

TOWN OF MARBLEHEAD
LICENSE TO ENTER AND USE TOWN-OWNED LAND

This License ("License" or "Agreement") is a license, by and between the Town of Marblehead a duly organized municipal corporation having its principal place of business at 188 Washington Street, Marblehead,

MA 01945 ("Licensor" or the "Town"), and _____

Business name

_____, Marblehead, MA 01945, (the "Licensee")

Business address

WHEREAS, Licensee, has control of the property located at _____ by either fee

Business address

interest or lease (the "Property"), which Property is shown as Map ____ and Lot ____ a copy of which Assessor's Map is attached hereto and made a part hereof as ***Exhibit A***; and

WHEREAS Licensee operates a food service establishment on said Property which hereafter is referred to

as _____; and

Business name

WHEREAS, Licensor, is the owner of adjacent parcel(s) of land shown on Assessor's Map __ Lot ____ (the "Licensed Premises") and as shown on Exhibit A; and

WHEREAS, the Licensor and the Licensee desire to cooperate and allow the Licensee to temporarily provide food service on the Licensed Premises as a result of the pandemic conditions and pursuant to any permit issued by the Select Board;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual covenants set forth herein, the parties agree as follows:

1. GRANT OF LICENSE

- i. Licensor grants the privileges of such entry, the permitted uses defined in Section 4 of this License, and the other privileges set forth in this License, and Licensee accepts the same, upon the terms and conditions hereinafter set forth:

2. LICENSED PREMISES

- i. Entry and use are limited to the Licensed Premises, as shown on the plan(s) or diagram(s) attached to this License as ***Exhibit B***.
- ii. Licensee's employees, agents, contractors, representatives and invitees shall have, as appurtenant to this License, the non-exclusive use, in common with others entitled thereto, of any sidewalks, driveways, parking area, and entrances and exits from public streets and highways serving the Licensed Premises.

3. CONDITION OF THE LICENSED PREMISES

Licensee acknowledges and agrees as follows:

- i. Licensee accepts the Licensed Premises in "as-is, where-is" condition.

- ii. Licensors are under no obligation to make any repairs, renovations, or alterations to the Licensed Premises.
- iii. Licensors have made no representations or warranties whatsoever regarding the condition of the Licensed Premises, including, without limitation, no representations or warranties regarding fitness of the Licensed Premises for Licensee's Permitted Use as described in Section 4 below.

4. PERMITTED USES

- i. Licensee shall use the Licensed Premises only for the purposes and uses as permitted by the Select Board and/or Board of Health in the grant of any related modification to a food service and liquor license permit (all of the foregoing, the "Permitted Use").
- ii. Any other purposes or uses may be undertaken only with advance written permission of Licensors.
- iii. Licensee's use of the Licensed Premises shall be in accordance with all applicable state, federal, and local laws and regulations.
- v. Licensee shall install any and all barriers as required and set forth on the attached Exhibit B and shall at the termination hereof, remove same and restore the Licensed Premises to its original condition, reasonable wear and tear excluded.

5. LICENSEE'S EQUIPMENT

Licensee, or their agents, employees, volunteers, contractors, representatives and invitees may bring such vehicles and other equipment upon the Licensed Premises for maintenance and repair purposes, provided, however, no vehicles or equipment shall remain upon the Licensed Premises for any period of time beyond what is reasonably necessary to (a) perform such maintenance or repairs, or (b) conduct the Permitted Use as defined herein in Section 4.

6. TERM

- i. The initial term of this License shall be concurrent with the permit for temporary outdoor dining issued by the Select Board.
- ii. The term of this License shall commence on the issuance of the permit for temporary outdoor dining issued by the Select Board and shall terminate in accordance with said permit unless earlier terminated in accordance herewith.
- iii. Subject to the sole discretion of Licensors, at the request of Licensee the term of this License may be extended on a month-to-month basis on the same terms hereof.

7. HOURS OF OPERATION

- i. The hours of use shall be in accordance with the permit for temporary outdoor dining issued by the Select Board.
- ii. After hours, staff and agents of Licensee shall have the right to be on the Licensed Premises for routine opening, closing, cleaning, maintenance and/or repair activities.

8. PERMITS

It shall be the responsibility of Licensee to obtain any permit or license which may be necessary for the ongoing operation, use and maintenance by Licensee of the Licensed Premises, at Licensee's sole cost and expense.

