shall indemnify, defend and hold harmless the Lessor from and against any and all liability, claims, costs and expenses arising out of work performed on the Leased Premises by Lessee or at Lessee's direction, including reasonable attorney's fees and costs incurred by the

Lessor in negotiating, settling, defending or otherwise protecting against such claims. It is understood and agreed that the improvements and installations being installed by Lessee are specific to Lessee's business and are being procured for the sole purpose of enhancing Lessee's business and not to confer any permanent benefit or enhancement in value on the Lessor or the Leased Premises. Lessee shall inform every service or material provider of the foregoing provisions prior to contracting with any of them for goods or services.

J. Ownership of Improvements.

i. Lessee shall own all improvements constructed on the Leased Premises by Lessee until the expiration of the Term, including any extension thereto, or the earlier termination of this Lease. Lessee shall not, however, remove any improvements from the Leased Premises nor waste, destroy or modify any improvements on the Leased Premises except as permitted by this Lease. Upon expiration of the Term, including any renewal thereof, or the earlier termination of this Lease, Lessee shall leave the Leased Premises as is for the Lessor's use and in the condition prior to the Lease Commencement Date, in which case the Leased Premises and any improvements, excepting FF&E owned free and clear by Lessee, therein shall become the Lessor's property free and clear of all claims by Lessee or any third person, and Lessee shall indemnify, defend and hold harmless the Lessor against all liability and loss arising from such claims or from Lessor's exercise of the right conferred by this paragraph. Upon Lessee's removal of the Leased Premises as provided herein, Lessee shall restore the Leased Premises, including, but not limited to, any landscaping and irrigation located therein, to its condition prior to the Lease Commencement Date.

ii. Notwithstanding anything to the contrary contained herein, at the expiration of the Lease Term, including any renewal thereof, or the earlier termination of this Lease, Lessee may remove any FF&E furnished to the Leased Premises by or at its expense; provided, however, that if the Lessor exercises its right to have Lessee leave the Leased Premises as provided above, then all FF&E permanently affixed to the Leased Premises in such a manner that removal would cause damage to the Leased Premises or necessitate fundamental changes thereto, including, but not limited to, built-in furniture and equipment, excepting therefrom FF&E purchased from Round Table Pizza unencumbered by any recorded security interest, shall remain on the Leased Premises upon the expiration or termination of the Lease. Lessee shall, at its sole cost and expense, repair or cause to be repaired any damage resulting from the removal of FF&E allowed to be removed hereunder. If the FF & E is not removed within thirty (30) calendar days after the expiration of the Term, or within such other time period as mutually agreed to by the parties, then any such FF & E not removed shall be considered abandoned and automatically become the property of the Lessor.

K. Hours of Operation. Lessee shall operate and maintain its business at the Leased Premises according to the following minimum schedule:

September 1-March 31	Sunday-Saturday	11:00 a.m.-2:00 p.m. 5:00 p.m.-8:00 p.m.
----------------------	-----------------	---

April 1-August 31	Monday-Friday	11:00 a.m.-2:00 p.m.
-------------------	---------------	----------------------

Lessee may operate and maintain its business at the Leased Premises during Lessor's operating hours, and upon written agreement from Lessor, during non-operating hours.

#### **4. Rent.**

A. Rent Payments. During the Term of the Lease, Lessee shall pay the Lessor monthly rent based upon Lessee's Net Sales as follows:

Net Sales from \$0 to \$100.00 per day	0%
Net Sales from \$101.00 to \$500.00 per day	3%
Net Sales from \$501.00 to \$1,000.00 per day	5%
Net Sales of more than \$1,000.00 per day	7%

Lessee shall pay rent without demand in monthly installments on the fifth day of each month during the Lease Term for net sales occurring the previous month. All rent payments shall be made to the Lessor at the following address: City of Boise, Department of Parks and Recreation, 1104 Royal Boulevard, Boise, Idaho 83706, Attn: Accounts Receivable. If this Lease is terminated during a monthly rental period, the rent will be prorated on a daily basis and paid by Lessee on or before the termination date.

