



To: Church Street Marketplace Commission

From: Samantha McGinnis, Assistant Director

CC: Kara Alnasrawi, Director

Date: November 7, 2024

Re: Execution of College Street Kiosk Lease

The City owns the property located at 108 Church Street, known as the College Street Kiosk. This property is managed by the Church Street Marketplace Department. The previous owner of Leunig's Bistro, Panache of Paris, Inc, operated a café, Leunig's Petit Bijou, out of such Kiosk since 2016. On September 12, we received notification that the previous owner would be selling their business to Taste of France LLC. The new owner, Taste of France LLC, wishes to continue operations of Leunig's Petit Bijou from the Kiosk and take over the remainder of the lease.

Since the abrupt sale of the business, the City has been working with the City Attorney's office to execute the transfer of the College Street Kiosk lease agreement to the new business owner. In the interim, the City, as to not disturb the business operations of the Owner, has granted a time-limited license, in the term of 60-days, terminating December 8, 2024, with the limited purpose of carrying on café business operations out of the Kiosk.

This agreement will require review and approval of the Church Street Marketplace Commission and ratification by the City Council and signature by the Mayor.

Background:

Following an RFP process run by the Church Street Marketplace in 2016, Leunig's Petit Bijou was selected to be the operator of the College Street Kiosk. In September of 2016, the City of Burlington, through its Church Street Marketplace Department entered into an agreement with Panache of Paris, Inc. (dba Leunig's Petit Bijou) to lease the City owned property located at the corner of College and Church Street for a term of three years, terminating on July 31, 2019. This lease included two three-year renewal options. The first executed in 2019 and ending July 31, 2023 and the second executed in 2023 and ending July 31, 2026. This new lease is in its second and final renewal and the College Street Kiosk will need to be put out to an RFP process in early 2026 to identify an operator following the end of this lease agreement. The current operator is allowed to reapply to the new RFP but will not be given another renewal option per the original lease agreement.

Staff recommends approval and execution of new lease for the College Street Kiosk to Taste of France LLC Upon approval by the Board of Finance and City Council.

**CITY OF BURLINGTON
LEASE AGREEMENT
WITH
TASTE OF FRANCE, LLC**

This Lease Agreement (“Lease”) is entered into by and between the City of Burlington, acting by and through the Church Street Marketplace Department (“City”), and Lessee, Taste of France, LLC, d/b/a Leunig’s Petit Bijou (“Lessee”), a Vermont corporation authorized to do business in the State of Vermont with a principal place of business at 115 Church Street, Burlington, VT 05401. The City and Lessee agree to the terms and conditions of this Lease.

1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Lease shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Lease before the Effective Date and unless otherwise agreed to in writing, shall have no obligations for performance or expenses incurred before the Effective Date or after the expiration or termination of this Lease.

2. RECITALS

- A. Authority.** Authority to enter into this Lease exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease.
- C. Purpose.** The City owns and operates a kiosk building located at 180 College Street in Burlington, Vermont. The City and Lessee wish to enter into an agreement leasing certain portions of the Marketplace’s premises to Lessee to further and carry out the purposes of the operation of the Petit Bijou coffee and food service. This Lease establishes the conditions and terms of Lessee’s use of the Leased Premises.
- D. References.** All references in this Lease to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments, are references to sections subsections, exhibits, or other attachments contained herein or incorporated as part of this Lease, unless otherwise noted.

3. DEFINITIONS

- A. “Leased Premises”** means the City-owned building and ground space known and numbered as 180 College Street in Burlington, Vermont, which consists of approximately 126 square feet of building space. A description and map of the Leased Premises are included as Attachment A.
- B. “Effective Date”** means the date on which this Lease is approved and signed by the City, as shown on the signature page of this Lease.
- C. “Hazardous Substance”** means and includes, but shall not be limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment or work place and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities,

cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offspring, and all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, CERCLA, and regulations adopted pursuant to such Acts, the Toxic Substances Control Act of 1976, as heretofore or currently in effect (“TSCA”) and the Resource Conservation and Recovery Act of 1976, as heretofore or currently in effect (“RCRA”).

- D. **“Lease”** means this Lease Agreement, its terms and conditions, attachments, and documents incorporated by reference under the terms of this Lease.
- E. **“Party”** means the City or Lessee and **“Parties”** means the City and Lessee.
- F. **“Termination Event”** means any event described in Section 16.B.i. (Termination by the City – Breach)

4. TERM AND RENEWAL TERM(S)

- A. **Initial Term.** This Lease and the Parties’ respective performance shall commence on the Effective Date and expire on July 31, 2026.
- B. **Prior Agreements.** The Parties acknowledge that the prior lease for the Leased Premises between the City and Panache of Paris, Inc., the former owner and operator of Leunig’s Petit Bijou, contained an option to renew through 2026. Because Lessee intends to carry on the same business operations the Parties agree to honor and apply that time period to this present Agreement between the Parties. Notwithstanding, the Parties agree that the Initial Term of this Agreement shall be the only available term under this Agreement without further written agreement of the Parties.

