



## STAFF REPORT

DATE: May 15, 2018  
CONSENT #9

**AGENDA ITEM:** Rocco's Pizza Lease

**SUBMITTED BY:** Kristina Handt, City Administrator

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### **BACKGROUND:**

Jim Bauer, President of Roccos' Pizza is interested in leasing suite 140 in the Brookfield building. Bauer had previously leased that space and is looking to return on a month to month basis.

### **ISSUE BEFORE COUNCIL:**

Should the City Council approve the lease agreement with Rocco's Pizza?

### **PROPOSAL DETAILS/ANALYSIS:**

Included in your packet is a proposed lease which has been reviewed by the City Attorney and signed by Jim Bauer. It provides for a monthly lease amount of \$400. The lease is month to month with a 60 day notice of termination. The tenant accepts the premises As Is. Mr. Bauer has agreed to this and indicated he needs no new carpet, painting, etc.

### **FISCAL IMPACT:**

The city will receive \$400/month to help offset costs of owning and operating the Brookfield building. The lease begins in June which will also help offset some of the revenue lost from another tenant moving out.

### **OPTIONS:**

- 1) Approve the proposed lease
- 2) Amend and then approve the lease

### **RECOMMENDATION:**

If removed from the consent agenda:

*Motion to approve the lease agreement with Rocco's Pizza*

### **ATTACHMENTS:**

- Lease Agreement

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), made this 1<sup>st</sup> day of June, 2018 (the "Effective Date"), by and between the City of Lake Elmo, a Minnesota municipal corporation (the "Landlord") and Rocco's Pizza, Inc., a Minnesota corporation (the "Tenant").

WHEREAS, that the Landlord, in consideration of the rents and covenants hereinafter mentioned, does hereby lease to the Tenant, and the Tenant does hereby lease and take from the Landlord the following-described real estate:

That certain rental space in a building owned by the Landlord and located on the North 350.18 feet of Lot One (1), Block Two (2), BROOKMAN ADDITION, County of Washington, State of Minnesota which rental space totals 350 square feet; of which is located on the 1st floor in the northeast corner of the building and known as Suite 140; the post office address of said building is 3880 Laverne Avenue North, Lake Elmo, Minnesota 55042.

(the "Premises").

TO HAVE AND TO HOLD the Premises on a month-to-month basis beginning June 1, 2018, on the following terms and conditions:

1. Rent. The Tenant shall pay to the Landlord, during the term of this Lease, rent in the sum of \$400.00. Rent shall be paid by the Tenant to the Landlord on the first day of each month, beginning on June 1, 2018.

2. Use of the Premises. Unless otherwise agreed by the Landlord, in writing (which consent the Landlord shall not unreasonably withhold) the Tenant shall use the Premises only for purposes incidental to the Tenant's business which is a general office but, in any case, not for any purpose that will in any way impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease. The Premises shall be used in accordance with all ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Premises. The Tenant shall not use the Premises for the storage,



handling, transportation, or disposal of any hazardous substance, hazardous waste, pollutant, or contaminant as those terms are defined in 42 U.S.C Section 9601 (CERCLA) or Minnesota Statutes Chapter 115B (MERLA).

3. Indemnification and Insurance. The Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all liability or claims by or on behalf of any person, firm, association, corporation or governmental authority arising from or incidental to the Tenant's use, improvement, or occupancy of the Premises or related to the death or bodily injury to any person in or upon the Premises at the Tenant's invitation or damage to any of the Tenant's personal property present on or located in or upon the Premises. All personal property kept, maintained, or stored on the Premises by the Tenant shall be kept, maintained, and stored on the Premises at the Tenant's sole risk.

The Tenant at its expense shall maintain in full force and effect commercial general liability insurance coverage with respect to the Premises in a minimum aggregate amount of \$1,000,000 and insurance covering the Tenant's personal property. The Tenant shall name the Landlord as an additional insured with respect to the commercial general liability insurance policy. The Tenant shall provide the Landlord with a certificate of insurance evidencing the insurance coverage required by this paragraph.

4. Utilities. The Landlord without additional charge, will provide and maintain adequate mechanical apparatus to furnish satisfactory heating, air conditioning, water service, sewer service, and electrical power service to the Premises. The Landlord will pay for all gas, electric, water, and sanitary sewer utility charges and garbage removal costs attributable to the Tenant's occupancy of the Premises. Provided, however, that if the Tenant conducts any activity or uses any equipment in the Premises which would require utilities such as gas, water, or electric power in an amount significantly greater than might reasonably be expected for general office use, then the Tenant is required to pay to the Landlord an



amount equal to any increase in utility costs to the Landlord over and above the Landlord's normal utility costs that are attributable to the Tenant's use of the Premises. If the Landlord determines that the volume of the Tenant's garbage is substantially greater than the average volume of other tenants in the building, the Tenant shall pay to the Landlord as additional rent a reasonable charge for the additional cost of refuse removal attributable to the Tenant's greater volume of garbage. The Tenant shall be responsible for any phone service, cable/satellite television service, Internet service, or any other services needed by the Tenant for the Premises.