B. Commencement of Rent. Lessee's obligation to pay rent shall commence on the earlier of two dates: the date Lessee lawfully commences business operations or upon execution of the Lease by Lessor and Lessee. Lessee shall commence business operations within sixty (60) days of execution of the Lease by Lessee (the "Rent Commencement Date").

C. Net Sales Defined. "Net Sales" shall mean Lessee's total gross sales of food beverages, catering and merchandise from the Premises, excluding sales taxes, coupons, discounts and allowances.

Rent reconciliation shall occur quarterly based upon Net Sales statements provided to Lessor upon request. In addition to base rent Lessee shall make the additional payments as set forth in paragraph 5 below.

D. Options to Renew. No fewer than one hundred twenty (120) days prior to the end of the initial lease term (or any extension thereof) Lessee shall provide notice to the City of its intention to renew its lease for an additional three (3) year term. Upon receipt of such notice and with written agreement to renew from both parties, a base rent for the next three (3) year term shall be agreed upon between the parties. Lessor and Lessee shall establish the new lease rate within ninety (90) days of the termination date of the first or extended term. If the parties are unable to agree on a lease rate within such ninety (90) day period, negotiations shall terminate, the City may seek another tenant Lessee may remain in the leased Premises to the end

of the lease term. Nothing contained in this section or within this Agreement, shall obligate Lessor to a lease extension in the absence of written mutual agreement to renew.

E. Late Payments. If any monthly rental payments are not received within five (5) days of the due date each month, a late charge of twenty-five dollars (\$25.00) shall be added for the first day late, plus an additional five (\$5.00) dollars per day for each day thereafter until payment is received. Any late charges becoming due under this paragraph shall be added and become due with the next monthly payment of rent.

F. Returned Check Fee. If any check for rent or other sums due hereunder received by the Lessor is returned by the bank for insufficient funds, in addition to any other right or remedy available to the Lessor as a result of such default, Lessee shall pay the Lessor a returned check fee of Fifty Dollars (\$50.00), or the maximum allowed by Idaho law, to reimburse the Lessor for the costs and expenses associated with such returned check.

G. Audit. Lessor shall have the right to audit, during normal business hours and either at the Leased Premises or the principal place of business of Lessee, the books and accounts related to its operations at IIW.

## **5. Additional Payments.**

A. Utilities. Lessee shall be responsible for arranging and paying for all charges for utilities provided to the Leased Premises, including, but not limited to, water, gas, telephone, and refuse collection service. With the exception of electricity, Lessee shall pay utility charges directly to the utility provider in the event a separate meter exists. Lessor shall bill Lessee directly for electricity at a rate of \$253.68 per month for the months September – March of each year and \$90.60 for April - August. The rates are based on the agreed upon hours of operation and are subject to change if Lessee increases hours of operation. Rate per hour shall be \$1.50 based upon Lessee's increased hours of operation.

### **B. Taxes.**

i. Subject to any exemptions from the payment of such taxes under Idaho law, and although there are no real estate taxes due at the execution of this lease, Lessee shall timely pay all applicable *ad valorem* real estate taxes, if any, leasehold taxes, stormwater utility fees, tangible personal property taxes on Lessee's personal property, sales taxes on rent, and any other applicable taxes, assessments, and charges assessed against or relating to the Leased Premises, Leased Premises or any related improvements. Lessee shall make all such payments directly to the taxing authority prior to delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any and all of the above items in installments, then Lessee may, at Lessee's election, utilize the permitted installment method, but shall pay each installment with any applicable interest before delinquency.

ii. Lessee may, at its sole cost and expense, contest the validity of such tax without being in default for nonpayment of taxes under this Lease provided that Lessee provides written notice to the Lessor of Lessee's intention to contest the taxes. If Lessee contests any such tax, assessment, or charge, then Lessee may, if permitted by state law, withhold or defer payment or pay under protest but shall protect the Lessor and the Leased Premises from any lien by adequate surety bond or other appropriate security. The Lessor will cooperate with Lessee to the extent reasonably necessary for Lessee to contest such taxes.