5. LEASE—USES AND PURPOSES

The City hereby leases to Lessee for its exclusive use the right to access and occupy the Leased Premises, subject to the terms of this Lease and the following conditions:

- A. **Use.** Unless otherwise approved in writing by the City, Lessee shall use and occupy the Leased Premises for its food and coffee service operations.
- B. **Upkeep and Utilities.** Lessee shall furnish to the Leased Premises and pay all charges for telephone service, sewage service, stormwater, trash and/or hazardous waste removal, janitorial service, water, electric power, heat, gas, air conditioning and other utilities of every kind.
- C. **Condition.** Lessee shall keep and maintain all parts of the Leased Premises—including related and associated appurtenances—in good condition, order and repair during the term of this Lease. Such actions include but are not limited to: painting, lighting, removal of ground side snow and garbage, landscaping, replacement of broken glass with glass the same size and quality of that broken, and utility services.
- D. **Sublease.** Lessee shall not sublease any portion of the Leased Premises without the express prior

written approval of the City

- E. Compliance with Law.** Lessee shall observe and comply with any and all present and future requirements of the constituted public authority and with all federal, state, or local statutes, ordinances, regulations, standards, conditions, and agreements applicable to Lessee for its use of the Leased Premises, including, but not limited to, ordinances, rules and regulations promulgated from time to time by or at the direction of the City for the administration of the Church Street Marketplace. Further, Lessee shall—at its own expense—submit to and comply with the requirements of all state and federal regulatory agencies or municipal boards having jurisdiction over the construction of any fixed improvements on the Leased Premises, including, but not limited to, any Environmental Board or Board of Health.
- F. ADA.** Lessee shall—at its own expense—comply with the standards for accessible design known as the Americans with Disabilities Act (“ADA”) Accessibility Guidelines in connection with any new construction or alteration of the Leased Premises. Lessee shall bear the burden of this obligation regardless of whether any such Agency or Board shall require that the City be the applicant of record.
- G. Waste and Nuisance.** Lessee shall not make any actionable waste or nuisance upon the Leased Premises and shall not do or permit to be done anything which may result in the creation, commission, or maintenance of any such waste or nuisance on said premises or the Church Street Marketplace. Lessee shall properly handle, remove, and dispose of any and all lubricants and/or hazardous waste and maintain the Leased Premises in a clean and safe condition.
- H. Improvements.** Should Lessee desire to make infrastructure and Lessee-specific modifications or improvements to the Leased Premises, Lessee shall obtain advanced written approval by the City. Lessee shall be solely responsible for all costs associated with improvements without reimbursement or further consideration from the City. All approved additions or improvements must comply with the standards for accessible design known as the Americans with Disabilities Act Accessibility Guidelines and shall, on expiration or termination of this Lease, belong to the City without compensation to Lessee.
- I. Supervision.** Lessee shall ensure that the management, maintenance, and operation of the Leased Premises shall at all times be under the supervision and direction of an active, qualified, competent representative of Lessee, and Lessee shall identify its representative, and any successor, in writing to the City.

6. MAINTENANCE AND CONDITIONS OF USE OF PREMISES

- A. LESSEE shall maintain the KIOSK in a manner which, in the sole discretion of the CITY, befits the appearance of the Church Street Marketplace. LESSEE is responsible for the maintenance of the inside and exterior of the KIOSK; the CITY is responsible for maintenance at ground level around the KIOSK and the sculpture in the upper portion of the KIOSK.
- B. If failure to perform maintenance in the manner deemed appropriate by the CITY shall continue for thirty (30) days after written notice thereof, the CITY may contract with others for maintenance of the KIOSK. In such event, LESSEE shall be responsible for all such costs.
- C. LESSEE shall repair any damage to the KIOSK
- D. caused by or arising from operation of its business. If LESSEE fails to make such repairs or replacements promptly, the CITY may, at its option, make such repairs or replacements, and LESSEE shall repay the cost(s) thereof. In case of damage by fire or other elements, or other causes beyond the control of LESSEE, such as to make the

KIOSK untenable or substantially unfit for use by LESSEE, if the cost of repair or reconstruction exceeds the extent of insurance proceeds, then LESSEE may terminate this Lease Agreement upon reasonable notice to the CITY. The CITY shall not be liable to LESSEE for losses due to theft, burglary, or other casualty, or for damages done by persons on the KIOSK.

