

**TEMPORARY SIDEWALK/STREET RESTAURANT PATIO
LICENSE, MAINTENANCE AND INDEMNIFICATION
AGREEMENT/AMENDMENT DUE TO COVID-19 CRISIS**

THIS TEMPORARY LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT/AMENDMENT (“Temporary License Agreement”) is made as of **this _____ day of _____, 20_____** (the “Date of this Temporary License Agreement”), by and between the CITY OF CAMBRIDGE (the “City” or “Licensor”) and _____ (**“Licensee”**).

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

WHEREAS, The City is the owner of the public street, sidewalk or property in front of and/or contiguous to the Site (“City Property”); and

WHEREAS, Licensee desires to serve meals with alcoholic beverages on a portion of City Property in conjunction with its Restaurant use at the Site; and

WHEREAS, Governor Baker issued on June 1, 2020 COVID-19 Order No. 35, an *Order Clarifying the Progression of the Commonwealth’s Phased Workplace Re-Opening Plan and Authorizing Certain Re-Opening Preparations at Phase II Workplaces* (the “Order No. 35”), which authorizes an expedited and streamlined process for the Cambridge Board of License Commissioners and the City to license a change in premises of a licensed establishment in order to expand outdoor dining areas; and

WHEREAS, Order No. 35’s provisions concerning change in premises for licensed establishments were in effect until November 1, 2020; and

WHEREAS, on September 10, 2020, Governor Baker issued COVID-19 Order No. 50 (“Order No. 50”) which extends outdoor dining provisions and any approval issued under Order No. 35 or Order No. 50 to sixty (60) days past the end of the state of emergency; and

WHEREAS, restaurants face challenging economic conditions as a result of the public health orders that have been issued to address the COVID-19 crisis; and

WHEREAS, the City is entering into this Temporary License Agreement with the Licensee for a temporary term from the Date of this Temporary License Agreement through sixty (60) days past the end of the state of emergency issued by Governor Baker to allow an outdoor extension of the Restaurant at the Site onto City Property for the purpose of serving meals with alcoholic beverages; and

WHEREAS, if the Restaurant has already entered into an agreement with the City for use of City Property for a sidewalk/street patio, but now wishes to further extending its Sidewalk/Street Patio further onto City Property, this Temporary License Agreement serves as an Amendment to the existing agreement that was entered into on

_____, 20____ ; and

1. **TERM OF LICENSE/AMENDMENT:**

The term of this Temporary License Agreement shall run from the Date of This Temporary License Agreement to sixty (60) days past the end of the state of emergency issued by Governor Baker (the “Term”). The license issued under this Temporary License Agreement (“License”) shall run from the Date of this Temporary License Agreement through the Term (the “License Term”), subject to all terms and conditions set forth herein unless this Temporary License 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 Temporary License Agreement.

2. **PERMITTED ACTIVITIES:**

- (a) Licensee is hereby licensed under this Temporary License Agreement during the course of the License Term to:
 - (i) use and/or occupy on a temporary, non-exclusive basis a section of City Property located in front of and /or contiguous to the Site, as 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 onto City property for the purpose of serving meals with alcoholic beverages (the “Sidewalk/Street Patio” or “License Area”);
 - (ii) construct and install structures and/or furnishings needed for the Sidewalk/Street Patio as required and approved by the City; and
 - (iii) use and/or occupy City Property for the purpose of maintaining and repairing the Sidewalk/Street Patio, including portion(s) of the public sidewalk or street used in common with the public, for the sole purpose of providing service of food and alcohol to patrons in the Sidewalk/Street Patio pursuant to the terms of this Temporary License Agreement if specifically required and approved by the Cambridge License Commission (the “License Commission”);

provided, however, that at no time is the Licensee permitted to sell alcohol for the purpose of being consumed at the Sidewalk/Street Patio unless it is accompanied by lunch or dinner and is for the purpose of being consumed at the Site, and provided further that Licensee's use and/or occupancy of City Property shall at all times be in conformity with all requirements and conditions of the City's Department of Public Works ("DPW").

3. **LICENSE AREA:**

(a) Location:

- (i) The Sidewalk/Street Patio shall be located in front of, adjacent to and/or contiguous to the Site or as otherwise approved by the License Commission. **The exact location of the Sidewalk/Street Patio is shown on a plan that** is on file with the License Commission, 831 Massachusetts Avenue, Cambridge, MA. The plan shall set forth all applicable dimensions in metes and bounds measured in feet and/or square feet. **A copy of the plan shall be attached hereto as EXHIBIT "A" and incorporated herein by reference.**
- (ii) The Licensee shall use and/or occupy only the License Area, except as per the provisions of Section 2 (a) (iii) above.
- (iii) The Licensee shall delineate the License Area as follows: the Licensee shall install a non-movable and temporary system of enclosure around the Sidewalk/Street Patio with removable bollards or other removable barriers approved by the License Commission.