C. Common Area Maintenance.

i. Common Area Maintenance or "CAM" costs shall consist of the ordinary exterior common area maintenance costs reasonably incurred and paid by Lessor for: (a) routine maintenance of the exterior of the building, (b) maintenance of the exterior landscaping and parking lots on the property (including snow and ice removal), (c) routine maintenance of the interior restroom common area based upon the cost of all direct labor and materials used in the maintenance of the rest rooms, and (d) chases for water and sewer usage for the building.

ii. On the fifth business day of each month during the term of this Lease, Lessee shall pay Lessee's *pro rata* share of CAM costs, as defined above. Commencing on the Rent Commencement Date, and for the period of the initial term, the CAM charges shall be \$440.00 per month. Thereafter, prior to September 1 of each year, Lessor shall present an annual CAM budget, accompanied by a reasonably detailed breakdown, for the preceding fiscal year (October 1 – September 30). The monthly CAM will be determined first on a *pro rata* basis and then by dividing the budget by twelve (12) and charged monthly in addition to the rent payment set forth in Section 4. above. Lessor annually shall prepare a comparison of budget to actual cost and the difference will either be paid to Lessor or billed to Lessee in December of each year within sixty (60) days of reconciling the CAM charges for the previous year.

iii. If the number of Lessee's customers who use the food court interferes with IIW's other lessees' quiet enjoyment of the common area or the other lessees' customers' use of the Lessee's facilities similarly interferes with Lessee's quiet enjoyment of the Leased Premises, the Lessee and Lessor agree to meet in good faith to reach an equitable adjustment.

D. Additional Payments as Rent. In addition to the rent required to be paid by Lessee under Section 4.A. above, all other payments required to be paid by Lessee under this Lease shall be considered additional rent, and such payment shall be paid when due. If Lessee fails to make such payments when due, then the Lessor is entitled to collect or enforce payment in the same manner as payment of rent.

**6. Repairs and Maintenance.**



A. Lessee shall be responsible for the repair and maintenance of the Leased Premises and any improvements and Lessee-owned FF&E located therein at its sole cost and expense. Lessee shall maintain such items and the Leased Premises in a good, safe and sanitary condition throughout the term of the Lease, normal wear and tear excepted. Lessee shall promptly and diligently repair and replace any items or improvements to maintain or comply as required above or to remedy all damage or destruction. Lessee shall insure that no noxious odors interfere with the use and enjoyment of IIW by the public.

B. The Lessor shall be entitled to inspect the Leased Premises and Improvements on a quarterly basis and provide Lessee with a written list of items requiring repair by Lessee. Lessee shall have thirty (30) days from its receipt of the list to repair all items on the list, unless the nature of such repair is such that it cannot be accomplished within 30 days, in which case Lessee shall be allowed a reasonable period of time to make such repairs, provided Lessee promptly and diligently pursues such repairs. The failure of Lessee to repair the items within such time period shall be a breach of this Lease. The failure of the Lessor to provide a list of repairs to Lessee shall not relieve Lessee of its maintenance and repair obligations. Lessee shall establish and perform preventative routine maintenance programs on its food service equipment in accordance with manufacturers' recommendations or customary practices.

#### **7. Routine Maintenance.**

A. Pest Control. Lessee, at its sole expense, shall engage exterminators to control vermin and pests on a regular basis. Such extermination services shall be supplied in all areas where food is prepared, dispensed or stored and in all areas where trash is collected and deliveries are made.

B. Janitorial Service. Lessee shall provide regular janitorial service to the Leased Premises at its sole expense.

**8. Grease Traps and Recycling.** Lessee shall comply with all provisions of the Boise City Code with respect to the control and handling of oil and grease. Lessee shall be responsible for the professional removal of grease to avoid spillage and for grease recycling of shortening. Grease traps shall be provided by Lessor and pumped in compliance with Boise City Code at Lessee's expense.