- E. LESSEE shall be responsible for cleaning the KIOSK including but not limited to window washing. Window washing shall occur bi-weekly.
- F. LESSEE shall be responsible for all graffiti removal on the exterior of the KIOSK.
- G. LESSEE shall be responsible for all trash removal and will not use Church Street Marketplace litter receptacles for disposal.
- H. LESSEE shall recycle all appropriate materials.
- I.
- J. LESSEE understands and agrees that CCTA bus patrons may use the eastern-most portion of the KIOSK being that portion presently covered by an awning, and as shown in Attachment A. LESSEE understands and agrees that it will not block or interfere in any way with such use. The CITY understands and agrees that if seating in or about the entire KIOSK area for use by bus patrons or other members of the public is provided, such furniture shall not be more than four (4) feet in length.
- K. LESSEE understands and agrees that the Neon Art Sculpture in the upper portion of the KIOSK will not be touched, used, or interfered with in
- L. any manner.
- M. LESSEE will, within its control, maintain a barrier-free walkway 9 ft. or more in width along the northernmost and eastern portion of the KIOSK at all times; i.e. no inventory, stock, supplies, or signs, etc. will be allowed in such walkway.
- N. LESSEE at all times shall operate the business in an orderly manner. LESSEE shall not, with intent to cause public inconvenience or annoyance, engage in fighting or in violent, tumultuous behavior, make unreasonable noise, use abusive or obscene language, make an obscene gesture, obstruct vehicular or pedestrian traffic, or engage in any conduct which is proscribed by Chapter 19 of Title 13 of Vermont Statutes Annotated.

7. RENT

Lessee shall, in accordance with the provisions of this section, pay the City rent and other amounts due hereunder in the amounts and using the methods set forth below:

- A. Leased Space Rent.** Lessee shall pay the City rent for access and use of the Leased Premises at a rate of one-thousand six-hundred two dollars (\$1,602.00) per month, which represents approximately \$12.71 per square foot per month for the 126 square feet of first floor rental space at 180 College Street.
- B. Time for Payment.** Lessee shall make the rental payment due under this §6 on or before the first day of each calendar month during the term of this Lease. Payment shall be made to:

Church Street Marketplace Office, 131 Church Street, Suite 209, Burlington, Vermont 05401.
- C. Electronic Payment.** The City shall have the right, on not less than thirty (30) days prior written notice to Lessee (the “Electronic Payment Notice”), to require Lessee to make subsequent payments of monthly rent, any additional back rent, and other monies due pursuant to the terms of this Lease by means of electronic funds transfer determined by the City in its sole and absolute discretion (the “Electronic Payment”). The Electronic Payment Notice shall set forth the proper bank ABA number,

account number and designation of the account to which such Electronic Payment shall be made. Lessee shall promptly notify the City in writing of any additional information that will be required to establish and maintain Electronic Payment from Lessee's bank or financial institution. The City shall have the right, after at least ten (10) days prior written notice to Lessee, to change the name of the depository for receipt of any Electronic Payment and to discontinue payment of any sum by Electronic Payment."

- D. Late Payment.** Any required payment which has not been paid when due shall incur interest at the rate of 1.5% per month, in addition to a 5% penalty. Any amounts owed with penalty thereon for a period in excess of one year shall be increased by additional eighteen (18%) applied annually to the total amount owed.

8. CITY OBLIGATIONS

- A. Access.** The City shall ensure reasonable ingress and egress to and from the Leased Premises.
- B. Snow Removal.** The City shall provide for snow removal from access roads.
- C. Water discharge.** The City will ensure that there is an even surface on the northern side of the KIOSK so that water does not run into the KIOSK from adjacent areas.

9. ENTRY OF LEASED PREMISES

The City and its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right to enter upon the Leased Premises for the following purposes:

- A. Inspection.** To inspect the Leased Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee has complied and is complying with the terms and conditions of this Lease. Lessee shall provide the Director of the Church Street Marketplace with serviceable keys to to the Kiosk permit the exercise of the City's rights hereunder; or
- B. Facilities.** To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the Leased Premises, and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the City provided, however, that said work shall in no event disrupt or unduly interfere with the operations of Lessee. Nothing herein shall be construed to impose upon the City any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. Lessee is and shall be in exclusive possession of the Leased Premises and the City shall not, in any event, be liable for any damage to the premises or any property of Lessee or any other persons located in or thereupon, other than to repair or remedy such damage as may be occasioned by negligence of the City, its employees or agents.

10. TAXES AND ASSESSMENTS

- A. Direct Tax.** Lessee shall pay directly to the taxing authority any and all personal property inventory taxes or assessments which may be assessed against the Leased Premises and its contents during the term hereof or any renewal term.

