

**CITY OF CAMBRIDGE RESTAURANT PATIO
LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT
THIS LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT**

(“Agreement”) is made by and between the CITY OF CAMBRIDGE (the “City” or “Licensor”) and _____ (“Licensee”), located at

_____ Cambridge, Massachusetts (the “Site”);

WHEREAS, Licensee is the owner and/or operator of the restaurant known as _____ (the “Restaurant”) located at the Site; and

WHEREAS, The City is the owner of the public way contiguous to the Site; and

WHEREAS, Licensee desires to serve meals with alcoholic beverages on a portion of the City’s adjacent public way or property in conjunction with its Restaurant use at the Site.

1. **TERM OF LICENSE:**

The Term of this Agreement shall be two (2) years and shall run from the date of this agreement to November 30th of the second year. The license issued under this Agreement (“License”) shall run from April 1st of each year during the Term to November 30th of each year during the Term (“License Term”). The License Term shall run from April 1st until November 30th of each year during the Term, subject to all terms and conditions set forth herein, provided that all fees and costs remain paid pursuant to Section 7 herein and/or unless the Agreement or the License granted by it are otherwise terminated pursuant to Section 6 herein, and provided further that Licensee has obtained and continues to maintain in good standing all applicable federal, state and City approvals, permits, and/or licenses for the activities permitted by this Agreement.

2. **PERMITTED ACTIVITIES:**

- (a) Licensee is hereby licensed under this Agreement during the course of the License Term to:
 - (i) occupy a section of the public street, sidewalk and/or property (“Public Property”) located contiguous to the Site, more fully described in Section 3 below in order to accommodate the construction, installation, occupation, maintenance and repair of an outdoor extension of the Restaurant at the Site on to the Public Property for the purpose of serving meals with alcoholic beverages (the “Patio”);
 - (ii) construct and install structures and/or furnishings needed for the Patio as required and approved by the City; and
 - (iii) occupy the Public Property for the purpose of maintaining and repairing the Patio, including portion(s) of the Public Property used in common with the public, for the sole purpose of providing service of food and alcohol to

patrons in the Patio pursuant to the terms of this Agreement if specifically required and approved by the Cambridge Board of License Commissioners (“Board”) and/or the Massachusetts Alcohol Beverage Control Commission (“ABCC”).

3. **LICENSE AREA:**

(a) **Location:**

- (i) The Patio shall be located directly in front of, adjacent to and contiguous to the Site or as otherwise approved by the Board, DPW and TPT. **The exact location of the Patio is shown on an engineer or architect’s plan entitled _____, prepared by _____ and dated _____, which plan is on file with the Cambridge License Commission, 831 Massachusetts Avenue, Cambridge, MA (the “License Commission”). A copy of the plan shall be attached hereto as EXHIBIT “A”.**
- (ii) The Licensee shall occupy only the Licensed Area, except as per the provisions of Section 2 (a) (iii) above.
- (iii) The Licensee shall delineate the Licensed Area as follows: the Licensee shall install a non-movable and temporary system of enclosure around the Patio with removable bollards or other removable barriers. If the enclosure includes elements that are movable, such as light bollards or poles with ropes or chains, the location of such enclosure shall be marked on the sidewalk/street and approved by the Department of Public Works prior to installation. All materials used in the structure and enclosure of the Patio, including but not limited to fixtures, chairs, tables, fencing, bollards, barriers, planters and any other items related to or connected to the Patio (the “Patio Materials”) must meet the City’s specifications and be reviewed and approved by the Board and the City’s Departments of Public Works and Traffic, Parking and Transportation.

(b) **Dimensions:**

- (i) **The Patio area measures _____ +/- square feet.**
- (ii) There shall be at all times no less than four (4’) feet of sidewalk between the tree grates or other street furniture, if any, and the side of the Patio closest to the curb. If there are no tree grates or other street furniture, then there shall be no less than four (4’) feet of sidewalk between the boundary of the Patio and the curb.

- (iii) The Licensor, in its sole discretion, reserves the right to require that more than four (4') feet of sidewalk within the area occupied by the Patio is made available during certain hours of the day, or days of the week, or if required by any applicable federal, state or local law or regulation.

(c) Pedestrian/Patron Access:

- (i) The Licensee shall provide safe and adequate access to patrons making use of the Patio and to pedestrians making use of the public way or property near or around the Patio and the Site. The Patio and all portions of the Site open to the public must be ADA accessible and ADA compliant at all times.
- (ii) The Patio and Patio Materials shall be constructed and maintained so as not to constitute a hazard or danger to persons making use of the Patio, Site, and the Public Property way.
- (iii) The Licensee shall be solely responsible for removing trash from the Patio and the Site, and for sweeping the Patio and the public way near or around the Site of any trash. The Licensee shall also be responsible for removing any snow or storm debris from the Patio, the Patio Materials and the public way near or around the Site in accordance with the City's requirement for snow removal pursuant to Section 12.16.110 of the Cambridge Municipal Code, which requires that snow be removed within twelve hours after snow ceases to fall in the daytime and before 1:00 P.M. after a fall of snow during the night, and requires that a way encumbered by ice be made safe and convenient by removing the ice therefrom, or by keeping the same covered with sand or some other suitable substance, within six hours after the way is encumbered by ice.

