

## LICENSE AGREEMENT

This License Agreement (this “Agreement”) is made and entered into this \_\_\_\_\_ day of June 2020 (the “Effective Date”), by the MAYOR AND CITY COUNCIL OF OCEAN CITY, MARYLAND, a body corporate and politic (“Licensor”) and \_\_\_\_\_ (“Licensee”).

### *Recitals*

- A. Licensee has applied for a Temporary Use Permit for Outdoor Table Service (the “Permit”), and submitted all required documentation including a Site Plan (Attached and incorporated hereto as Exhibit A) that identifies areas where outdoor table service will encroach on Town-owned property (the “Licensed Premises”).
- B. Licensor is the owner of fee simple title in that certain property, a portion of which is designated for temporary outside dining by the Permit (the “Property”).
- C. Licensee desires to be granted certain non-exclusive rights to use the Property for the activities under the Permit, and Licensor agrees to grant the rights to use the Property pursuant the terms and conditions of the Permit and this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

### *Agreements*

1. Grant of License. Licensor hereby grants to Licensee a non-exclusive license over that portion of the Property shown as the Licensed Premises on the Site Plan, attached to the Permit and attached hereto, for the purposes allowed under the Permit. Licensee shall conduct all operations and business consistent with the terms of the Permit. Licensee shall be solely and wholly responsible and liable for any and all costs or expenses of any kind related operations and business performed under the Permit.
2. Term. This Agreement shall run concurrent with and terminate simultaneously with the Permit.
3. Fee. Fees are waived for this Agreement. .
4. Licensor’s Termination Rights. If Licensor determines that the Licensed Premises is required for a Town purpose and the Licensee’s business and operations within the Licensed Premises are in conflict with that purpose, or if the Licensor determines that the Licensee is in violation of any of the terms of this Agreement or the Permit, said determination being within the sole and absolute discretion of the Licensor, Licensor may terminate this Agreement and demand that Licensee remove the operations and any property from the Licensed Premises immediately after written notice.

5. Insurance. During the Term of this Agreement, Licensee shall maintain a comprehensive general liability insurance policy, covering bodily injury and property damage arising from Licensee's exercise of the rights granted herein and also liquor liability insurance (if applicable). The coverage shall be in the minimum amounts of \$1,000,000 per person, \$2,000,000 in the aggregate per occurrence and \$500,000 for property damage. Liquor liability insurance shall be in the minimum amount of \$1,000,000 per person and \$2,000,000 per occurrence. Such insurance policies shall name Licensor as an additional insured. Failure to provide and continue in force any insurance required by the Licensor shall be deemed a material breach of this Agreement. In no event shall the limits of liability of the policy or policies as set out hereinabove, be considered to limit the liability of the Licensee under this Agreement. The provision of any insurance required herein does not relieve the Licensee of any of the responsibilities or obligations the Licensee has assumed under this Agreement or for which the Licensee may be liable by law, regulation or otherwise. The obligations of Licensee under this Paragraph shall extend to Licensee's successors and permitted assigns. Licensee is also responsible for maintaining all insurance coverages required by law to operate its business, including, but not limited to, workers compensation insurance. The insurance policies shall not terminate or be cancelled without thirty (30) days written notice to Licensor. Licensee shall provide proof of said insurances within five (5) business days of the Permit being issued. Failure to provide the proof of said insurances within the five (5) business days of the Permit being issued will result in the immediate revocation of the Permit and this Agreement shall be null and void.

6. Indemnification. Licensor, its officials, officers, directors, licensees, employees, agents, servants, contractors and subcontractors shall not be liable for any loss, injury, death or damage, which at any time may be suffered or sustained by Licensee, its officers, directors, licensees, employees, agents, servants, contractors, subcontractors, invitees and customers regardless of whether such loss, injury, death or damage shall be caused by, or in any way result from or arise out of any act, omission, or negligence of Licensor, its officials, officers, directors, licensees, employees, agents, servants, contractors and subcontractors, or shall result from or be caused by any other matter or thing, whether of the same kind as or a different kind than the matters or things above set forth. Licensee shall indemnify Licensor, its officials, officers, directors, licensees, employees, agents, servants, contractors and subcontractors, and hold them harmless against all claims, suits, liability, loss or damage whatsoever on account of any use of the Licensed Premises by Licensee. Licensee agrees to indemnify, defend, and save the Licensor, its officials, officers, directors, licensees, employees, agents, servants, contractors and subcontractors harmless from and against any liability and all claims, suits, liability, loss or damage of whatever nature arising from or claimed to arise from any act or omission of the Licensee, or its officers, directors, contractors, licensees, agents, servants, or employees, or arising from any incident, injury, or cause whatsoever to any person or to any property occurring in, on, or about the Licensed Premises or any part thereof or outside the Licensed Premises. The Licensee's obligation includes all costs, expenses, and liabilities incurred in connection with any claim or proceeding, including the reasonable expense of investigating and defending any such claim or proceeding, including attorney's fees.

Licensor shall not be liable for any loss, injury, death or damage, which at any time may be suffered or sustained by Licensee, its officials, officers, directors, licensees, employees, agents, servants, contractors, subcontractors, invitees or customers or by any person who may at any time be using or occupying or visiting the Licensed Premises or be in, on, or about the same, whether

such loss, injury, death or damage shall be caused by, or in any way result from or arise out of any act, omission, or negligence of Licensor, its officials, officers, directors, licensees, employees, agents, servants, contractors and subcontractors, or any occupant, subtenant, visitor or user of any portion of the Licensed Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or a different kind that the matters or things above set forth. Licensee shall indemnify Licensor against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. Licensee hereby waives all claims against Licensor for damages to the property of Licensee in, on, or about the Licensed Premises, and for injuries to person or property in or about the Licensed Premises, from any cause arising at any time.