Lessee shall be responsible for paying all applicable property taxes for the Kiosk during the term of this Lease Agreement. For the entire term of this lease agreement, all the appropriate fiscal year property taxes for the KIOSK, as listed on the Property Tax Payment Schedule set by the City Council and located at 149 Church Street, shall be paid by Lessee to the CITY when a bill for said taxes is presented.

B. Common Area Fees

Lessee shall be responsible for paying all applicable common area fees to the City. The computation for common area fees shall include all elements applied by the Church Street Marketplace Commission in the setting of Common Area fees for Marketplace properties on Church Street. For the term of this Lease Agreement the appropriate fiscal year common area fee for the Lease Premises that is set forth on the common area fee payment schedule set by the City Charter shall be due and payable by Lessee the CITY.

C. Common Area Fee Formula Negotiation

In the event that the formula used to determine the common area fees for Church Street property owners for any fiscal year during the term of this Lease Agreement is changed such that a simple mathematical calculation of the amounts due CITY from Lessee for the rights granted hereby cannot be made, the parties agree to negotiate the amounts owed CITY for such year or years which amount(s) shall not be less than the amount(s) paid for the preceding fiscal year.

11. INSURANCE

Lessee shall provide insurance in accordance with Attachment B hereto.

12. INDEMNIFICATION & LIABILITY

A. *Indemnification. Lessee shall indemnify, defend, and hold harmless the City, its officers, agents and employees, including the City of Burlington Church Street Marketplace Commission their successors and assigns, individually or collectively, from and against all liability and any claims, suits, expenses, losses, judgments, proceedings, damages, expenses, demands, suits, costs (including costs of defense, reasonable attorney fees, and reasonable professional fees incurred in defense or incurred in enforcement of this indemnity), and causes of action, including but not limited to, claims arising out of or in connection to the following:*

- 1. *This Lease;***
- 2. *The Leased Premises;***
- 3. *Actions on the Leased Premises;***
- 4. *Lessee's possession, use, occupation, or control of the Leased Premises ;***
- 5. *Actions or omissions of the Lessee, its agents, employees, licensees, visitors, or contractors;***
- 6. *Breach or default of this Lease by Lessee, its agents, employees, licensees, or contractors.***

Lessee shall give prompt and timely notice to the City (and copying the Burlington City Attorney's Office) of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or may affect the City, the Leased Premises, or the Church Street Marketplace

Lessee shall reimburse the City for costs associated with violations issued by state and federal regulatory authorities resulting from Lessee's misconduct, incompetence, or negligence as determined by the City.

- B. Liability.** *The City shall not be liable to the Lessee, any assignees claiming by, through, or under Lessee, any subtenants claiming, by, through, or under Lessee, and any of their respective agents, contractors, employees, and invitees, for any injury to or death of any person or persons or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience (collectively and individually a "loss") caused by casualty, theft, fire, third parties, repair, or failure to repair, or alteration of any part of this building, or any other cause, unless due to the negligence or willful misconduct of any indemnified party, in whole or in part.*

13. HAZARDOUS WASTES

- A. Disposal.** Lessee shall properly handle, remove, and dispose of any and all lubricants, grease, and/or hazardous waste and shall maintain the Leased Premises in a clean and safe condition.
- B. Hold Harmless.** Without any limitation to Lessee's indemnification and defense obligations hereunder, Lessee shall indemnify, defend, and hold harmless the City, its officers, and employees from and against all loss, cost and expense (including, without limitation, attorney fees) of whatever nature suffered or incurred by the City on account of the existence, release, or discharge of Hazardous Substances on or from the Leased Premises including, without limitation, any claims, costs, losses, liabilities, and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against the City or the Leased Premises based upon nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of Hazardous Substances or the imposition of a lien on any part of the Leased Premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), or any other laws pursuant to which a lien may be imposed due to the existence of Hazardous Substances. Lessee further unconditionally, absolutely, and irrevocably guarantees the payment of any fees and expenses incurred by the City in enforcing or seeking enforcement of the liability of Lessee under this indemnification.

14. WARRANTIES AND REPRESENTATIONS

- A. Regarding the Leased Premises.** The City represents that it is the owner of the Leased Premises or the authorized representative or agent of said owner. During the terms of this Lease, the City represents and warrants that the Lessee may have, hold, and enjoy peaceful and uninterrupted possession of the Leased Premises and rights herein leased and granted, subject to performance by Lessee of its obligations herein.
- B. Regarding Legal Authority.** Lessee warrants that it possesses the legal authority to enter into this Lease and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Lease and

to bind Lessee to its terms. The person signing and executing this Lease on behalf of Lessee hereby represents, warrants, and, guarantees that they have full authorization to do so. If requested by the City, Lessee shall provide the City with proof of Lessee's authority to enter into this Lease within 15 days of receiving such a request.