9. SITE ALTERATIONS

- i. Licensee shall not make any structural alterations or additions to the Licensed Premises without the prior written approval of the Town.
- ii. All non-structural alterations shall be at Licensee's expense.
- iii. Any alterations or improvements made by Licensee shall be removed and/or the Licensed Premises restored to the condition of the premises before occupation reasonable wear and tear excluded.
- iv. Licensee shall not permit any mechanics' liens or similar liens to remain upon the Licensed Premises for labor and material furnished to Licensee or claimed to have been furnished to Licensee in connection with work of any character performed or claimed to have been performed at the direction of Licensee, and shall cause any such lien to be released of record forthwith without cost to Licensor.

10. UTILITIES

- i. Licensee have no utility easements across said Licensed Premises. Licensee shall not bring across the Licensed Premises any additional utilities including, but not limited to, electrical, gas, telephone, internet, water, sewer, and storm water drainage, EXCEPT ONLY that any entity which provides utility service(s) and which presently has an easement for said utilities across the Licensed Premises may bring utilities over said easement to the Property.
- ii. Licensee agree that the provision of utilities across the Licensed Easement is subject to interruption due to any accident, to the making of repairs, alterations or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service or supplies from the sources from which they are usually obtained, or to any cause beyond the Licensor's control.

11. CONDUCT OF LICENSEE

i. Compliance with Laws

Licensee shall at all times operate the Licensed Premises in accordance with all applicable laws, statutes, ordinances, regulations, permits, and licenses.

ii. Repair of Damage

Licensee shall neither cause nor suffer any waste of the Licensed Premises and shall maintain the Licensed Premises in good order at all times as hereinafter described. Licensee's responsibilities shall include, but not be limited to, the repair of any and all damage or breakage resulting from acts of vandalism or the intentional or negligent acts of Licensee or others, but excluding damage or breakage caused by employees, agents, contractors, representatives or invitees of Licensor or members of the public who entered onto the Licensed Premises for purposes unrelated to Licensee's use (e.g. members of the public who park on the Licensed Premises). All repairs required to be made by Licensee shall be performed by Licensee in a manner reasonably satisfactory to Licensor. If Licensee fail to commence making a repair for which it is responsible under this section within five (5) business days after its receipt of notice from Licensor demanding such repair, Licensor shall have the option to make such repairs for the account of Licensee, in which event Licensee

shall reimburse Licensor for any and all reasonable actual out of pocket costs incurred by Licensor to make such repairs. Licensee shall make payment within ten (10) business days after written demand by Licensor.

iii. Sanitation

Licensee shall maintain the Licensed Premises in a sanitary condition and shall follow all reasonable directions of Licensor with regard to the collection and disposal of refuse.

Licensee shall be solely responsible for providing, at Licensee's sole cost and expense, waste receptacles, regular cleaning and maintenance of the Licensed Premises including, but not limited to, removal of rubbish and debris from the Licensed Premises, and regular emptying of waste receptacles.

Receptacle construction and placement must pose no danger to the public, and shall comply with all building and fire codes. Receptacles shall be topple proof at full load and, to the extent practicable, shall be kept in a manner which avoids attracting wildlife, vermin, and other pests.

The removal of rubbish and other waste shall be accomplished as needed and in such a manner so as to avoid the creation of a nuisance due to odors and infestation by vermin and other pests.

iv. Security

Licensee shall be solely responsible for providing, at Licensee's discretion and its sole cost and expense, any required security measures on the Licensed Premises.

v. Cost of Operations

Except as otherwise expressly set forth in this License, Licensee shall be responsible for any and all costs and expenses associated with Licensee's operations upon the Licensed Premises.

vi. Operations Limited to Permitted Uses

Licensee shall not conduct, nor permit any of its employees, agents, contractors, representatives or invitees to conduct, any operations or business upon the Licensed Premises except for the Permitted Use and other uses permitted by this License, unless prior written authorization is provided by Licensor. Any such additional authorization shall be given or denied solely at Licensor's discretion.