5. Operation and Maintenance of Common Area. For the purpose of this Lease, the term "Common Area" shall be defined as all that portion of the property in which the Premises are located including hallways, stairs, atria, landscaped areas, lighting facilities, sidewalks, the parking lot, driveways, and other improvements excepting those areas which are occupied by the Landlord, presently leased by the Landlord to tenants, or are proposed to be leased by the Landlord to tenants.

The Landlord agrees to manage, operate, and maintain during the term of this Lease and any renewal thereof the Common Area, to a normal and reasonable standard for a professional office building. The manner in which such Common Area and facilities shall be maintained and the expenditures therefore shall be at the sole discretion of the Landlord, who shall have the right to adopt and promulgate reasonable rules and regulations, from time-to-time, including the right to restrict the Tenant and the Tenant's employees and invitees from parking areas reserved for customers of various other tenants or the Landlord

The Landlord will be responsible for removing snow from the driveways, parking lot, and sidewalk of the Premises.

The Landlord has made no representation as to identity, type, size, or number of other tenancies in the building. The Landlord has the unrestricted right to change the



building perimeters, driveways, identity and type of other tenancies provided, however, there shall always be reasonable access to the Premises by the Tenant.

The Landlord hereby grants to the Tenant, its employees, agents, customers, and invitees, the non-exclusive right for and during the term of this Lease and any renewal thereof to use Common Area from time-to-time constituted, such use to be in common with the Landlord and all tenants of the Landlord from time-to-time, its and their employees, agents, customers and invitees, except when the same is being repaired or maintained. The Tenant shall not at any time interfere with the rights of the Landlord and other tenants, its and their employees, agents, customers, and invitees, to use any part of the Common Area.

6. Assignment or Sublease. The Tenant shall not assign or sublease the whole or any part of the Premises without prior written permission of the Landlord, which permission will not unreasonably be withheld.

7. Repairs, Maintenance, and Improvements. The Tenant is familiar and satisfied with the present physical condition of the Premises. The Tenant accepts the Premises in an "AS IS" condition with no obligation on the part of the Landlord to maintain, repair, or replace anything in the interior of the Premises. The Tenant shall be responsible for all repairs and maintenance to the interior of the Premises at its own cost and expense. The Tenant shall also be responsible for cleaning the interior of the Premises and removing all garbage from the interior of the Premises and depositing it in the designated garbage area on the Premises on a frequent basis. During the time of this Lease and any renewal thereof, the Tenant agrees to keep the interior of the Premises in as good a state of repair as the same now is, except for reasonable use and wear and tear.

The Tenant may, after written approval of the Landlord, make such alterations and



improvements to the Premises, and install such additional fixtures and equipment as may be necessary for the operation of the Tenant's business, all of which shall also be made at the Tenant's own cost and expense. The Tenant agrees to pay all sums of money with respect to any labor, service, materials, supplies, or equipment furnished or alleged to have been furnished to the Tenant in or about the Premises, and not furnished on order of the Landlord, which may be secured by any mechanic's, materialman's, or other lien. The Tenant may contest such lien, on the condition that the Tenant first provides the Landlord cash, bond, or other security against such lien which the Landlord reasonably determines to be sufficient.

On the expiration of this Lease, or sooner termination thereof, any improvements or alterations made, or fixtures or equipment installed on the Premises by the Tenant shall become a part of the Premises and shall belong to the Landlord without compensation to the Tenant. However, the Tenant must before the expiration or termination of this Lease, remove any improvements or alterations or fixtures or equipment which had not been consented to by the Landlord, if requested by the Landlord.

Upon expiration or termination of this Lease, the Tenant must remove all of its furniture, business equipment, and other personal property placed in, on or about the Premises by the Tenant. Upon removal, the Tenant shall at the Tenant's expense, repair and restore the Premises in as good, clean, sanitary, and safe condition as it was on the effective date of this Lease, ordinary use and reasonable wear and tear excepted.