15. CASUALTY

If the Leased Premises are damaged by fire, flood, or another casualty, either Party may terminate this Lease within 30 days of the date the terminating Party becomes aware of such occurrence if, in the opinion of the terminating Party, the Leased Premises have been so damaged as to render them wholly or partially untenable or unfit for the Lessee's purposes. If so elected, the terminating Party shall give the other Party written notice to the City and termination shall be effective 30 days from the date of mailing of the notice of termination.

If the Parties elect not to terminate this Lease, the City shall reasonably estimate the time, restoration work, and commencement date that the City reasonably anticipates is required for the performance of restoration work. Lessee's obligation to pay rent shall equitably and proportionately abate with respect to the damaged portion of the Leased Premises from the date of damage until restoration is sufficiently complete to enable Lessee to recommence its use and occupancy of the Leased Premises for the purposes set forth in this Lease.

16. TITLE TO IMPROVEMENTS

Upon the expiration or termination of this Lease, all permanently fixed improvements made upon the Leased Premises by Lessee shall become a part of the realty and remain on the Leased Premises as the property of the City. Lessee shall not be entitled to compensation of any kind for such improvements nor shall the City be required to provide Lessee with any consideration of any kind for such improvements.

17. TERMINATION

In addition to the termination rights granted in other sections of this Lease, the Parties may terminate this Lease in accordance with this §16.

A. Breach. The failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B. Termination by the City.

(i) Breach. The City may terminate this Lease, if Lessee fails to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, including, but not limited to, the following conditions:

a. Past Due. If Lessee fails to pay required rental charges or money payments more than thirty (30) days after a due date.

b. Abandonment. If Lessee or any approved sub-lessee voluntarily abandons or discontinues the conduct and operation of its service at the Kiosk for a continuous period of sixty (60) days.

c. **Bankruptcy.** The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Lessee, or the appointment of a receiver or similar officer for Lessee or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof, shall constitute a breach.

d. **Public safety.** If terminating the lease is reasonably necessary to preserve public safety or to prevent an immediate public crisis.

(ii) **Notice and Cure Period.** In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if a cure of the breach has not begun within 30 days and pursued with due diligence, the non-breaching Party may terminate this Lease by sending a notice of termination, which shall be effective thirty (30) days after the notice of termination is sent. Notwithstanding anything to the contrary herein, the City, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Lease in whole or in part if reasonably necessary to preserve public safety or to prevent an immediate public crisis.

(iii) **Repeated Breaches.** If the same Termination Event has occurred on four separate occasions during any rolling 12-month period (having been duly remedied or waived on each occasion), a cure period for remedying the next occurrence of such Termination Event occurring within the relevant 12-month rolling period will only be available if City so permits in its sole discretion.

(iv) **Rights and Remedies Not Exclusive.** The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. **Termination by Lessee.** Lessee may terminate this Lease upon thirty (30) days' advance written notice to the City under the following conditions:

(i) **Injunction.** The issuance by any court of competent jurisdiction of an injunction, order, or decree preventing or restraining the use by Lessee of all or any substantial part of the Leased Premises or preventing or restraining the use of the Kiosk for usual Church Street Marketplace purposes in its entirety, or the use of any part thereof which may be used by Lessee and which is necessary for Lessee's operations on the Kiosk which remains in force, unvacated or unstayed for a period of at least sixty (60) days.

D. **Damage to Improvements.** Either Party may terminate this Lease upon providing thirty (30) days' written notice to the other Party if the fixed improvements upon the Leased Premises are so totally destroyed or so extensively damaged that it would be impracticable or uneconomical to restore the same to their previous condition.

18. CONDITION ON TERMINATION

At the termination or expiration of this Lease, Lessee shall surrender and deliver the Leased Premises in as substantially good order and condition as exists at the inception hereof; excepting, however, loss

by fire, inevitable accident, act of God, and ordinary wear and tear.

19. LIENS

Lessee shall cause to be removed any and all mechanic's or materialman's liens of any nature arising out of or because of any construction performed by Lessee upon the Leased Premises or arising out of or because of the performance of any work or labor upon or the furnishing of any materials for use at the Leased Premises, by or at the direction of Lessee within a reasonable time not to exceed six (6) months from the completion of any such construction.

20. HOLDING OVER

In the event Lessee shall hold over and remain in possession of the Leased Premises after cancellation or termination of this Lease, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but rather shall only create a tenancy from month-to-month which the City may terminate at any time upon thirty (30) days' advance written notice.

