

LICENSE AGREEMENT FOR OUTDOOR SEATING ON PUBLIC SIDEWALK

BUSINESS NAME _____

ADDRESS _____

THIS AGREEMENT is entered into on the _____ day of _____, 201____, by and between the CITY OF BATAVIA, an Illinois Municipality (hereinafter referred to as “Licensor”) and _____, doing business as _____ (hereinafter referred to as “Licensee”).

WHEREAS, the City of Batavia (Batavia) desires to promote economic activity within it’s the downtown business district; and

WHEREAS, outdoor seating can contribute to a vibrant, pedestrian friendly, open, business atmosphere, and

WHEREAS, Licensee is a business located at _____ (the “Premises”), and is desirous of utilizing adjacent City property for outdoor seating; and

WHEREAS, adequate room exists on the public property for _____ to furnish outdoor seating without interfering with the use of the property; and

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into this Agreement, as though fully set forth herein verbatim.

2. Granting of License. Licensor hereby grants to Licensee a Temporary Non-Exclusive, Revocable License to allow Licensee to locate tables, chairs, shade umbrellas, and/or portable planters on the public property adjacent to the Premises (hereinafter the “Licensed Area”), as further described herein.

3. Payment for License. There shall be no fees for the year 2013. I understand that in subsequent years, licenses will carry an annual fee, payable before issuance, of a permit of \$50.00 plus \$0.50 per square foot for the use of the Licensed Area unless otherwise determined by the City Council. In addition, Licensee shall submit a Personal Bond (hereinafter “surety”) in the amount of \$1,000.00 to pay for clean up or repair of the Licensed Area in the event Licensee fails to do so at the request of the City. Said surety shall be released at the conclusion of the agreement, subject to the Licensed Area being returned in satisfactory condition to the City. If the City does make a claim on the surety to perform clean up or maintenance activities, then Licensee shall renew said surety within seven (7) days otherwise the City may revoke this License pursuant to Section 20 below.

There shall be no charge for only the placement of moveable planters on public property.

4. Term. The term of this License shall commence on the later of January 1, 20__ or the date it is executed by the second of the parties to sign this Agreement, whichever is later, and shall terminate on December 31, 201__. Use of the Licensed Area is only permitted between May 1, 20__ and no later than November 15, 20__. The City may in its sole discretion extend the starting date to April 15, 20__ and the ending date to November 30, 20__. In addition, at the request of the Licensee and agreement by the City, use of the Licensed Area on special occasions outside of these dates (i.e. St. Patrick’s day, Mardi Gras) may be granted at the sole discretion of the City. Said request shall be made at least two (2) weeks prior to the event in question. In the off-season, tables, chairs, planters or temporary fencing may not be stored within sight of the public way.

5. Location of seating areas. Licensee shall place its tables and/or chairs in locations within the Licensed Area consistent with the attached drawing (Exhibit “A”), but in any event shall leave a minimum 48” of the walk unobstructed (to the back of curb where applicable) at all times and shall not impede pedestrian traffic or interfere with intersection sight lines. Portable planters may be located in the seating area, maintaining the same 48” unobstructed walk, with the consent of the Building Commissioner. Portable planters shall contain decorative vegetation at all times or removed, and be maintained in a safe, neat, clean, and presentable manner.

Tables, chairs, portable planters and trash receptacles may remain on the public walk overnight so long as they are chained or secured together in a safe manner. However, upon notice from the City, and in the exercise of its sole discretion, this permission may be

revoked, and in such case all tables, chairs, and portable planters may only remain on the sidewalk while the business is open to the public. Tables, chairs, perimeter fences and other improvements may not be anchored to the ground by any permanent or semi-permanent means, nor shall any modification or damage be done to the sidewalk or pavement improvements unless otherwise authorized in writing by the City Council, Director of Public Works, or his designee. No holes may be drilled in the sidewalk, nor may public property such as light poles be used for such securing unless otherwise authorized in writing by the City Council, Director of Public Works, or his designee. Shade umbrellas must always be taken down and stored when the business is closed. The Licensed area shall be separated by either a fence, crowd control ropes or other method approved by the City to separate the Licensed Area from the public sidewalk, except within the River Street “woonerf” area where fencing is only required if alcohol service is provided.

