

**NON-EXCLUSIVE OUTDOOR SEATING AREA
LICENSE AGREEMENT**

THIS NON-EXCLUSIVE LICENSE AGREEMENT (“Agreement”), dated as of _____, 2022, (**“Effective Date”**), by and between the **CITY OF WARRENVILLE**, an Illinois home rule municipal corporation (**“City”**), and _____ (**“Licensee”**).

NOW THEREFORE, in consideration of the recitals, mutual covenants, and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby mutually agree as follows:

SECTION 1. RECITALS.

A. The City is the owner of that portion of the public right-of-way or public property identified and depicted in *Exhibit A* (**“Licensed Premises”**).

B. Licensee is the operator of the food and/or beverage service established commonly known as _____ (**“Establishment”**) located at _____ in the City (**“Property”**).

C. Section 7-2-2 of the Warrenville City Code, as amended (**“City Code”**) provides that food and/or beverage service establishments located within the City may use a portion of the public right-of-way or other public property for an outdoor seating area accessory to the establishment (**“Outdoor Seating Area”**), but only pursuant to an outdoor seating area license and subject to certain conditions and restrictions.

D. Pursuant to Section 7-2-2 of the City Code, the City has adopted Outdoor Seating Area Rules, which govern the use and operation of Outdoor Seating Areas (**“Outdoor Seating Area Rules”**).

E. Pursuant to Section 7-2-2 of the City Code, Licensee has applied to use the Licensed Premises as an Outdoor Seating Area for the consumption of food and/or beverages purchased at the Establishment, which Outdoor Seating Area is further depicted and described on *Exhibits A and B*.

F. The City desires to authorize Licensee to use the Licensed Premises for an Outdoor Seating Area, subject the City Code, the Outdoor Seating Area Rules, and the terms and conditions of this Agreement.

SECTION 2. GRANT AND TERM OF LICENSE.

A. Grant of License. Subject to the terms and conditions set forth in this Agreement, the City hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, nontransferable, revocable license to use the Licensed Premises for an Outdoor Seating Area pursuant to and in strict accordance with the terms and provisions of this Agreement (**“License”**). Licensee acknowledges and agrees that nothing in this Agreement shall be interpreted to provide a license to Licensee to alter the Licensed Premises in any way other than as set forth in this Agreement.

B. Limitation of Interest. Except for the License granted pursuant to this Agreement, Licensee shall have no legal, beneficial, or equitable interest, whether by adverse possession or prescription or otherwise, in the Licensed Premises.

C. Term. This License shall be for a term commencing on the Effective Date of this Agreement and ending on December 31, 2022.

D. Renewal. This Agreement and the License may be renewed for additional one-year terms, each expiring on following December 31, upon application by Licensee and approval of the City. Any such renewal must be in writing and executed by both parties.

E. Termination of License; Restoration of Licensed Premises.

1. Termination Event. Without prejudice to any other rights and remedies available pursuant to Section 8 of this Agreement, the License shall automatically terminate upon the occurrence of any of the following:

a. Failure to Comply. Licensee has violated any provision of this Agreement.

b. Mutual Agreement. Upon the mutual written agreement of the City and Licensee.

c. Public Construction Work. The City or other public body desires to engage in any construction work on the Licensed Premises and the City elects, in its sole discretion, to terminate this Agreement and the License.

d. Dangerous Condition. The City determines, in its sole and absolute discretion, that the Outdoor Seating Area on the Licensed Premises threatens the public health and safety, and the termination of the License is necessary to abate the dangerous condition.

2. Restoration of Licensed Premises.

a. Licensee Obligation. Upon the expiration of this Agreement or the termination of this Agreement pursuant to this Section 2.E, Licensee, at its sole cost and expense, shall restore the Licensed Premises as nearly as practicable to its condition as of the Effective Date, including, without limitation: (1) repair or replacement of the Licensed Premises, if necessary in the sole determination of the City; and (2) restoration of all City-owned property as nearly as practicable to the condition immediately preceding the use of the Licensed Premises, if disturbed or damaged by Licensee.

b. Failure to Restore. In the event that Licensee fails or refuses to repair, replace and/or restore the Licensed Premises or any City-owned property that is disturbed, damaged, or removed by Licensee, in accordance with Section 2.E.2.a of this Agreement, the City shall have the right, but not the obligation, to perform and complete the repair, restoration, and/or replacement, and to charge Licensee for all costs and expenses, including legal and administrative costs incurred by the City, for such work. If Licensee does not fully reimburse the City for such costs, then the City shall have the right to place a lien on the Property for all such costs and

expenses in the manner provided by law. The rights and remedies provided in this Section 2.E.2.b shall be in addition to, and not in limitation of, any other rights and remedies otherwise available to the City.

SECTION 3. INSTALLATION AND MAINTENANCE OF THE LICENSED PREMISES.

Licensee shall: (i) install any tables, seating, and any other equipment for the Outdoor Seating Area in a good and workmanlike manner, all at the sole expense of Licensee and subject to inspection and approval by the City; and (ii) maintain such equipment and Licensed Premises in a clean and safe manner.

SECTION 4. CONDITIONS.

A. Compliance with Law. Licensee shall strictly comply with the Outdoor Seating Area Rules, Section 7-2-2 of the City Code, and all other applicable requirements of State and local statutes, laws, regulations, ordinances, orders, and guidelines, including, without limitation.