21. FORCE MAJEURE

Neither Party shall be deemed to have breached this Lease if it is prevented from performing any of its obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the Party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began. The Party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Lease shall be resumed immediately after such cause has been removed, provided that neither Party shall be required to settle any labor dispute except upon terms that the Party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Lease to be extended and shall not affect any rights accrued under this Lease prior to the occurrence of the force majeure. The Party giving notice of the force majeure shall also give notice of its cessation.

22. PUBLIC EMERGENCIES

Lessee must comply with all local, state, federal orders, directives, regulations, guidance, advisories during public emergencies. Public emergencies include, but are not limited to, national, state and local security emergencies; public health emergencies and pandemics; evacuations; chemical spills; shelter-in-place alerts; severe weather advisories; boil water advisories; and roadway interruptions. A Lessee's failure to comply with any local, state, federal orders, directives, regulations, guidance, or advisories during a public emergency shall constitute a breach of the Lease pursuant to Section 17 (Termination). The City shall have sole discretion in determining if Lessee is compliant with the above. If a public emergency is declared, the City will not be responsible for any expenses or losses incurred as a result of any public emergency.

23. DISPUTE RESOLUTION

The Parties shall make their designation representative available to meet within a reasonable time to discuss issues relating to the Lease or the Leased Premises. Each Party shall take such actions as reasonably necessary to address any issues within a reasonable time.

Either Party may enforce this Lease and/or seek appropriate remedies in Chittenden Superior Court under the laws of the State of Vermont.

24. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

For the City: Kara Alnasrawi
131 Church Street, Suite 209 Burlington, VT 05401
802.238.1910

Kara@burlingtonvt.gov

For Lessee: Amy Bernhardt
115 Church Street, Burlington, VT 05401
events@leunigsbistro.com

25. GENERAL CIVIL RIGHTS PROVISIONS

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

26. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Lease, the Lessee, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the

Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

27. FEDERAL CIVIL RIGHTS PROVISION

No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of property and facilities made available or leased to Lessee; the construction of any improvements on, over, or under said property and facilities; or the furnishing of services thereon. Lessee shall comply with the Nondiscrimination Acts and Authorities as set out below and as they may be amended from time to time.

A. The Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities such that no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by Lessee of Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities.

C. In the event of breach of any of the above non-discrimination covenants, the City shall have the right to terminate the Agreement and re-enter and repossess the underlying property and facilities and hold the same as if the Agreement had never been made or issued.

D. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - i. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - ii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - iii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

28. LIVABLE WAGE

The City has in effect a livable wage ordinance. This livable wage ordinance is applicable to service contracts with the City (as opposed to the purchasing of goods) where the total amount of the contract or contracts with the same person or entity exceeds \$15,000 for any twelve-month period.

Lessee shall comply with the livable wage ordinance to the extent that it is a covered employer under the ordinance and the ordinance is otherwise applicable. Lessee shall also require any contractors or

agents performing work at the Leased Premises to comply with the livable wage ordinance.

29. MORTGAGES

At the option of the City, this Lease shall be subordinate to any mortgage or other security interest by the City which from time to time may encumber all or part of Leased Premises so long as the City's lender shall agree in writing in a form reasonably acceptable to Lessee that such lender will not disturb Lessee's possession and rights under Lease so long as Lessee remains in compliance with Lease.

30. ESTOPPEL CERTIFICATE

Each Party shall—within thirty (30) business days after request by the other Party—execute and deliver to the requesting Party, or the party designated by the requesting Party, a statement certifying: (i) that Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the modified Lease is in full force and effect); (ii) whether, to the responding Party's knowledge, either Party is in default in performance of any of its obligations under Lease, and, if so, specifying each default; and (iii) any other information reasonably requested concerning Lease.

31. BROKER COMMISSIONS

The City shall have no obligation to pay any real estate commissions to any agents or brokers claiming by or through Lessee, and without prejudice to Lessee's general indemnification and defense obligation hereunder, Lessee agrees to indemnify and hold harmless the City for all claims or demands of any other real estate agent or broker claiming by, through, or under Lessee. This indemnification shall also include payment of costs and attorney fees incurred by the City in defense of a claim for such real estate commissions or fees.

32. GENERAL PROVISIONS

- A. Assignment.** Lessee shall not assign this Lease or sublet any part of the Leased Premises without the expressed written consent of the City.
- B. Binding Effect.** All provisions of this Lease, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- C. Captions.** The captions and headings in this Lease are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.
- D. Counterparts.** This Lease may be executed in multiple identical counterparts, all of which shall constitute one agreement.
- E. Entire Understanding.** This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings—oral or written—are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein. By and through execution of this Lease, the prior temporary license agreement executed between the Parties as of Fall 2024 is extinguished and supplanted hereby.