6. Prohibited Activities. No food preparation, food or beverage storage, refrigeration apparatus, temporary dirty dish storage or equipment shall be allowed in the Licensed Area unless authorized by the Building Commissioner as part of a special event, or in the case of unique physical characteristics of the area. Any circuits to provide lighting at the Licensed Area must be securely attached to the building in which the main business is located, and installed per the requirements of the Batavia Municipal Code. No extension cords shall be permitted. Battery- powered lighting or candles in substantially enclosed containers may be utilized. Umbrellas and fences shall not contain advertising of the name of the Licensee, but may have incidental advertising of products served on the premises. Fencing shall not contain any advertising material whatsoever. Licensee may not utilize any City owned electrical outlets or public water spigots as part of the Licensed Area.

No business shall be conducted in the Licensed Area except when the Licensee’s adjacent premises is open for business.

7. Compliance with City Smoking Code. Pursuant to Title 4, Chapter 8 of the City Code, smoking shall be prohibited in the Licensed Area within a minimum distance of fifteen feet (15’) from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. Outside of said fifteen-foot (15’) limit, the Licensee shall have the right to permit or not permit smoking within the area covered by this license. In the event smoking is permitted at tables and chairs located

outside of said 15-foot (15') distance, Licensee shall provide a separate waste container or ashtray, on each table where smoking is permitted, for discarded smoking materials. Stand-alone receptacles, located outside of the 15-foot (15') area, for discarded smoking materials shall be provided in the absence of other means for discarding smoking materials. Licensee shall be responsible for cleanup of ashtrays and receptacles and any cigarette butts disposed of in or near the Licensed Area on a regular, but no less than daily basis.

8. Cleaning and maintenance of public right of way. Licensee shall maintain the Licensed Area in a clean condition and not allow dishes, utensils and the like to remain on tables. No items, including condiments, ashtrays, etc. may be left on tables outside of the business hours of the Licensed Area. Licensee shall actively and regularly “bus” tables, Licensee shall also “police” the sidewalk and street area adjacent to the Licensed Area and keep it clean from waste and smoking materials generated by its patrons. The Licensee shall, at all times hereunder, prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused or permitted by Licensee's use of the Licensed Area or by any person's use of the Licensed Area during the time periods of said license. Licensee shall retrieve and properly dispose of any debris scattered on to adjacent property caused by any use of the Licensed Area, and, additionally, shall maintain its own trash containers within the adjacent premises for disposal of any debris. No trash containers other than for cigarette disposal shall be allowed within the Licensed Area. Said cleaning shall include daily sweeping and removal of debris in the Licensed Area, and hosing or mopping down if necessary. The City reserves the right to revoke the license if tables, chairs or portable planters are left in a poor state of repair or the Licensed Area is left in an unsanitary or unsightly manner after an initial written warning is made. In addition, Licensee covenants and agrees to reimburse the City for the cost of maintenance of the Licensed Area in the event Licensee fails to do so to the satisfaction of the City.

9. Snow. Licensee shall remove all tables and chairs from the Licensed Area within 6 hours of any snowfall, unless Licensee removes the snow from the Licensed Area within said time. Licensee shall not place removed snow on public property or within required pedestrian areas or exit routes. If a snowfall were to occur during the license period and the business still has furniture on the sidewalk, the licensee is required to clear the area within 6 hours after the event has ended. Failure to remove snow according to this

Section shall be sufficient cause for the City to revoke this License Agreement pursuant to Section 20 below.

10. Use. The use of the Licensed Area for outdoor seating shall not be an exclusive use. All public improvements, including, but not limited to trees, light poles, traffic signals, manholes, or any public initiated maintenance procedures, shall take precedence over said use of the public right of way at all times. The City Administrator, Public Works Director, Chief of Police, Community Development Director, Building Commissioner, Code Compliance Officer or their designees may temporarily order the removal of some or all of the items in the Licensed Area for special events, including but not limited to, parades, sponsored runs or walks, or for public health and safety reasons. The City will give reasonable notice of the need for such temporary removal.