vii. Hazardous Materials

Licensee agree that Licensee shall not cause or permit any Hazardous Material to be used, generated, stored, or disposed of on, under, or about, or transported to or from the Licensed Premises. As used herein, "Hazardous Material" shall be defined as provided in Section 2 of Chapter 21E of the General Laws of Massachusetts and the regulations promulgated thereunder, as such laws and regulations may be amended from time to time. "Hazardous Material" does not include ordinary cleaning products, household paint, and gardening or landscaping material to be used in connection with the Property.

viii. Surrender of Licensed Premises

Upon the expiration or earlier termination pursuant to Section 17 of this License, Licensee shall immediately vacate and surrender the Licensed Premises to Licensor, except that Licensee may enter the premises for the purposes of removal of Licensee's property and restoration as set forth herein. Licensee shall, within thirty (30) days following the date of such expiration or termination, remove all of Licensee's property from the Licensed

Premises and restore the Licensed Premises to the condition the Licensed Premises were in at the commencement of this License, reasonable wear and tear and damage by fire or other casualty only excepted, and subject further to any obligation Licensee may have hereunder to make repairs or improvements to the Licensed Premises. If any of Licensee's personal property remains on the Licensed Premises more than 30 days after the expiration or earlier termination of this License without a written agreement between the parties, said property shall be deemed abandoned and may be retained by Licensor without any compensation to Licensee, or said property may be removed and either stored or disposed of by Licensor at the sole cost and expense of Licensee.

12. ASSUMPTION OF RISKS

- i. Licensee agrees that Licensee shall use and occupy the Licensed Premises at Licensee's own risk, and Licensor shall not be liable to Licensee for any death or personal injury, or for any loss or damage to vehicles, equipment, fixtures, or other personal property of Licensee that are brought upon the Licensed Premises except for any death, personal injury, loss or damage, arising or resulting from the acts, omissions or negligence of Licensor or the officers, agents, contractors, representatives and employees of Licensor to the extent such liability is allowed under Massachusetts law.
- ii. Without limiting the foregoing, Licensor shall have no liability to Licensee or to Licensee's invitees for any injury, death, loss, or damage caused by any act of Licensee's invitees, officers, agents, contractors, employees, or members of the general public.

13. INDEMNIFICATION

- i. Licensee shall indemnify Licensor and save Licensor harmless from and against any and all injury, loss, claim, action, damage, or liability arising solely out of any act, failure to act, or negligence of Licensee, or of Licensee's officers, agents, contractors, employees, or invitees relating to the Licensee's use of the Licensed Premises, any failure on the part of the Licensee to comply with any provision or term of this License, or relating to the exercise by the Licensee of rights under this License. This indemnity and hold harmless agreement shall include indemnity against all reasonable actual out of pocket costs, expenses, and liabilities, including reasonable attorney's fees, in connection with any such injury, loss, or damage or any such claim, or any proceeding brought thereon or in defense thereof, relating to the Licensee's use of the Licensed Premises, any failure on the part of the Licensee to comply with any provision or term of this License, or relating to the exercise by the Licensee of rights under this License.
- ii. Any negligent, reckless, unauthorized, or wrongful act on the part of any member of the public using the Licensed Premises shall be the sole responsibility of that individual.

14. INSURANCE

Licensee shall keep in force, at Licensee's sole cost and expense during the full term of this License and during such other times as Licensee occupy the Licensed Premises or any part thereof, the following insurance policies:

- i. Comprehensive general liability insurance insuring Licensee against all claims and demands for personal injury or damage to property that may be claimed to have occurred upon or about the Licensed Premises. Said insurance shall be written on an occurrence basis to afford protection in the amount of \$1,000,000 per occurrence/ \$3,000,000.00 annual aggregate for personal and bodily injury and death and for property damage, with a so-called "broad-form" endorsement and contractual liability coverage insuring the performance by Licensee of the indemnity

- agreements set forth in Section 13 of this License. Licensors shall be named as an additional insured.
- ii. Liquor legal liability insurance policy for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of 1 person, and \$500,000 on account of any 1 accident resulting in injury to or death of more than 1 person.
 - iii. Vehicle Liability Insurance covering each vehicle of Licensee entering the Licensed Premises in an amount of at least \$1,000,000 bodily and property damage per accident. Licensors shall be named as an additional insured.
 - iv. Workers Compensation Insurance shall be provided as required by law, including Employers Liability Part B.
 - v. Umbrella Liability of at least \$2,000,000/occurrence, \$2,000,000/aggregate. The Licensors shall be named as an additional insured.
 - vi. All insurance coverage required by this Section 14 shall be by standard policies obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts.
 - vii. Each said insurance policy shall name the Town as an additional insured and shall contain a provision stating that such coverage shall not be cancelled, reduced, or otherwise materially altered without at least ten (10) days prior written notice to Licensee, who in turn shall be responsible for providing immediate notice of cancellation to Licensors.
 - viii. If Licensee fails to obtain or to maintain any of the insurance coverages required by this Section 14, or if any of the required insurance policies are cancelled, it shall be grounds for immediate termination of this License as provided in Section 17 of this License.