- F. Extinguishment and Replacement.** This Lease extinguishes and replaces any prior leases between the Parties related to the Leased Premises upon the Effective Date hereof.
- G. Modification.** Modifications of this Lease shall not be effective unless agreed to in writing by both Parties in a formal written amendment to this Lease, properly executed and approved by both Parties.
- H. Interpretation.** The language in all parts of this Lease shall in all cases be construed simply according to its fair meaning and not strictly construed against the City. This Lease shall be construed and performance thereof shall be determined in accordance with the laws of the State of Vermont.
- I. Severability.** Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable, and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.
- J. Survival of Certain Lease Terms.** Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after expiration or termination shall survive such expiration or termination and shall be enforceable by the City if Lessee fails to perform or comply as required.
- K. Third Party Beneficiaries.** Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease and do not create any rights for such third parties.
- L. Waiver.** No acceptance by the City of rentals, fees, charges or other payments in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof, to be performed, kept or observed by Lessee, shall be deemed a waiver of any right on the part of the City to terminate this Lease. A waiver by the City of any breach of a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- M. Public Records.** All records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of the City. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified by Lessee, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that a document or record is proprietary, a trade secret, or otherwise exempt. Particular records, pages, or sections that are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.
- N. Illegal Substance.** Lessee, Lessee's employees, and Lessee's patrons are prohibited from possessing, using, transporting, cultivating, selling, growing, or donating any substance prohibited under local, state, or federal law, including but not limited to marijuana.

- O. Attorneys' Fees.** In case of any dispute arising from this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
- P. Municipal Rights.** Nothing herein shall be deemed a waiver of Landlord's regulatory authority as a city.
- Q. Rules:** The Rules and Regulations in Attachment C are incorporated herein by this reference as though fully set forth.

33. ATTACHMENTS

The following attachments are adopted, made part of, and incorporated by reference into this Agreement:

- A. Attachment A:** Leased Premises Description and Map
- B. Attachment B:** Insurance Requirements
- C. Attachment C:** Certificate of Insurance

— *Signature Pages to Follow* —

34. SIGNATURE PAGE 1.

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect. This Lease may be executed electronically, and an electronic copy or other facsimile shall be treated as an original. This Lease may be executed in counterparts, each of which shall be deemed an original.

The Parties hereto have executed this Lease Agreement

LESSEE
TASTE OF FRANCE, LLC
115 Church Street, Burlington, VT 05401

By: _____

Name: Amy Bernhardt

Title: Owner

Date: _____

State of Vermont, County of _____. This record was acknowledged before me on _____ (date) by _____ (authorized signatory's name).

Signature of Notary Public: _____

Stamp or certificate number: _____

Title of office: _____

My commission expires: _____

35. SIGNATURE PAGE 2.

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

The Parties hereto have executed this Lease Agreement

**City of Burlington
149 Church Street, Burlington, Vermont 05401**

By: _____

Name: Mayor Emma Mulvaney-Stanak_____

Title: Mayor of the City of Burlington, Vermont_____

Date: _____

State of Vermont, County of _____. This record was acknowledged before me on _____(date) by _____ (authorized signatory's name).

Signature of Notary Public: _____

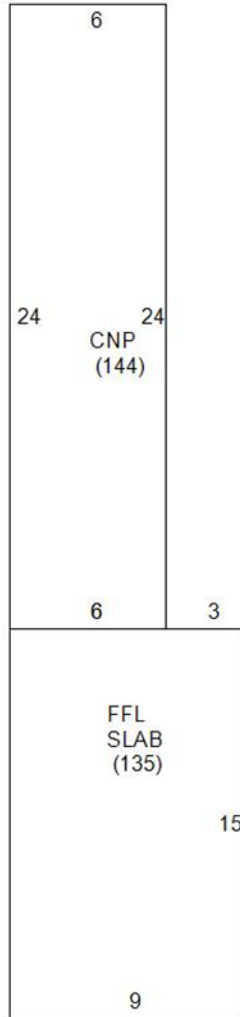
Stamp or certificate number: _____

Title of office: _____

My commission expires: _____

ATTACHMENT A

Leased Premises Description[s] and Map[s]



MARKETPLACE KIOSK
CORNER OF CHURCH AND COLLEGE

ATTACHMENT B

INSURANCE REQUIREMENTS

As used in this form, “Contractor” shall mean the lessee/tenant. Insurance shall be maintained throughout the term, and the lessee/tenant shall provide certificates of insurance and endorsements reasonably acceptable to the City prior to the Effective Date of the lease and annually during the term. These requirements shall also be satisfied by any subtenant authorized by the City and by any contractors, subcontractors, consultants, or subconsultants doing work of any kind or nature in the premises that could create liability for the City of any kind or nature.