11. Indemnification. Licensee agrees to indemnify, protect, defend and hold Licensor and its employees, officials and agents harmless from and against any and all claims, liabilities, judgments, costs, damages and expenses, including reasonable attorney's fees, arising out of, or in any way related to, any operation conducted on the Licensed Area by Licensee during the term of this License, except to the extent that such claim, liability, judgment, cost, damage or expense arises from the negligence or willful misconduct of Licensor, its employees, or agents.

12. Insurance. Licensee shall provide a certificate of insurance for commercial General Liability with limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate combined single limit for bodily injury, personal injury and property damage liability. The City shall be shown as an additional insured on the licensee's General Liability insurance policies on a primary/non-contributory basis. Licensee shall provide the City with a certificate of insurance continuously in effect during the term of the license providing coverage extended to the Licensed Area. The certificate shall contain a provision that the insurance may not be cancelled without a 30-day written notice to the City.

13. Relationship of the Parties. It is understood and agreed that none of the provisions herein, or any acts of Licensor and/or Licensee, will be deemed to create a leasehold estate, a landlord-tenant relationship, a partnership, joint venture, master-servant relationship, or any interest other than a License for the use of the Licensed Area.

14. City's obligation towards Licensee's property. The City shall not be responsible for the care or security of tables and chairs located in the licensed seating area, and any tables, chairs or other property of Licensee left on the Licensed Area after business hours shall remain there at the Licensee's risk.

15. Alcohol. Licensee acknowledges that this agreement does not grant Licensee the authority to serve alcohol or allow alcohol to be consumed on the public right of way described in the Agreement. Licensee understands that separate state and local ordinances govern the sale or consumption of alcoholic beverages on public rights of way, and further understands that serving alcohol or allowing alcohol to be consumed in the Licensed Area shall only be permitted if a liquor license is granted to the applicant specifically for the purpose of serving alcohol in the Licensed Area. Serving of alcohol without a valid liquor license for the Licensed Area shall be grounds for immediate revocation of this license. Any area used for service and or consumption of alcohol shall be separated from the remainder of the public sidewalk by a gate or fence that shall be approved by the terms of an outdoor liquor license and the Licensee shall comply with all requirements of said liquor license.

16. Lighting. Any lighting in the Licensed Area must comply with the Batavia Building, Zoning and Electrical Codes. No spotlights or broadcast lighting shall be permitted. No extension cords may be utilized for such lighting fixtures.

17. Heaters. Portable heaters may be used within the Licensed Area subject to all Building and Fire Codes for separation from buildings and flammable materials. No open flame, fire pits or portable chimneys shall be utilized within the Licensed Area.

18. Music. No amplified entertainment shall be allowed in the seating area, but the Building Commissioner may authorize speakers for music so long as the volume is reasonably restricted to serve only those in the seating areas and shall not be disturbing to other businesses or tenants in the area. Music shall be turned off no later than 10:00 PM Sunday through Thursday, and 11:30 PM on Fridays and Saturdays.

19. Decorations. Decorations (i.e. planters, lights, etc.) may be used within the Licensed Area provided that they are approved by the Building Commissioner upon establishment of the Licensed Area. Said decorations shall not block or impede access to

the entrances and exits from the facility and shall not block or impede pedestrian traffic on the sidewalk.

20. Revocation. Any license issued pursuant to this License Agreement is subject to revocation for violation of the terms herein or for violations of the Municipal Code. Revocation shall not occur prior to notice of the violation(s) and some reasonable time to address the violation(s), which shall not be less than two (2) days. Notice of Revocation shall be given in writing. A Licensee may appeal the revocation by request for a hearing in writing made to the City Council. Once revoked, a license may not be reinstated or a new license issued for two (2) weeks from the date of revocation or until all violations have been addressed to the satisfaction of the Building Commissioner, whichever is later. Any Licensee whose license has been revoked more than once shall not be eligible for reinstatement or a new license until all violations are addressed and without the approval of the City Council subject to whatever additional conditions might be imposed thereby.

21. Non-Assignability. Licensee may not assign this License to any other person or entity without the express written consent, in advance, of Licensor.