**9. Warranty of Title and Quiet Possession.** The Lessor covenants that it is lawfully seized of the Leased Premises in fee simple, free and clear of all liens and encumbrances, and has full right to make this Lease, and that Lessee, provided that Lessee is not then in default hereunder, shall have quiet, exclusive and peaceable possession of the Leased Premises during the Term hereof.

**10. Indemnification.** Lessee hereby agrees to indemnify, defend and hold harmless without limit the Lessor, and its officers, agents, employees, and elected and appointed officials, from and against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the construction,

installation, operation, maintenance or repair of the Leased Premises and any improvements thereon, or the performance of this Lease, caused by any act or omission of Lessee, its agents, servants, employees, invitees or others.

#### **11. Insurance.**

A. Lessee, at its own expense, shall keep in force and at all times maintain during the term of this Lease the following types and amounts of insurance:

- i. Property Insurance. Property Insurance, including fire and extended coverage, insuring against damage caused by fire, vandalism, wind, and water, for the replacement cost of the Leased Premises and any improvements located on the Leased Premises.
- ii. Commercial General Liability Insurance. Commercial General Liability, including liquor law liability and fire legal liability insurance with limits of not less than One (1) Million Dollars (\$1,000,000.00) per occurrence, Two (2) Million Dollars (\$2,000,000.00) annual aggregate, for Bodily Injury (BI) and Five Hundred Thousand Dollars (\$500,000.00) per occurrence, One (1) Million Dollars (\$1,000,000.00) annual aggregate for Property Damage (PD);
- iii. Workers' Compensation/Employer Liability Insurance. Full and complete workers' compensation coverage as required by Idaho law.
- iv. Automobile Liability Insurance. In the event Lessee elects to utilize delivery of food or beverages from the Leased Premises, automobile liability insurance coverage in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage, including hired/non-owned vehicles regardless of number of passengers transported.

B. The Lessor shall be named as an Additional Insured on the Commercial General Liability and Automobile Liability Insurance policies required herein.

C. Lessee shall provide the Lessor with certificate(s) of insurance on all the policies of insurance and renewals thereof on an annual basis in a form(s) reasonably acceptable to the Lessor.

D. The Lessor reserves the right to modify any aspect of the insurance requirements, including the addition of new types of coverage, and increases in the coverage amounts, as the result of reasonable and prudent risk management review of the activities upon or associated with the Leased Premises.

E. The Lessor shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said action.

F. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, who are licensed and authorized to do business under the laws of the State of Idaho.

G. The Lessor may waive or amend the insurance coverage requirements contained herein.

H. The procurement of the insurance coverage as set forth herein shall not constitute a waiver of the Lessor's sovereign immunity limits provided by Idaho law.

## **12. Compliance With Laws.**

A. Lessee shall comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations relating to the operation of a restaurant serving alcohol and the construction, operation and maintenance of the Leased Premises pursuant to this Lease, including, but not limited to, the City's building code, the Americans With Disabilities Act (ADA) and state alcohol beverage control law. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Lessee's responsibility.

B. The Lessor shall comply with all applicable laws, rules and regulations imposed upon it as the owner of the Leased Premises.

C. This Lease is contingent upon Lessee's obtaining all certificates, permits, and other approvals that may be required by any federal, state, or local authority for the operation of the Restaurant and Leased Premises. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Lessee's responsibility.

