

After recording return to:

City of Stevenson
PO Box 371
Stevenson, WA 98648

LICENSE AGREEMENT

Agreement made, effective as of January 1, 2018, by and between the City of Stevenson, a Washington Municipal Corporation, hereinafter referred to as Licensor, and Justin Gross, dba Big River Grill, hereinafter referred to as Licensee.

Recitals:

- A. Licensor is a Washington Municipal Corporation known as Stevenson, Washington.
- B. Licensee is an individual doing business as Big River Grill, and restaurant adjacent to a city park known as Walnut Park.
- C. Licensee wishes to use part of Walnut Park for *al fresco* dining during a five-month period each year when the weather is typically warmer.
- D. Licensor is willing to allow this use in exchange for improvements to the park the first year and a license fee for subsequent years, and further subject to the terms and conditions set forth herein.

In consideration of the mutual promises contained in this agreement, the parties agree as follows:

SECTION ONE **Grant of License and Construction Easement**

Licensor hereby grants to Licensee an exclusive license to occupy and use a portion of Walnut Park, as depicted on Exhibit "A", attached hereto and by this reference fully incorporated herein (the "Premises"), during the months of June through October each year, beginning June 1, 2018 and ending October 31, 2020, unless otherwise extended or terminated pursuant to this agreement.

All the remaining area of Walnut Park, and the entire park from November 1 through May 31 of each year shall be open to the public, and Licensee shall not obstruct or occupy the public areas at any time and shall remove all barriers to the Premises during those times at Licensor's sole expense.

SECTION TWO **Limitation to Described Purpose**

The above-described property may be used by Licensee solely for food and beverage service, entertainment and such activities generally consistent with the use requested by the Licensor in its application to City Council.

SECTION THREE
Periodic Payments

Licensee shall pay Licensor for this license at the rate of Five Hundred and 00/100 dollars (\$500.00) plus leasehold tax thereon, currently at the rate of 12.84% per RCW 82.29A.030, due and payable on the first day of each month, in advance and without notice. Any payment made after the fifth day of each month shall bear a late payment charge of fifty dollars (\$50.00). Any extension or renewal of this license shall be at the same rate plus an annual adjustment for CPI (Portland Urban Index), unless otherwise agreed to by the parties. Licensor's license fee shall be waived the first year (2018), provided Licensor completes the deliverables set forth on Exhibit "B", attached, plus payment of the leasehold tax assessed at the \$500.00 per month rental rate.

SECTION FOUR
Miscellaneous Duties of Parties

A. Licensor agrees to maintain the Premises in a functional and operational manner, and to keep the area surrounding the Premises free of debris generated by Licensor's operations except as reasonably necessary to conduct the permitted activities on the premises.

B. Licensee shall hold Licensor harmless for a Licensee's activities on the premises, and shall take all reasonable and prudent precautions to safeguard the public from all activities and conditions on the premises.

SECTION FIVE
Termination and Breach

A. Licensee may extend the term of this agreement or license at the end of the original term and at the end of any subsequent term for up to three additional annual terms if licensee shall have promptly and fully complied with all provisions of this agreement for the entire term thereof. All provisions of the agreement will remain the same during the extension period as in the original agreement unless otherwise modified in writing by the parties. This renewal will occur automatically unless licensor or licensee notifies the other party in writing prior to the expiration of the term being extended that they choose not to renew this agreement.

B. If Licensee shall fail to make any payment when due, make an assignment for the benefit of creditors, or be placed in receivership or adjudicated a bankrupt, or take advantage of any bankruptcy or insolvency law or otherwise breach this agreement, Licensor may terminate this agreement by giving written notice to the Licensee, specifying the date of termination, such notice to be given not less than ten (10) days prior to the date specified in such notice for the date of termination.

C. On any termination of this agreement, Licensee shall quit the above-described premises, and shall immediately remove all personal property belonging to Licensee from the above-described premises, except as to any property provided by Licensee in lieu of rent pursuant to Exhibit "B" or unless the parties agree otherwise. Licensee shall have no obligation to restore the property to pre-construction condition, except to make the property safe to the public.