22. Notice. Any notice required to be given herein shall be made by personal delivery or by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If intended for Licensor:

City of Batavia

100 North Island Avenue

Batavia, IL 60510

ATTN: City Administrator

If intended for Licensee:

ATTN: _____

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any other negotiations, representations, or agreements,

either written or oral. This Agreement may not be amended or modified without the prior written consent of the parties.

24. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Illinois.

25. Separability. If any provisions, phrase or other portion of this License Agreement is determined to be illegal, unenforceable or otherwise void, such determination shall not affect the remainder of this agreement, and each and every other provision, phrase and portion of the License Agreement shall remain in full force and effect.

26. Responsibilities at Termination of Agreement. Upon termination of the agreement either by expiration, revocation or otherwise, the Licensee shall be responsible to return the Licensed Area to the City in a condition as good or better than when the License Agreement commenced. This includes removal of any and all Licensee improvements, tables, chairs, umbrellas, fixtures or other items placed or left within the Licensed Area. Licensee shall also repair any areas damaged during the duration of the License, and shall return the property to the City in a broom clean condition. Failure to remove furniture at termination will subject Licensee to fines and/or adjudication action.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals on the date and year first above written.

LICENSOR:

LICENSEE:

CITY OF BATAVIA,

an Illinois Municipality,

an Illinois Corporation

By _____

By _____

Its City Administrator

Its _____

Last revised 3/18/2013

Regulations* for Outdoor Seating Areas

on

Public Property

- The following regulations are a description of the terms contained in the agreement for an outdoor seating license. Applicants are advised to review the actual agreement for other details.
1. Licenses require an inspection of the proposed location, and an exhibit showing the location of tables, chairs, waste containers, fencing, gates, the 15' "non-smoking" distance from doors, opening windows, streets and alleys.
 2. Tables, chairs, perimeter fences and all other items shall maintain a clear unobstructed "walking area" of 48", unobstructed at all times. A path of 48" from fire exits is required.
 3. The Licensed Area shall not be located within 15 feet of an intersection and not interfere with pedestrian or vehicular passage.
 4. Portable planters may be located in the seating area but only with live, maintained plantings.
 5. Tables, chairs, portable planters and trash receptacles may remain overnight so long as they are chained or secured together in a safe manner. Consider tables, chairs and sun umbrellas that are either heavy enough to remain stationary in windy weather, or are secured in a manner acceptable to the City. Umbrellas must be stored when the business is closed.
 6. Tables, chairs, perimeter fences and other improvements may not be anchored to the ground unless otherwise authorized in writing by the City Council, Director of Public Works, or his designee. No modification or damage can be done to the sidewalk or pavement improvements, including drilling holes in sidewalks or pavement unless otherwise authorized in writing by the City Council, Director of Public Works, or his designee, Light poles or other public property cannot be used for such securing perimeter fencing without written permission.
 7. The Licensed area shall be separated by either a fence, crowd control ropes or other method approved by the City to separate the Licensed Area from the public sidewalk,

except within the River Street “woonerf” area, where fencing is only required if alcohol service is provided.

8. No food preparation, food or beverage storage, refrigeration apparatus, blenders, temporary dirty dish storage or equipment shall be allowed in the Licensed Area unless authorized as part of a special event or unique characteristics of the public area.
9. Any circuits to provide lighting at the Licensed Area must be securely attached to the building in which the main business is located, and installed per the requirements of the Batavia Municipal Code. No extension cords shall be permitted. Battery- powered lighting or candles in substantially enclosed containers may be utilized. Any lighting must comply with the applicable codes, and historic buildings require special attention. No spotlights or broadcast lighting, or extension cords allowed.
10. Licensee may not utilize any City owned electrical outlets or public water spigots as part of the Licensed Area.
11. Umbrellas and fences shall not contain advertising of the name of the Licensee, but may have incidental advertising of products served on the premises.
12. Smoking laws need to be complied with. Outside of the required fifteen-foot (15’) limit, the Licensee shall have the right to permit or not permit smoking within the area covered by this license.
13. If smoking is permitted at tables and chairs located outside the 15-foot (15’) distance, separate waste containers or ashtrays are required on each “smoking” table. Stand-alone receptacles, located outside of the 15-foot (15’) area, for discarded smoking materials shall be provided in the absence of other means for discarding smoking materials. Licensee shall be responsible for cleanup of ashtrays, receptacles and any cigarette butts disposed of in or near the Licensed Area on a regular, but no less than daily basis.
14. Licensee shall maintain the Licensed Area in a clean condition and not allow dishes, utensils and the like to remain on tables. Licensee shall actively and regularly bus all tables and seating areas on a regular basis. No items may be left on tables outside of business hours. Licensee shall also “police” the sidewalk and street area adjacent to the Licensed Area and keep it clean from waste and smoking materials generated by its patrons. The Licensee shall prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris.
15. No trash containers other than for cigarette disposal shall be allowed within the Licensed Area. Cleaning includes daily sweeping and removal of debris in the Licensed Area, and hosing or mopping down if necessary. The City reserves the right