## **13. Default and Remedies.**

A. Events of Default. The occurrence of any one of the following shall constitute an Event of Default and breach of this Lease by Lessee:

- i. Lessee fails to pay rent, taxes, or other sums when due and does not cure such failure within five (5) business days of Lessee's receipt of written notice of such failure by Lessor;
- ii. Lessee fails to comply with the insurance requirements of this Lease and does not cure such failure within five (5) business days of Lessee's receipt of written notice of such failure by Lessor;

- iii. Lessee fails to perform any other term, condition or obligation of Lessee under this Lease (other than payment of rent, taxes or any other sums due, or to maintain the required insurance coverage) and does not cure such failure within thirty (30) days of Lessee's receipt of written notice of such failure by Lessor;
- iv. The abandonment or failure to take possession of the Leased Premises (for purposes hereof abandonment shall be defined as Lessee's absence from the Leased Premises of a period of more than 10 consecutive days without the Lessor's consent);
- v. Lessee fails to complete construction of the Leased Premises, as evidenced by the issuance of a Certificate of Occupancy or Certificate of Completion, as applicable, on or before the end of the month following approval by Lessor per the terms of the section 42
- vi. Lessee's assignment of this Lease or subletting of the Leased Premises or any portion thereof except as permitted in this Lease;
- vii. The dissolution or liquidation of Lessee's corporation;
- viii. Lessee's failure to operate and maintain the Leased premises pursuant to the terms of this Lease;
- ix. The subjection of any right or interest of Lessee in the Leased Premises to attachment, execution, or other levy, or to seizure under legal process, if not released within twenty (20) days;
- x. The appointment of a receiver, who is not removed within sixty (60) days after appointment, to take possession of the Leased Premises or improvements or of Lessee's interest in the leasehold estate or of Lessee's operations on the Leased Premises for any reason, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership pursuant to administration of the estate of any deceased or incompetent individual member of Lessee, or pursuant to any mortgage permitted by provisions of this Lease;
- xi. An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment, or satisfaction of Lessee's liabilities; or for reorganization, liquidation, dissolution or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceedings, and all consequent orders, adjudications, custodies, and supervisions are

dismissed, vacated, or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing, or other initial event;

- xii. Default or delinquency in the payment of any loan secured by a mortgage permitted by this Lease against the leasehold estate.
- xiii. Lessee commits waste to the Leased Premises.
- xiv. Failure to adhere to the terms of this Lease Agreement through and including March 31, 2012.

B. Lessor's Remedies. Upon the occurrence of an Event of Default described in subsection A above, the Lessor may, if it so elects but not otherwise, with or without further notice or demand, in addition to any other remedy available at law or equity, forthwith terminate this Lease and Lessee's right to possession of the Leased Premises or, without terminating this Lease, forthwith terminate Lessee's right to possession of the Leased Premises and in either case Lessor may re-enter the Leased Premises, and repossess the Leased Premises and may re-let the same after making such repairs and doing such remodeling as Lessor deems reasonable to re-let the Leased Premises. Lessee is not released from liability for damages because Lessor repossesses the Leased Premises or pursues any other remedy available to Lessor. If the Lessor terminates this Lease, then in addition to any other remedy it may have, the Lessor may recover from Lessee all damages incurred by reason of such breach, including the cost of recovering the Leased Premises.

C. Lessor's Default and Lessee's Remedies. The Lessor shall be in default of this Lease if the Lessor fails to perform and observe any of its obligations required to be performed under this Lease or applicable law, and fails to cure such default within thirty (30) days of the Lessor's receipt of written notice of such default from Lessee; provided, however, that if the nature of the Lessor's Default is such that it cannot reasonably be cured within such 30 day period, then the Lessor shall have a reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure to Lessee's reasonable satisfaction, but in any event, the Lessor shall not have more than ninety (90) days from its receipt of the notice to cure such Default. If the Lessor fails to cure the Default within the required time period, then Lessee shall have available all remedies at law and in equity, including, but not limited to, (a) terminating the Lease and vacating the Leased Premises without liability for future rent, upon thirty (30) days notice to the Lessor or (b) setting off from the rent any sum that Lessee reasonably incurs to cure any default by the Lessor, but in no event more than thirty percent (30%) of any monthly installment of rent.

D. Mutually Exclusive Remedies. The Lessor and Lessee's remedies contained herein are mutually exclusive, and are in addition to any other remedies available at law or in equity.