D. Unless specified otherwise herein Licensor may terminate this agreement for cause, including breach of the terms of this agreement, for non-payment, or for failing to complete the improvements set forth on Exhibit "B", time being of the essence of this agreement, after thirty (30) days' written notice to Licensee setting forth the basis of the default(s) and affording Licensee a reasonable opportunity to cure the default. Licensee may make reasonable adjustments to the conceptual design approved by Licensor without creating an event of default hereunder, such as engineering, placement of facilities within the site and other changes necessary to accomplish the Licensee's stated purpose with Licensor's prior consent, which consent shall not unreasonably be withheld. Licensee shall not, however, change the purpose or scope of the initial conceptual design without first obtaining Licensor's prior written consent, which consent may be withheld in Licensor's sole discretion. Upon expiration of the time fixed by this agreement and any extensions granted by Licensor, all rights of Licensee hereunder shall terminate in the same manner and with the same force and effect, except as to Licensee's liability, as if the date fixed in the notice of cancellation is the end of the license term.

SECTION SIX

Inspection

Licensee is utilizing the Premises in an "as is" condition, and Licensor makes no representation or warranties except as set forth herein. Without limiting the generality of the foregoing, Licensee acknowledges that it has made its own independent investigation respecting the Premises and will be relying entirely thereon and on the advice of any consultant it may retain. Licensee may not rely upon any representation of any party, whether or not such party purports to act on behalf of Licensor, unless the representation is expressly set forth herein or in a subsequent document executed by Licensor. All repairs for which Licensee is responsible shall be completed by the date of termination.

SECTION SEVEN

Insurance

A. Licensee shall, at its sole expense maintain at all times Commercial General Liability insurance on the Premises at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The Public Entity shall be named as additional insured on Licensee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Licensors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.

B. Property insurance shall be written on an all risk basis.

C. Such Commercial General Liability insurance Licensee agrees to purchase and maintain for the duration of this Agreement and all extensions shall include public liability and all-risk property damage insurance with Commercial General Liability limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, which insurance shall protect the Licensor, and to deposit evidence of same with Licensor. The evidence of insurance deposited with Licensor shall name the Licensor as an additional insured. Licensor reserves the right to require reasonable increases in the insurance coverage mandated by this subparagraph. Licensor shall have no liability or

responsibility whatsoever with respect to the conduct and operation of the Licensee's business on the Premises. Licensor shall not be liable for any accident or injury to any person or property in or about the Premises that is caused by the conduct or operation of said business or by virtue of equipment or property of Licensee on said premises. Licensee agrees to defend and hold Licensor harmless against any and all such claims. Licensee shall further maintain dram shop liability insurance in an amount not less than Two Million dollars, (\$2,000,000.00) and shall name Licensor as additional insured

D. All insurance provided by Licensee as required by this section shall be carried in favor of Licensor and Licensee, as their respective interests may appear, and, in the case of insurance against damage to the Premises by fire or other casualty, shall provide that loss, if any, shall be adjusted with and be payable to Licensor. All insurance shall be written with responsible companies authorized to conduct business in the State of Washington. Licensee shall provide the names of all of Licensee's insurance carries to Licensor and shall provide copies of all insurance policies to Licensor. All policies shall show Licensor as an additional insured and shall require thirty (30) days notice by registered mail to Licensor of any cancellation or change affecting any interest of Licensor.

SECTION EIGHT **Unlawful or Dangerous Activity**

Licensee shall neither use nor occupy the Premises, or any part thereof, for any unlawful, disreputable or ultra-hazardous purpose, nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon discovery of any unlawful, disreputable or ultra-hazardous use, Licensee shall immediately halt such activities. For the purposes of this agreement, construction activities pursuant to proper permits and procedures shall not be considered an unlawful or dangerous activity.