(b) Dimensions:

- (i) **The Sidewalk/Street Patio area measures _____ +/- square feet.**
- (ii) If the Street/Sidewalk Patio is located on a public sidewalk, there shall be at all times no less than a four (4') foot width of the public sidewalk available for pedestrian and public access.
- (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 Sidewalk/Street 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 Sidewalk/Street Patio and to pedestrians making use of City Property near or around the Sidewalk/Street Patio and the Site.
 - (ii) The Sidewalk/Street Patio shall be constructed and maintained so as not to constitute a hazard or danger to persons making use of the Sidewalk/Street Patio, the Site, and City Property.
 - (iii) The Licensee shall be solely responsible for removing trash from the Sidewalk/Street Patio and the Site, and for sweeping the Sidewalk/Street Patio and City Property near or around the Site of any trash.
- (d) City Access:

The City, its employees, servants, and agents, and utility personnel may enter the License Area from time to time, with or without notice, to conduct safety inspections, complete emergency utility repairs, complete public works activities, and any other activities as may be deemed necessary by the City from time to time. Licensee shall cooperate with the City, its employees, servants, and agents, and utility personnel to facilitate such entry and activities in the License Area.

4. **MAINTENANCE OF LICENSE AREA AND REMOVAL OF STRUCTURES:**

- (a) Licensee shall maintain and return the License Area to the City in as good condition or better as it existed on the date of full execution of this Temporary License Agreement.
- (b) At the termination of this License and Temporary License Agreement, the Licensee shall remove all structures comprising, used for or within the Sidewalk/Street Patio, including but not limited to fixtures, chairs, tables, fencing, bollards, planters and any other items related to or connected to the Sidewalk/Street Patio.

5. **DEFAULT:**

- (a) If the Licensee fails to comply with any of the terms or conditions of this Temporary License Agreement (“Breach”), the City may notify the Licensee and the Licensee shall have the opportunity to cure said Breach as follows:

- (i) The Licensee shall have Three (3) days from the date notice of Breach is sent or Licensee becomes aware of a Breach to make temporary repairs that ensure the safety of the public, WITH THE EXPRESS CONDITION THAT FOR ANY PERIOD OF TIME WITHIN WHICH THE SAFETY OF THE PUBLIC CANNOT BE ENSURED, THE LICENSEE MAY NOT USE THE SIDEWALK/STREET PATIO.
 - (ii) The Licensee shall have Fourteen (14) days from the date notice of Breach is sent or Licensee becomes aware of a Breach to permanently cure any such Breach of this Temporary License Agreement.
- (b) If it is a practical impossibility for the Licensee to cure a Breach in accordance with Section 5(a), the City will not find the Licensee in default of the Breach provided that:
- (i) The Licensee requests additional time in writing to cure the Breach; 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 to cure the Breach on a case-by-case basis and has approved the Licensee's request, cures the Breach within the specified time approved by the City.

6. **TERMINATION:**

- (a) This Temporary License 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 and/or public safety requires earlier termination of this Temporary License Agreement or License; or
 - (ii) The Licensee is in default. If the Licensee is in default, then this Temporary License Agreement and the License granted by it shall terminate upon the expiration of the fourteen days stated in Section 5(a)(ii); or
 - (iii) 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

- (iv) The City and the Licensee mutually agree to terminate this Temporary License Agreement and the License granted by it on a date certain.

7. **FEES AND COSTS:**

- (a) The Licensee shall maintain the Site and Sidewalk/Street Patio 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 the operation of the Sidewalk/Street Patio.
- (b) The Licensee shall bear all costs and expenses related to any and all improvements to City Property, both within and surrounding the Sidewalk/Street Patio, which, in the opinion of the City, are required for the safe installation, use and/or operation of the Sidewalk/Street Patio.
- (c) In light of the COVID-19 crisis and resulting economic challenges faced by restaurants, the City waives all permit fees or other fees related to this Temporary License Agreement.
- (d) The City shall not be responsible for any costs associated with the Sidewalk/Street Patio or Site, nor shall it be required to make any improvements to City Property used for or associated with the use and/or occupancy of City Property for the Street/Sidewalk Patio or Site or to expend any money for the benefit of the Licensee.

8. **HOURS OF OPERATION:**

The License Commission shall establish the hours of operation and any other restrictions, limitations, etc. it deems appropriate. The decision of the License Commission is hereby incorporated herein by reference.

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 Sidewalk/Street 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 Sidewalk/Street 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 Sidewalk/Street Patio, or by reason of any violation of any term or specification contained in this Temporary License 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 any and all times during which the License is in effect and Licensee uses and/or occupies City Property for the Sidewalk/Street 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 Temporary License Agreement and shall operate as immediate termination of this Temporary License 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. 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 Sidewalk/Street Patio. **Copies of each Certificate of Insurance naming the City of Cambridge as an additional insured are attached hereto as EXHIBIT “B”.** All contractors and sub-contractors performing work in the Sidewalk/Street 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 if legally required 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.

10. **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: Nicole Murati Ferrer, Chairperson

And if to the Licensee at: _____

Attention: _____

And a copy to:

11. **ADDITIONAL TERMS AND CONDITIONS:**

- (a) Notwithstanding any language to the contrary, consumption of alcoholic beverages is permissible at or on the Sidewalk/Street Patio only if authorized by the License Commission. If such authorization is not obtained or is revoked at any time for any reason, this Temporary License Agreement and 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 Temporary License Agreement the parties are bound the all provisions in this Temporary License Agreement and the License granted by it during the full course of the Term.

IN WITNESS HEREOF, the parties hereto have executed this Temporary License Agreement as of the day and year first above written.

CITY OF CAMBRIDGE, BY

Louis A. DePasquale
City Manager

Approved as to Form:

Nancy E. Glowa
City Solicitor

_____, **BY**
(Name of Establishment)

(Signature)

Duly Authorized,

Print Name: _____

Title: _____