**14. Termination.** In addition to any other termination rights provided for in this Lease, this Lease may be terminated:

A. By the mutual, written agreement of the Lessor and Lessee; or

B. At the convenience of the Lessee, without cause, upon ninety (90) days prior, written notice to Lessor, after the initial twelve months ending March 31, 2012.

**15. Damage or Destruction of Leased Premises.**

A. If the Leased Premises or any portion thereof are destroyed or damaged so as to materially hinder effective use of the Leased Premises as an Leased Premises, then Lessee may, by giving thirty (30) days written notice to the Lessor, elect to either (1) repair or reconstruct the Leased Premises within the Leased Premises at its sole cost and expense, or (2) terminate this Lease.

B. In the event that Lessee elects to terminate the Lease, then it shall promptly remove the FF&E from the Leased Premises and restore the Leased Premises to its condition prior to the Lease Commencement Date. Upon such termination of the Lease Lessee shall be entitled to the reimbursement of any prepaid Rent on a monthly pro-rata basis.

C. In the event that Lessee elects to repair or reconstruct the Leased Premises, it shall do so in a manner that restores the Leased Premises to its structural integrity and capacity prior to such damage or destruction, and the construction of any improvements shall be subject to the requirements of this Lease. Upon such repair or reconstruction of the Leased Premises by Lessee, Lessee shall be entitled to an abatement of the rent due during the reconstruction period not to exceed ninety (90) calendar days.

**16. Condemnation.** In the event the Leased Premises or any portion thereof is taken by eminent domain, or conveyed in lieu of such taking or condemnation, to such extent as to render the Leased Premises untenable, then this Lease shall automatically terminate as of the date title to the Leased Premises vests in the condemning authority. If only a portion of the Leased Premises is so taken so as not to render the remainder of the Leased Premises untenable, the Monthly Rent shall be decreased proportionately as mutually determined by the Lessor and Lessee. All proceeds and awards as a result of any taking or condemnation shall belong to and paid to the Lessor. Lessee shall not be entitled to any portion of the award paid for the taking and the Lessor shall receive the full amount of such award. Lessee hereby expressly waives any right or claim to any portion thereof and all damages, whether awarded as compensation for diminution in value of the improvements or Leased Premises.

**17. Advertising and Promotion.** Lessee shall not use the Lessor's name or logo in advertising or promoting its Restaurant or Leased Premises without the Lessor's prior, written consent; provided however, that Lessee may use the name and location of Idaho IceWorld in such advertising without the Lessor's prior consent. Lessor and Lessee agree to explore joint marketing opportunities throughout the term of this Lease.

**18. Mortgage By Lessee.** Lessee shall not mortgage Lessee's interest in this Lease or the Leased Premises as security for the payment of any loan, note or refinancing without the

prior, written consent of the Lessor, which consent may be withheld in the Lessor's sole discretion.

**19. Estoppel Certificate.** Either party shall at any time and from time to time upon not less than ten (10) days prior request by the other party deliver to the requesting party a statement in writing certifying whether (a) the Lease is in full force or has been modified (if there have been modifications, that the Lease is in full force as modified and identifying the modifications); (b) Rent and other charges have been paid; (c) the party requesting the Estoppel Certificate is in default under any provisions of the Lease; and (d) such other matters as the party may reasonably request.

**20. Notices.** All notices, requests, demands, and other communications required or given hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addressees:

If to the Lessor, to:

Manager  
Idaho Ice World  
7072 South Eisenman  
Boise, Idaho 83716

with a copy to:

City of Boise  
Legal Department  
Post Office Box 500  
Boise, Idaho 83701

If to Lessee, to:

The Chicago Connection, L.L.C.  
Thomas Kealey, Managing Member  
7766 West Lemhi St.  
Boise, Idaho 83709  
(208) 323-1231  
(208) 323-1356 (Facsimile)  
[thebetterpizza@aol.com](mailto:thebetterpizza@aol.com)

**21. Attorney's Fees.** If any legal action or proceeding is brought by either party for default or breach of this Agreement or to enforce any provision hereof, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorney's fees and court costs at both trial and on appeal.