15. ASSIGNMENT

- i. Licensee shall not sell, assign, sublicense, mortgage, or transfer any interest in this License without obtaining, in each instance, the prior written consent of Licensors. The decision to grant or withhold such consent shall be at Licensors' sole discretion.

16. RIGHTS OF LICENSOR AND AGENCY TO ENTER

- i. Licensors reserves the right to enter upon the Licensed Premises at any time to make repairs, perform maintenance, inspect the Licensed Premises, show the Licensed Premises to others, monitor compliance with this License, or for any other reason. Prior notice shall not be required in the event of an emergency. Licensors shall exercise such right of entry in a manner that does not unreasonably interfere with Licensee's use of the Licensed Premises.
- ii. Licensee shall not interfere with the exercise of this right and shall cooperate with Licensors, other representatives of the Town of Marblehead, and their agents.

17. TERMINATION

This License shall expire on the date specified in Section 6(ii), unless extended in compliance with the terms of this License and all other requirements of law, or unless terminated earlier under the following conditions:

- i. Without Cause. If circumstances that were unanticipated at the time this License was issued, or that are beyond the control of Licensee or Licensor, result in an inability to continue this License for its full term, then either Licensee or Licensor may terminate this License by giving written notice to the other party at least ninety (90) calendar days prior to the effective date of termination stated in the notice.
- ii. For Breach. Notwithstanding the foregoing, each party can terminate this License upon seven (7) days' prior written notice to the other if the other party fails to comply with the terms of this License (provided said notice specifies the default and that the non-complying party fails to cure the default within said seven (7)-day period or, if with due diligence such cure cannot be effected within said seven (7)- day period, if Licensee have failed to commence to cure the same within the seven (7)-day period or failed thereafter to proceed promptly and with due diligence to cure such default). The notice shall specify in reasonable detail the nature of the alleged breach or non-compliance.
- iii. Emergency. If Licensor determines that it is necessary to terminate this License or suspend Licensee's rights hereunder immediately in order to prevent imminent injury or damage to persons or property, or to protect state or federal funds, Licensor may terminate this License or suspend Licensee's rights hereunder by providing written notice to Licensee stating the grounds for said termination or suspension. Said notice may be given in the form of a letter hand delivered (including, without limitation, delivery by Federal Express or other overnight delivery service) or other reasonable written means, and this License shall be terminated or suspended, as the case may be, upon delivery of said notice to Licensee.
- iv. Surrender of Premises. In the event this License is terminated in accordance with any of the provisions of this Section 17, this License shall come to an end as fully and completely as if the term had expired on the date set forth in Section 6, and Licensee shall vacate and surrender the Licensed Premises as provided in Section 11(x).
- v. Entry by Licensor. Within thirty (30) days following the expiration or earlier termination of this License, or any time prior thereto, Licensor may enter upon the Licensed Premises to remove Licensee's property. Upon agreement of the parties, Licensee may abandon all or part of their property improvements made in place. If any of Licensee's personal property remains on the Licensed Premises more than thirty (30) days after the expiration or earlier termination of this License without a written agreement between the parties, said property shall be deemed abandoned and may be retained by Licensor without any compensation to Licensee, or said property may be removed. If Licensee do not cease to use the Licensed Premises upon expiration or earlier termination of this License, Licensor may enter upon the Licensed Premises or any part thereof to secure the Premises so as to exclude the Licensee and their agents and/or invitees. This remedy shall be without prejudice to any other remedies that Licensor may have for breach of this License by Licensee.
- vi. Liability. A termination of this License in accordance with any of the provisions of this Section 17 shall not impair any other rights and remedies available to the parties at law or in equity.
- vii. Waiver. Licensee expressly waives any right to damages related to such termination, including, without limitation, incidental or consequential damages.