B. Other Conditions. Licensee shall strictly comply with any conditions set forth in *Exhibit C*.

SECTION 5. RESERVATION OF RIGHTS.

The City hereby reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or interfere in any way with the exercise by Licensee of the rights granted pursuant to this Agreement. The City shall have the right to grant other non-exclusive licenses or easements, including, without limitation, licenses or easements for utility purposes, over, along, upon, under or across the Licensed Premises. The City reserves its right of full and normal access to the Licensed Premises for the maintenance of any existing or future utility located thereon. The City also reserves the right to conduct ongoing maintenance of the Licensed Premises.

SECTION 6. LIENS.

Licensee hereby represents and warrants that it shall take all necessary action to keep all portions of the Licensed Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any work performed by Licensee or its agents on the Licensed Premises.

SECTION 7. LIABILITY AND INDEMNITY OF CITY.

A. City Review. Licensee acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Licensed Premises, or the issuance of any approvals, permits, certificates, or acceptances for the operation, use, or maintenance of the Licensed Premises, and that the City's review and approval of any such plans for use of the Licensed Premises and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure Licensee or any of its successors, assigns, tenants and licensees, or any third party, against damage or injury of any kind at any time.

B. Indemnity. Licensee agrees to, and does hereby, hold harmless and indemnify the City and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of those parties in connection with: (i) the use, operation, and maintenance of the Licensed Premises; or (ii) Licensee's performance of, or failure to perform, its obligations under this Agreement (collectively, "*Indemnified Claims*"), whether or not any such Indemnified Claim is due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or willful misconduct or fault of Licensee; provided, however, that this indemnity shall not apply to willful misconduct or gross negligence on the part of the City.

C. Defense Expense. Licensee, only as to its own acts or omissions, shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the Indemnified Claims.

D. Limitation of Liability. Licensee acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries caused to the Licensed Premises by the City, or its employees, contractors or agents, when the City is taking action in order to comply with applicable federal, state and City laws, statutes, codes, ordinances, resolutions, rules, and regulations, as may be amended from time to time, or when exercising any of the rights reserved to the City under Section 4 of this Agreement.

E. Insurance. Licensee represents and agrees that: (i) it has insurance coverage that covers the Licensed Premises and the operation of the Outdoor Seating Area that satisfies the minimum types and amounts set forth in the Outdoor Seating Area Rules; (ii) it will maintain such insurance during the term of the License; and (iii) it will provide a certificate of insurance to the City upon request.

SECTION 8. ENFORCEMENT.

A. Enforcement. The City and Licensee may, in law or in equity, by suit, action, mandamus or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement; provided, however, that Licensee agrees that it will not seek, and does not have the right to seek, recovery of a judgment for monetary damages against the City or any City elected or appointed officials, agents, representatives, attorneys or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

B. Prevailing Party. In the event of a judicial proceeding brought by one party against the other party, the prevailing party in the judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding.

SECTION 9. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement shall be given by the parties by: (i) personal delivery; (ii) deposit in the United States Registered Mail, return receipt requested, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section

9.A. The address of any party may be changed by written notice to the other parties. Any mailed notice shall be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier shall be deemed to have been given and received within 24 hours after deposit. Notices and communications to the parties shall be addressed to, and delivered at, the following addresses:

If to the City: City of Warrenville
3S258 Manning Avenue
Warrenville, Illinois 60555
Attention: Director of Community and Economic
Development

If to Licensee: _____

Attention: _____

B. Time of the Essence. Time is of the essence in the performance of all of the terms and conditions of this Agreement.

C. Amendments. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

D. Authority to Execute. The City hereby warrants and represents to Licensee that the persons executing this Agreement on its behalf have been properly authorized to do so by the City. Licensee hereby warrants and represents to the City that Licensee has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement.

E. Non-Waiver. The City shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the City to exercise at any time any right granted to the City shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the City's right to enforce that right or any other right.

F. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the License granted pursuant to this Agreement.

H. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties participated equally in the

drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

I. Exhibits. Exhibits A, B, and C attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

J. Survival of Obligations. All obligations of Licensee pursuant to this Agreement that have not been fully performed as of the termination of this Agreement shall survive such termination, including, without limitation, the restoration obligations set forth in Section 2.D.2 of this Agreement, and the liability and indemnity obligations set forth in Section 7 of this Agreement.

K. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person shall be made, or be valid, against the City or Licensee.

L. Transfers Prohibited. The nonexclusive license granted pursuant to this Agreement is for the benefit of Licensee and the Establishment only and may not be transferred to any other business or property.

M. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to constitute a duly authorized original.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed, effective as of the date first written above.

[SIGNATURE PAGE FOLLOWS]

ATTEST:

CITY OF WARRENVILLE,
an Illinois home rule municipal corporation

City Clerk

By: _____
Ron Mentzer
Director of Community and Economic
Development

ATTEST:

[LICENSEE]

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A

DEPICTION (SITE PLAN) OF LICENSED PREMISES

EXHIBIT B

DESCRIPTION OF OUTDOOR SEATING AREA

EXHIBIT C

SPECIAL CONDITIONS

[City to Insert any special conditions]