to revoke the license if tables, chairs or portable planters are left in a poor state of repair or the Licensed Area is left in an unsanitary or unsightly manner. City has the right of reimbursement if it has to clean the area.

16. Snow removal is very important to the proper running of the downtown. Licensee shall remove all tables and chairs from the Licensed Area within 6 hours of any snowfall, unless Licensee removes the snow from the Licensed Area within said time. Removed snow can't be placed on public property or within required pedestrian areas or exit routes. Failure to remove snow is sufficient cause for the City to revoke the license agreement.
17. Use. The use of the Licensed Area for outdoor seating shall not be an exclusive use. Operation of the public property for safety is most important, and with notice temporary removal of some or all of the items in the Licensed Area may be required for special events, like parades, sponsored runs or walks, or for public health and safety reasons.
18. Licensees will be required to indemnify the City as described in the License Agreement.
19. Licensees will provide a certificate showing commercial General Liability insurance coverage with limits of not less than \$500,000.00 per occurrence, \$1,000,000.00 in the aggregate combined single limit for bodily injury, personal injury and property damage liability. The City shall be shown as an additional insured on the licensee's General Liability insurance policies on a primary/non-contributory basis. The certificate shall contain a provision that the insurance may not be cancelled without a 30-day written notice to the City.
20. The City shall not be responsible for the care or security of tables and chairs located in the licensed seating area, and any tables, chairs or other property of Licensee left on the Licensed Area after business hours shall remain there at the Licensee's risk.
21. The outdoor seating agreement does not grant the authority to serve alcohol or allow alcohol to be consumed on the licensed area. A separate liquor license is required. Unlicensed use of alcohol can result in revocation of the outdoor seating license.
22. Portable heaters may be used subject to all applicable codes. No open flame, fire pits or portable chimneys allowed.
23. No amplified entertainment shall be allowed in the seating area. Speakers for music may be allowed so long they serve only those in the seating areas and shall not be disturbing to other businesses or tenants in the area. Music shall be turned off no later than 10:00 PM Sunday through Thursday, and 11:30 PM on Fridays and Saturdays.

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24. Decorations that do not block building access or pedestrians may be used with approval upon establishment of the Licensed Area.
 - 25 Any license issued pursuant to this License Agreement is subject to revocation for violation of the agreement or the Municipal Code. There is a process for notice and appeal in the agreement.

written declaration is served, the City shall have the right to enforce this bond in court by asserting any rights it has in law or equity to seek compliance with the License Agreement and reimbursement of the cost to bring the property and/or City sidewalk into compliance with the License Agreement, up to One Thousand Dollars (\$1,000.00), together with reimbursement for any attorney's fees and costs incurred in the enforcement of the License Agreement.

7. This personal bond shall expire upon either written notice of the City, termination of the License Agreement or upon fulfillment of the Business's obligations thereunder, whichever is the last to occur.

IN WITNESS WHEREOF, _____ has hereunto set his hand and seal this ____ day of _____, 20__.

<Business>

By: _____

Print Name and Title

<Individual>

By: _____

Approved by the City of Batavia this ____ day of _____, 20__.

By: _____

City of Batavia