7. Hazardous Substances. The Licensee represents and warrants that its use of the Licensed Premises herein shall not generate any hazardous substance, and that it shall not store or dispose of, nor transport to or over, any hazardous substance in the Licensed Premises, other than as provided by law. The Licensee further agrees to indemnify, defend, and save harmless the Licensor, its officials, officers, directors, licensees, employees, agents and servants, from all suits, actions, or claims of any character, including but not limited to, compensatory damages, court costs, defense costs, expenses and fees, including but not limited to, expert witnesses and consultants, penalties, liens, charges, losses, other expenses of any kind, and reasonable attorneys' fees, brought on account of any release or discharge into the environment of, any generation of, or any failure to transport except in accordance with applicable law, by the Licensee, its agents, contractors, employees, officers, officials, representatives, successors, or assigns, any such hazardous substance, and that may arise out of, be due to, be owing to, or be a consequence of, such release, discharge, generation, or transportation.

8. Licensee's Compliance with Laws. While on the Licensed Premises, Licensee shall comply with all applicable local, state, and federal laws, ordinances, rules, regulations, requirements for permits and emergency orders now in force or in force after the date hereof. Licensee shall not commit or suffer to be committed any waste or any nuisance on the Licensed Premises.

9. Right of Entry. Licensee shall permit Licensor, and its agents and employees to enter into and upon the Licensed Premises at all reasonable times for the purpose of inspecting same.

10. Subletting and Assignment. Licensee shall not sublet or assign the Licensed Premises in whole or in part.

11. Reservation. The Licensor reserves the right at all times to exercise full control and regulation in respect to all matters connected within the Town property. Licensee hereby releases the Licensor from any and all claims for property damage in the event the Licensor is required to remove Licensee from the Licensed Premises.

12. No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed in any manner to create any relationship between the Town and the Licensee other than expressly specified herein, and the Town shall not be considered partners or joint ventures for any purpose of this Agreement.

13. WARRANTIES. THE GRANT OF THIS LICENSE IS "AS-IS", WITH NO REPRESENTATION OR WARRANTY OF ANY KIND BY THE LICENSOR, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, AS TO ANY OWNERSHIP, PRESCRIPTIVE RIGHTS, TITLE, RIGHTS, OR INTEREST, OR SUITABILITY FOR ANY PURPOSE WITH REGARD TO THE LICENSED PREMISES. THE LICENSOR RESERVES THE RIGHT AT ALL TIMES TO EXERCISE FULL GOVERNMENTAL CONTROL AND REGULATION IN RESPECT TO ALL MATTERS CONNECTED WITH THIS LICENSE, NOT INCONSISTENT WITH THE TERMS HEREOF. THE LICENSOR FURTHER RESERVES THE RIGHT TO AWARD LICENSES TO OTHER ENTITIES OR INDIVIDUALS AS THE TOWN DEEMS APPROPRIATE, IN ITS SOLE DISCRETION, SO LONG AS SUCH OTHER LICENSES SHALL NOT INTERFERE WITH LICENSEE'S RIGHTS HEREUNDER.

14. Redelivery of Licensed Premises. Licensee shall peaceably and quietly surrender to Licensor the Licensed Premises. At the end of the Agreement, Licensee shall remove all property and the Licenses Premises shall be restored to its original condition, reasonable wear and tear excepted, as reasonably acceptable to Licensee.

15. Waiver. The waiver by Licensor of, or the failure of Licensor to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same or any other term, covenant, or condition therein contained.

16. Miscellaneous.

- a. This Agreement and the Permit contain the entire agreement of the parties concerning the subject matter hereof. There are no other or different agreements or understandings concerning the subject matter hereof between Licensor and Licensee.
- b. This Agreement shall be governed and construed in accordance with the laws and regulations of the State of Maryland and Worcester County, Maryland. Those articles, sections and subsections of this Agreement which by their nature are intended to survive shall survive the expiration or earlier termination of this Agreement.
- c. If any provision of this Agreement is declared by any court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the fullest extent permitted by law.
- d. Any modification of this Agreement shall be in writing to be effective.

17. Time is of the Essence. Time is of the essence with respect to performance of the terms and conditions of this Agreement.

18. Notices. All notices, demands, or other writings in this Agreement provided to be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail registered and postage prepaid, and addressed as follows:

For Licensor

Director, Department of Planning and Community  
Development  
301 N. Baltimore Avenue,  
Ocean City, Maryland  
410-289-8855

For Licensee

Name:  
Title:  
Company Name:  
Address:  
Phone Number:  
Email Address:

**IN WITNESS WHEREOF** the parties have signed and sealed this Agreement the day and year first written above.

WITNESS:

**LICENSOR:**

**MAYOR AND CITY COUNCIL OF OCEAN  
CITY, MARYLAND**, a body corporate and politic

\_\_\_\_\_

By: \_\_\_\_\_  
Douglas R. Miller, City Manager

**LICENSEE:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Approved for Form and Legal Sufficiency\*

\_\_\_\_\_

Office of City Solicitor  
Heather Stansbury

\*Approval of Form and Legal Sufficiency Does Not  
Convey Approval or Disapproval of the Substantive  
Nature of Transaction or the Review of any Due

Diligence or Related Documentation for the  
Transaction. Approval is Based Upon Departmental  
Use of Form Typeset Document.