**22. Assignment/Subletting.** Lessee shall not assign this Lease (whether by assignment, sale of the partnership or its assets, merger, or operation of law) or sublet this Lease or any portion of the Leased Premises without the prior, written consent of the Lessor, which consent shall not be unreasonably withheld.

**23. Non-Waiver; Remedies Cumulative.** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be in exclusion of any other, and any two or more or all of such rights and remedies may be exercised at the same time.

**24. Construction of Language.** The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning. Each party has participated extensively in the negotiations concerning and drafting of this Lease, and each has been represented by legal counsel.

**25. Business Day.** Should any due date hereunder fall on a Saturday, Sunday or legal holiday, then such due date shall be the first business day following such Saturday, Sunday or legal holiday.

**26. Holding Over.** The provisions of this Paragraph do not exclude Lessor's right of re-entry or any other right or remedy provided or allowed by law or this Lease. If Lessee retains possession of the Leased Premises or any part thereof after the termination of the Lease thereof, by lapse of time or otherwise, then in addition to its other rights and remedies provided by law, the Lessor may elect, pursuant to written notice to Lessee given within thirty (30) days of said holding over and not otherwise to:

A. Treat such retention of possession as constituting a renewal of this Lease, and so bind Lessee on a month-to-month basis on the same terms and conditions as expressed herein, except there shall be no right of first refusal, and the rental rate shall be the market rate as established by an independent appraiser selected by the Lessor; or

B. Treat Lessee as a lessee-at-sufferance and Lessee shall be liable for monthly rent at double the market rate of rent for the month immediately preceding said holding over, computed on a per month basis, for each month or part thereof (without reduction for any such partial month) that Lessee thus remains in possession.

**27. Surrender of Possession.**

A. At the expiration or earlier termination of the Lease term, Lessee shall surrender possession of, and deliver all keys to, the Leased Premises to the Lessor and make known to the Lessor the combination of all combination locks in the Leased Premises, and shall, except as otherwise provided in this Lease, return the Leased Premises to the Lessor in broom



clean condition, normal wear and tear excepted, failing which the Lessor may restore the Leased Premises to such condition and Lessee shall pay the cost thereof to the Lessor on demand.

B. All property that Lessee is required to surrender shall become the Lessor's at the termination of this Lease. All property that Lessee is not required to surrender but that Lessee abandons shall, at the Lessor's election, become the Lessor's property at termination.

C. If Lessee fails to surrender the Leased Premises at the expiration or sooner termination of this Lease, then Lessee, to the extent allowed by law, shall defend and indemnify the Lessor from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding lessee founded on or resulting from Lessee's failure to surrender.

D. This Lease shall terminate without further notice at expiration of the Lease Term. Any holding over by Lessee after expiration shall not constitute a renewal or extension or give Lessee any rights in or to the Leased Premises except as otherwise expressly provided in this Lease.

**28. Hazardous Waste.** Lessee shall not cause or permit its business in the Leased Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process hazardous substances, or other dangerous or toxic substances, or solid waste, except in compliance with all applicable federal, state and local laws or regulations. Lessee shall notify the Lessor immediately if Lessee learns of any non-compliance or of any facts (such as the existence of any release or the threat of release of hazardous substances at, on, from or beneath the surface of the Leased Premises) that could give rise to a claim of non-compliance with such laws or rules and regulations promulgated thereunder. Lessee, for itself and its successors and assigns, shall indemnify, defend and hold the Lessor, its successors, assigns, owners and affiliates harmless from and against any claims, demands, liabilities and damages (including, but not limited to, attorneys' fees and court costs) arising out of or in connection with any environmental contamination or pollution of the Leased Premises, or the existence on, or removal from, the Leased Premises of any hazardous substance provided that any such contaminant, pollutant or hazardous substance was introduced into the Leased Premises by Lessee or its agents, employees, invitees, contractors or any other party acting on behalf of Lessee or for whom Lessee is responsible. The obligations of this Paragraph shall survive the expiration or termination of this Lease for 24 months.