18. NO ESTATE CREATED

- i. This License shall not be construed as creating or vesting in Licensee any estate in the Licensed Premises, but only the privileges of entry and use as herein described.
- ii. Licensee understands, acknowledges, and agrees that Licensee is acquiring no interests or rights whatsoever in or to the Licensed Premises by virtue of this License other than the privileges of entering and using the Licensed Premises in accordance with the provisions of this License.
- iii. Licensee shall have no right to require specific performance of the obligations of Licensor hereunder.

19. NON-DISCRIMINATION

- i. Licensee shall not discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Licensee, nor shall Licensee deny any person access to the Licensed Premises or to any activities or programs carried out pursuant to this License because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation.
- ii. Licensee shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment and accommodations.

20. NOTICES

- i. Unless otherwise expressly permitted hereunder, all notices or other communications required or permitted to be given under this License shall be in writing and signed by a duly authorized representative of the party giving the notice, and shall be given by hand delivery (including, without limitation, courier, Federal Express, or other overnight delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested.
- ii. Such notices shall be sent or addressed to Licensor and Licensee at the addresses set forth in Section 1 of this License.
- iii. By notice given hereunder at any time and from time to time, Licensor or Licensee may designate a different address to which notices shall be sent.
- iv. Notices served as aforesaid shall be deemed given for all purposes on the date shown on the receipt for such delivery or if delivery is refused or acceptance could not be obtained.

21. INTEGRATION

This Agreement, including the Exhibits attached hereto, constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, proposals, offers, counteroffers, agreements and understandings of the parties regarding said subject matter, whether written or oral, all of which are hereby merged into and superseded by this Agreement.

22. MISCELLANEOUS PROVISIONS

- i. This License may not be modified except in a written document duly executed by both parties.
- ii. Licensee, their employees, officers, contractors, or agents are not authorized to bind or involve the Town of Marblehead or any of its agencies in any contract or to incur any liability for or on the part of the Town of Marblehead.

- iii. If any portion of this License is declared to be illegal, unenforceable, or void, then all parties to this License shall be relieved of all obligations under that portion, provided, however, that the remainder of this License shall be enforced to the fullest extent permitted by law.
- iv. No consent or waiver, whether express or implied, by Licensor to or of any breach of the terms of this License by Licensee shall be construed as a consent or waiver to or of any other breach. No waiver of any breach or default or other indulgence shall be effective unless expressed in writing by Licensor.
- v. The Preamble of this License is an integral part of this License and not mere recitals.
- vi. The captions in this License are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this License or any of the provisions hereof.
- vii. No official, employee, or consultant of the Town of Marblehead shall be personally liable to Licensee or to any person claiming under or through Licensee for or on account of any alleged breach of this License, or for any act, failure to act, or other matter arising out of the execution of this License or the performance of Licensor's obligations hereunder.
- viii. This License shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.
- ix. This License is to take effect as a sealed instrument.
- x. Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure in performance or any interruption of service resulting, directly or indirectly, from an act of God, fire, explosion, riots, acts of terrorism, computer hardware or software failures or breakdowns, failure in communication equipment, or similar causes or occurrences beyond the reasonable control of either party.
- xi. This License is executed by certain individuals on behalf of Licensor, not individually, and in consideration for entering into this License Licensor waives any rights to bring a cause of action against the individual executing this License.
- xii. Counterparts. This License may be executed in any number of counterparts, and by any party on separate counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. Signatures to this License transmitted by telecopy or electronic mail shall be valid and effective to bind the party so signing.
- xiii. The following exhibits and attachments are made a part of this License for all purposes:

SEE ATTACHED APPLICATION

____ ***Exhibit A***

____ ***Exhibit B***

[SIGNATURE PAGE TO FOLLOW]

WITNESS the duly authorized signatures of Licensee and Licensors on three (3) counterparts of this License, each of which shall be considered to be an original, for all intents and purposes. This License shall be valid upon, but not before, the delivery of a fully executed counterpart to Licensee by Licensors.

LICENSEE:

By: _____ Date _____

LICENSEE:

By: _____ Date _____

LICENSOR: THE TOWN OF MARBLEHEAD, MASSACHUSETTS

By: _____ Date _____
Chair, Select Board