4. **REMOVAL AND REINSTALLMENT OF STRUCTURES:**

- (a) The Licensee shall remove all Patio Materials at the end of each License Term for each year of the Term as specified in Section 1 above, which is November 30th of each year during the Term unless DPW issues an exception in writing. In addition, the City reserves the right to require that the Patio Materials be removed at any time in the interest of public safety.
- (b) The Licensee may reinstall the Patio Materials no sooner than April 1st of each year provided that all fees and costs remain paid pursuant to Section 7 herein and/or unless otherwise terminated pursuant to Section 6 herein and provided further that Licensee has obtained and continues to maintain in good standing all other federal, state and City approvals, permits, and/or licenses for the activities permitted by this Agreement.

5. **DEFAULT:**

- (a) If the Licensee fails to comply with any of the terms or conditions of this Agreement and the City knows of said failure, the City will notify the Licensee

and the Licensee shall have the opportunity to cure breach of this Agreement as follows:

- (i) The Licensee shall have three (3) days from the date notice is sent to make temporary repairs that ensure the safety of the public.
 - (ii) The Licensee shall have fourteen (14) days from the date notice is sent to permanently cure any breach of this Agreement.
- (b) If it is a practical impossibility for the Licensee to cure in accordance with Section 5(a), the City will not find the Licensee in default provided that:
- (i) The Licensee requests additional time in writing to cure the violation(s); and
 - (ii) The Licensee explains in writing why it cannot comply with Section 5(a); and
 - (iii) The Licensee, only if and after the City has determined how much additional time is necessary on a case-by-case basis and has approved the Licensee's request, cures the violation(s) within the specified time approved by the City.

6. **TERMINATION:**

- (a) This Agreement and the License granted by it shall terminate on the date set forth in Section 1 above, unless:
- (i) The City determines that public need requires termination of this Agreement or License; or
 - (ii) The Licensee is in default. If the Licensee is in default, then this Agreement and the License granted by it shall terminate upon the expiration of the fourteen (14) days stated in Section 5(a)(ii); or
 - (iii) Licensee fails to pay the yearly License fee as stated in Section 7(d)(ii); or
 - (iv) Licensee fails to obtain and/or maintain the required insurance as stated in Section 10(d) and/or fails to provide the Certificates of Insurance required pursuant to Section 9(d); or
 - (v) The City and the Licensee mutually agree to terminate this Agreement and the License granted by it on a date certain.

7. **FEES AND COSTS:**

- (a) The Licensee shall maintain the Site, Patio and Patio Materials at all times at its sole cost and expense and shall be solely responsible for costs and expenses related to the construction and maintenance of any utilities and other amenities relative to this license and operation of the Sidewalk Patio.

- (b) The Licensee shall bear all costs and expenses related to any and all improvements to the Public Property, both within and surrounding the Patio, which, in the opinion of the City, are required for the safe installation and operation of the Patio.
- (c) Permit Fees:
 - (i) The Licensee shall, prior to its entry upon, or use or occupancy of the Patio, and prior to installing or constructing any part of the Patio, have paid any and all permit fees required to be paid to the City and any City Department(s). No permit fees or other fees will be waived.
- (d) Yearly License Fee:
 - (i) The yearly License fee shall be \$750.00 for each year of the Term (“Annual License Fee”). In addition, for each patio that is located on any part of the street there shall be an additional fee for each parking space that is used for the patio that will be assessed by the City’s Traffic, Parking and Transportation Department.
 - (ii) Payment is due prior to or upon the signing of this Agreement, and any renewal of the Agreement. If payment is not received upon signing or renewal of the Agreement, the City shall have the right to terminate this Agreement and the License granted by it and order the Licensee to immediately remove the Patio from the City’s property.
 - (iii) The amount of the Annual License Fee (i) will remain as such until the end of the current Term. Thereafter, the Annual License Fee is subject to change and the City will provide adequate notice of any such Annual License Fee change.
- (e) The City shall not be responsible for any costs associated with the Patio or Site, nor shall it be required to make any improvements to the public way or to expend any money for the benefit of the Licensee.

8. **HOURS OF OPERATION:**

The Board shall establish the hours of operation and any other restrictions, conditions or limitations it deems appropriate.