SECTION NINE **Indemnity**

Licensee shall indemnify Licensor against all liabilities and claims by or on behalf of any person or entity to the extent that Licensee has caused damage to person or property as a result of licensee's activities on the premises, fault on the part of Licensee, Licensee's failure to perform any of the terms or conditions of this agreement, or Licensee's failure to comply with any law or government authority. Licensee will hold Licensor harmless from any mechanic's lien or security interest filed against the premises or any buildings or improvements thereon, as a result of Licensee's activities.

SECTION TEN **Governing Law**

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.

SECTION ELEVEN

Entire Agreement

This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

SECTION TWELVE

Waiver

Whenever either party's consent or approval is required under this Agreement, the party shall promptly exercise its judgment in a reasonable manner. Failure of a party to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that the party may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

SECTION THIRTEEN

Modification of Agreement

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

SECTION FOURTEEN

Notices

All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing.

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein.

Licensor:

City of Stevenson
P.O. Box 371
Stevenson, WA 98648

Licensee:

Justin Gross, dba Big River Grill
PO Box 611
Stevenson, WA 98648

SECTION FIFTEEN
Costs and Attorney Fees

If either party shall be in default under this Agreement, the nondefaulting party shall have the right, at the defaulting party's expense, to retain an attorney to make demand, enforce any remedy, or otherwise protect or enforce its rights under this Agreement. The defaulting party hereby promises to pay all costs and expenses so incurred by the nondefaulting party, including, without limitation, reasonable attorneys' costs and fees and the failure of the defaulting party to promptly pay the same shall constitute a further and additional default. In the event either party hereto institutes, defends, or is involved with any action to enforce the provisions of this Agreement, the prevailing party in such action shall be entitled to reimbursement by the losing party for its court costs and reasonable attorney costs and fees.

SECTION SIXTEEN
Assignment of Rights

The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, form, corporation, or other entity without the prior, express, and written consent of the other party, which consent shall not be unreasonably withheld or delayed. Upon assignment as permitted herein, this License shall be binding upon and inure to the Licensor and assignee as if made an original party to this agreement.

SECTION SEVENTEEN
Compliance With Laws

Licensee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations. Any fees for any inspection of the Premises during or for the Agreement term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Licensee.

SECTION EIGHTEEN
Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action or litigation shall be in the Superior Court of the State of Washington in and for the County of Skamania.

[Signatures appear on following page]

In witness whereof, each party to this agreement has caused it to be executed at Stevenson, Washington on the date indicated below.

Dated this _____ day of _____, 2017.

LICENSOR: **CITY OF STEVENSON, a Washington Municipal Corporation**

By _____
Frank Cox, its Mayor

LICENSEE: **Justin Gross, an individual, doing business as Big River Grill**

Justin Gross

Approved as to form:

**Kenneth B Woodrich, City Attorney
for City of Stevenson**

STATE OF WASHINGTON)
) ss:
COUNTY OF SKAMANIA)

I certify that I know or have satisfactory evidence that Justin Gross is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated he executed the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this _____ day of _____ 2017.

Name:
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF SKAMANIA)

I certify that I know or have satisfactory evidence that Frank Cox, as Mayor of the City of Stevenson, is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated he executed the instrument as duly authorized by the agency and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this _____ day of _____ 2017.

Name:
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires: _____

Request for an exclusive use permit for the use of a portion of Walnut Park in order to provide outdoor seating for Big River Grill customers.
Request time period: May 1 - October 15, 2017

A Add & maintain 2-top table for public and maintain existing public garbage can.