**29. Attornment.** Lessee shall attorn and be bound to any of the Lessor's successors under all the terms, covenants and conditions of this Lease for the balance of the remaining term, and Lessee shall execute any reasonable written agreements in furtherance thereof as shall be required by the Lessor.

**30. Accord and Satisfaction.** No payment by Lessee or receipt by the Lessor of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and the Lessor may accept

such check or payment without prejudice to the Lessor's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

**31. Unlawful Discrimination.** Lessee covenants and agrees that no person shall be unlawfully discriminated against in the use and operation of the Leased Premises pursuant to this Lease.

**32. No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Lessor and Lessee.

**33. Authority to Execute Lease.** The Lessor and Lessee represent that each, respectively, has full right, power, and authority to execute this Lease.

**34. Entire Agreement.** This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein

**35. Governing Law/Venue.** This Lease shall be construed in accordance with the laws of the State of Idaho. The location for the settlement of any disputes arising out of this Lease shall be Ada County, Idaho.

**36. Severability.** If any term of this Lease is found to be void or invalid, such invalidity shall not effect the remaining terms of this Lease, which shall continue in full force and effect.

**37. Amendment.** This Lease may be amended or modified at any time during the term of the Lease by the mutual, written agreement of the parties.

**38. Time is of the Essence.** Time is of the essence with respect to all provisions of this Lease, including the performance of all obligations of the parties provided for herein.

**39. Commission.** The Lessor and Lessee represent and warrant to each other that neither party has engaged, employed nor dealt with any broker for whom a commission is due in connection with this Lease.

**40. Force Majeure.** Neither party shall be deemed in default with respect to the failure to perform any of the terms, covenants and conditions of this Lease if such failure is due in whole or in part to any strike, lockout, labor dispute (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God, terrorism, or any other cause beyond the reasonable control of the either party. In such event, the time for performance shall be extended by an amount of time equal to the period of the delay so caused. The provisions of this paragraph shall not relieve Lessee from the prompt payment of rent and other sums due hereunder if Lessee can reasonably occupy the Leased Premises.

**41. Memorandum of Lease.** At Lessee's request, the Lessor and Lessee shall execute a Memorandum of Lease mutually agreed to by the parties, which Lessee may record in the records of the Ada County Recorder.

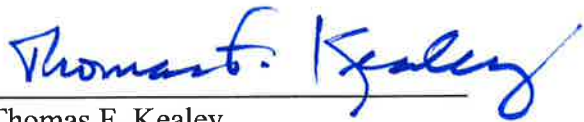
**42. Approval by Lessor.** Lessor and Lessee each acknowledges that this Agreement, even though agreed upon by the City's representatives, is not binding upon the City until the Boise City Parks and Recreation Commission and City Council approve this Agreement and the City Council authorizes the Mayor to execute this Agreement on behalf of the City. Upon execution of this Agreement by Lessee, Lessee may proceed to make alterations to the Leased Premises pursuant to the terms of this Agreement; provided, however, than Lessee does so at its own risk and Lessor shall incur no liability in the event either the Parks and Recreation Commission or the City Council fail to approve this Agreement.

This Lease has been executed by the parties as of the date set forth above.

**City of Boise City**  
**Lessor**

\_\_\_\_\_  
David H. Bieter  
Mayor

**The Chicago Connection, LLC**  
**Lessee**

  
\_\_\_\_\_  
Thomas F. Kealey  
Managing Partner

**ATTEST:**

\_\_\_\_\_  
Craig Croner  
Interim City Clerk

**EXHIBIT A**  
**Leased Premises**

**EXHIBIT B**  
**Idaho IceWorld Rules and Regulations**

**EXHIBIT C**  
**Lessor's Furniture, Fixtures and Equipment**