9. **INDEMNIFICATION AND INSURANCE REQUIREMENTS:**

- (a) The Licensee shall defend and indemnify the City against any and all claims, suits, demands for damages or liability to persons or property, costs, and expenses (including reasonable attorneys’ fees and costs), for compensation on account of, or in any way growing out of or related to the design, construction, installation, maintenance, dismantling, collapse or in any way growing out of the use and occupancy by the Licensee, its agents, contractors, subcontractors, employees, patrons, invitees and/or users of the Site and Patio, except if caused by the sole negligence of the City, its agents, contractors, subcontractors and/or employees.

- (b) The Licensee shall defend and indemnify the City against any and all claims, suits, demands for damages or liability to person or property, costs, expenses (including reasonable attorneys' fees and costs), or for compensation on account of, or in any way growing out of or related to any act, failure to act or neglect of the Licensee, its agents, contractors, subcontractors, employees, patrons, invitees and/or users of the Site and Patio, except if caused by the sole negligence of the City, its agents, contractors, subcontractors and/or employees.
- (c) The Licensee shall defend and indemnify the City against all claims, suits, demands for damages or liability, costs, expenses or compensation for, on account of, or in any way growing out of the leakage of gas, sewage or water into or upon the City's property growing out of or related to any act, failure to act or neglect of the Licensee, its agents, contractors, subcontractors, employees, patrons, invitees and/or users of the Site and Patio, or by reason of any violation of any term or specification contained in this Agreement, except if caused by the sole negligence of the City, its agents, contractors and/or employees.
- (d) The Licensee shall obtain and maintain liability insurance for each year during any portion of which the License is in effect and Licensee uses the City's property for the Patio; all such insurance coverages shall be maintained throughout the entire Term. Failure to provide and continue in force such insurance as required herein shall be deemed a material breach of this License Agreement and shall operate as immediate termination of this Agreement and immediate revocation of the License granted by it. The minimum amount of general liability insurance shall be in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The minimum amount of liquor liability insurance shall be One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Assault and battery coverage shall not be excluded from either the general liability insurance or the liquor liability insurance and shall be provided for the full policy limits of each. The minimum amount of worker's compensation (employer's liability) insurance shall be Five Hundred Thousand Dollars (\$500,000) per any one accident and Five Hundred Thousand Dollars (\$500,000) per illness. The minimum amount of umbrella insurance shall be in the amount of One Million Dollars (\$1,000,000) combined single limit and One Million Dollars (\$1,000,000) in the aggregate. The City shall be named as an additional insured for each of the above insurance coverages. All insurance carriers shall carry an A.M. Best rating of "A-" or better. Each policy shall provide for a 30-day notice of cancellation or non-renewal clause, which clause shall also be indicated on each Certificate of Insurance. Licensees having multiple locations of operation shall provide evidence of "per location" limits of coverage pertaining to the Site and Patio. **Copies of each Certificate of Insurance naming the City of Cambridge, 795 Massachusetts Avenue, as an additional insured are attached hereto as EXHIBIT "B" and shall be provided annually thereafter.** All contractors and sub-contractors performing work in the Patio area shall be required to carry general liability, workers' compensation and umbrella insurance in the above amounts, naming the Licensee and the City as additional insureds,

and the Licensee shall provide the City with copies of each such Certificate of Insurance naming the City as an additional insured.

- (e) The City shall give written notice of any such suits, actions, claims, demands, damages or losses, expenses or costs to the Licensee. In the event that any such suit, action, claim, demand or notice of damage, loss expense or cost arises for which the City may seek indemnification hereunder then the Licensee shall have the obligation to defend the City in connection therewith.

11. **NOTICE REQUIREMENTS:**

All notices shall be in writing, sent by certified or registered mail, return receipt requested, addressed as follows:

If to the Licensor at: City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

And a copy to: City Solicitor
Law Department, City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

And a copy to: Cambridge License Commission
831 Massachusetts Avenue
Cambridge, MA 02139
Attention: License Commission Chair

And if to the Licensee at: _____

Attention: _____

And a copy to: _____

12. **ADDITIONAL TERMS AND CONDITIONS:**

- (a) Notwithstanding any language to the contrary, consumption of alcoholic beverages is permissible at the Patio only if previously authorized by the Board

and ABCC. **Said authorization from the Board and authorization from ABCC shall be collectively attached hereto as EXHIBIT "C" and are incorporated by reference** If such authorization is not obtained or is revoked at any time for any reason, this License shall be immediately revoked and deemed null and void.

- (b) The Licensee shall comply with all applicable federal, state and local rules, regulations and laws, and any amendments thereof.
- (c) Except as stated in Paragraph 2 and as otherwise stated elsewhere in this Agreement the parties are bound by all provisions in this Agreement and the License granted by it during the full course of the Term.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of

_____, 20____.

CITY OF CAMBRIDGE, BY

Louis A. DePasquale
City Manager

Approved as to Form:

Nancy E. Glowa
City Solicitor

BY
(Establishment Name)

(Signature)

Duly Authorized,
Name: _____
Title: _____