8. Signs and Displays. The Tenant must not place any signs or displays in windows of the Premises, on the exterior or interior Common Area of the building or any other place which would be visible from outside the building or within the Common Area without the specific written consent of the Landlord. It is understood, however, that the



Landlord shall permit at least one identification sign to be placed by the Tenant outside of the building and at least one identification sign to be placed by the Tenant inside the building but such signs shall be designed and placed in locations according to reasonable standards established by the Landlord for the purpose of maintaining a harmonious and aesthetically pleasing exterior for the building and Common Area interior.

9. Inspection. The Landlord reserves the right to enter the Premises at all reasonable times to view the Premises, or to show the Premises to a prospective purchaser or lessee, or to make repairs, alterations, or improvements, all with prior Tenant approval which shall not be unreasonably withheld. Nothing in this Lease shall be deemed to limit the Landlord's right to have access to the Premises or to exercise its remedies under the Lease, or to make applications to a governmental entity with respect to the Premises, or to take other similar action with respect to the Premise as a responsible Landlord would elect.

10. Condemnation. If the whole or any part of the Premises shall be condemned by any public authority or any corporation in condemnation proceedings then, at the option of the Landlord, to be exercised in writing within 60 days of the date of the condemnation, this Lease shall cease upon the date that title passes to the condemning authority and the Tenant shall not be liable for payment of rent beyond that date.

11. Destruction of Premises. In the event the Premises shall be destroyed or so injured by fire, the elements, or any other cause, so as to be partially or wholly untenable, then the Landlord shall have the option of terminating the Lease. The Landlord shall be entitled to all insurance proceeds for the damage to or loss of any of the structures located on the Premises. If the Landlord elects to continue the Lease, the Landlord shall restore the Premises to a tenable condition substantially as before the destruction if such restoration is reasonably practical, and rent shall abate on that portion



of the Premises which is untenable until it is restored to a tenable condition.

12. Default by the Tenant. In case of default by the Tenant in the payment of any rent or in performance of any of the agreements and covenants herein contained, the Landlord may, at its option, and after 10 days written notice to the Tenant during which time the Tenant shall have the right to remove such default, terminate this Lease Agreement, re-enter and take possession of the Premises (without working a forfeiture of the rent to be paid by the Tenant for the remainder of the term of the Lease) and exercise any and all other rights and remedies provided to the Landlord by law. No waiver of a breach of any of the covenants or conditions of this Lease shall be construed as a waiver of any subsequent breach of the same covenants or conditions.

13. Peaceable Possession. The Landlord covenants to the Tenant that on paying therefor required by this Lease and upon performing the agreements and covenants required of the Tenant by this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the term of this Lease.

14. Parking. The Landlord agrees to provide reserved parking spaces as may reasonably be required for the Tenant's business use but not to exceed three spaces. The location of the reserved spaces will be determined by the Landlord.

15. Notices. Any notices, payment, or demand, permitted or required to be given or made pursuant to this Lease shall be delivered personally or mailed by certified United States mail, return receipt requested to the addresses set forth below. Such notices, demand, or payment shall be deemed timely given or made when delivered personally or when deposited in the United States mail in accordance with the above. The addresses of the parties are as follows:





If to the Landlord: City of Lake Elmo  
3880 Laverne Avenue North  
Lake Elmo, MN 55042  
Attn: City Administrator

If to the Tenant: Rocco's Pizza, Inc.  
3880 Laverne Avenue North, Ste. 140  
Lake Elmo, MN 55042  
Attn: Jim Bauer, President

16. Binding Effect. The terms and conditions of this Lease shall extend, apply to, and firmly bind the successors and assigns of the respective parties.

17. Termination. This Lease shall terminate upon 60 days written notice by either the Tenant or the Landlord.

18. Relationship of the Landlord and the Tenant. This Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between the Landlord and the Tenant, the sole relationship between the parties hereto being that of landlord and tenant under this Lease.

19. Choice of Law. The laws of Minnesota shall govern the validity, performance, and enforcement of this Lease.

20. Entire Agreement and Amendment. This Lease constitutes the entire agreement between the Landlord and the Tenant affecting the Premises and there are no other agreements, either oral or written between them. No subsequent alteration, amendment, change, or addition to this Lease shall be binding upon the Landlord or the Tenant unless reduced to writing and executed in the same form and manner in which this Lease is executed.



IN WITNESS WHEREOF, the parties have hereunto caused these presents to be executed the day and year first above written.

TENANT:  
ROCCO'S PIZZA, INC.

LANDLORD:  
CITY OF LAKE ELMO

By:  \_\_\_\_\_

Jim Bauer  
Its: President

By:

Mike Pearson  
Its: Mayor

By:

Julie Johnson  
Its: City Clerk

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