The Contractor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Contract. If this Contract extends to more than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Copies of any insurance policies may be required.

The Contractor is responsible to verify and confirm in writing to the City that: (i) all subcontractors must comply with the same insurance requirements as the Contractor; (ii) all work activities related to the Contract shall meet minimum coverage and limits; and (iii) all coverage shall include adequate protection for activities involving hazardous materials.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor’s operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

A. Commercial General Liability: With respect to all operations performed by the Contractor, subcontractors, agents or workers, it is the Contractor’s responsibility to ensure that commercial general liability insurance coverage, covering bodily injury and property damage, on an occurrence form, provides all major divisions of coverage including, but not limited to:

1. Premises Operations
2. Independent Contractors’ Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Medical Expenses

Coverage limits shall not be less than:

1. General Aggregate \$2,000,000

2. Products-Completed/Operations \$2,000,000

3. Personal & Advertising Injury \$1,000,000

4. Each Occurrence \$1,000,000

5. Damage to Rented Premises \$ 250,000

6. Med. Expense (Any one person) \$ 5,000

B. Workers' Compensation/Employer Liability: With respect to all operations performed, the Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all subcontractors carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident

2. Bodily Injury by Disease: \$500,000 policy limit, \$500,000 each employee

For contracts involving work of any kind or nature on Lake Champlain, Workers' Compensation/Employer's Liability policy shall include a Maritime Endorsement (USL&H).

C. Automobile Liability: The Contractor shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the Contract. Each policy shall provide coverage with a limit not less than: \$1,000,000 - Combined Single Limit for each occurrence.

3. Umbrella/Excess Liability is excess above Commercial General Liability, Automobile Liability, and Workers' Compensation/Employer Liability.

All policies shall be endorsed to provide the City thirty (30) days' notice of cancellation. Each policy (except workers compensation/employers' liability) shall be endorsed to name the City and its officers, employees, agents, successors, and assigns as additional insureds on a primary, non-contributory basis.

Each policy shall be endorsed to waive subrogation against the City.

ATTACHMENT C
Certificate of Insurance

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, provides notice of Tenant's interest in the leased premises and of the existence of the lease. In accordance with 27 V.S.A. § 341, the lease entered into by the parties is described as follows:

1. Names of the parties.

- A. Landlord's Name: The City of Burlington, Vermont
- B. Tenant's Name: Taste of France, LLC

2. Statement of the rights of a party to extend or renew the lease. Upon mutual agreement of the Parties, this lease may be extended for a one (1) year renewal term. The renewal term shall automatically commence upon the expiration of the initial term under the same terms contained herein, except that either Party may decline the extension by providing 60 days written notice to the other Party.

3. Parties' addresses set forth in the lease.

- A. Landlord's Address: Burlington City Hall, 149 Church Street, Burlington, Vermont, 05401.
- B. Tenant's Address: 115 Church Street, Burlington, VT 05401

4. Date of the execution of the lease. [Date]

5. Term of the lease, the date of commencement, and the date of termination.

- A. Term of the lease: 18-months
- B. Date of commencement: [Date]
- C. Date of termination: July 31, 2026

6. Description of the real property as set forth in the lease. The City-owned building and ground space known and numbered as 180 Church St, Burlington, Vermont, which consists of approximately 126 square feet of building space ("Leased Premises").

7. Statement of the rights of a party to purchase the real property or exercise a right of first refusal with respect thereto. Tenant has *no* rights to purchase the real property. Tenant has *no* rights to exercise a right of first refusal with respect thereto.

8. Statement of any restrictions on assignment of the lease. Tenant shall not assign the lease or sublet any part of the Leased Premises without the expressed written consent of the City.

9. The location of an original lease.

Business & Workforce Development
131 Church Street, Suite 209
Burlington, VT 05401

IN WITNESS WHEREOF, the parties have executed or have caused this instrument to be executed by their proper officers duly authorized to do so.

THE CITY OF BURLINGTON

By: _____
Name: Mayor Emma Mulvaney-Stanak
Title: Mayor of the City of Burlington, Vermont
Address: 149 Church St, Burlington, VT 05401

State of Vermont, County of Chittenden. This record was acknowledged before me on _____ (date) by Miro Weinberger as the Mayor of the City of Burlington, Vermont.

Signature of Notary Public: _____
Stamp or certificate number: _____
Title of office: _____
My commission expires: _____

TASTE OF FRANCE, LLC

By: _____
Name: Amy Bernhardt
Title: Owner
Address: 115 Church Street, Burlington VT 05401

State of Vermont, County of _____. This record was acknowledged before me on _____ (date) by _____ (authorized signatory's name).

Signature of Notary Public: _____
Stamp or certificate number: _____
Title of office: _____
My commission expires: _____