42" WLCC approved fencing



Remove existing planter



Remove existing table & benches

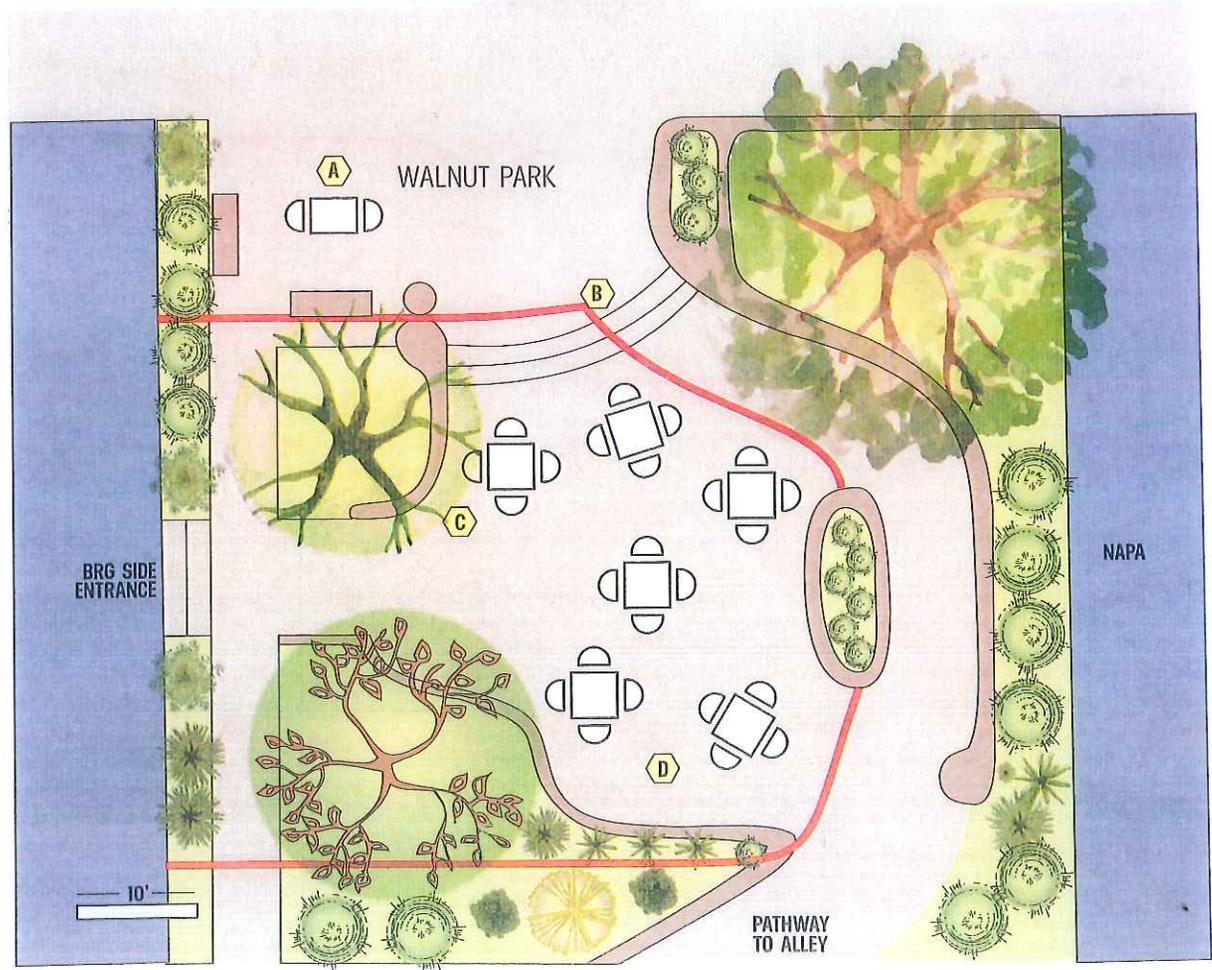


EXHIBIT B

Walnut Park Improvements to be made by Big River Grill during the first year of lease (2018) include, but are not limited to, the following:

1. Pressure wash and/or scrub the entire park and sidewalks to remove existing moss. (Not just the leased portion, but the entire park).
2. Remove the existing concrete table; replace with a community table that matches the new tables to be installed in the BRG-leased portion.
3. Trim trees and shrubs; clean up remaining storm damage.
4. Pull weeds in the entire park and the flower beds.
5. Plant and maintain native flowers and vegetation in the flower beds.
6. Work cooperatively with the Public Works Director to jointly address other maintenance issues not covered by the items on this list.