

Restaurant/Brewery Address: _____
Restaurant/Brewery Name: _____

OUTDOOR SEATING ENCROACHMENT AGREEMENT

THIS OUTDOOR SEATING ENCROACHMENT AGREEMENT (the "Agreement"), is made as of the date it is signed by the Hampton City Manager or her designee (the "Effective Date"), by and between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "City") and _____ (the "Business") and (collectively, the "Parties").

WHEREAS, the City is the owner of the public right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on **EXHIBIT A – LICENSED AREA** attached hereto;

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Business was restricted by the Statewide Declaration of Public Health Emergency;

WHEREAS, a Temporary Outdoor Dining permit was issued by the City to allow the Business to enter upon a portion of the Property (the "Licensed Area") for the purpose of outdoor seating and dining in conjunction with the Business during the Statewide Declaration of Public Health Emergency, as amended;

WHEREAS, the Statewide Declaration of Public Health Emergency, as well as the accompanying City of Hampton Declaration of Emergency, have been terminated as of July 1, 2021;

WHEREAS, the Temporary Outdoor Dining permit will expire 30 days from the termination of the emergency declarations described above, unless extended by the City;

WHEREAS, the City made improvements to the Licensed Area, including the addition of tables, chairs, and umbrellas, for use by the Business and other adjacent businesses, on a more permanent basis; and

WHEREAS, the Parties desire to continue use of the Property for outdoor seating and dining purposes under substantially the same terms as the prior Temporary Outdoor Dining permits.

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

1. **Grant of Encroachment.** The City hereby grants a non-exclusive revocable license to the Business over the portion of the Property designated for the Business on Exhibit A, subject to the terms and conditions of this Agreement (the "License"). No assignment of the License shall be permitted without consent of the City.

2. **Use of the Property.** Business shall use the Licensed Area solely to provide table seating for dining and or beverage consumption in accordance with all applicable terms and conditions attached as **EXHIBIT B - OUTDOOR DINING CONDITIONS.** The City reserves the right to modify the Licensed Area at any time as may be necessary and in the interest of public health and safety, including but not limited to alterations in response to construction upon adjacent parcels. The City and the City's authorized representatives may, at any time, enter upon the Licensed Area for the purpose of making inspections and verifying compliance with all applicable federal, state, and local law.

(a) **Furnishings.** Outdoor seating furnishings, including tables, chairs, and umbrellas, which are owned by the City, have been or will be installed by the City for use in the Licensed Area

("City-Provided Furnishings"). The City may also provide barriers, accessible ramps, and other tangible property to the Licensed Area, which shall then also be considered City-Provided Furnishings. All City-Provided Furnishings within the Business's Licensed Area shall be inspected each day by the Business to assess any damage to them. The Business shall immediately notify the City, in writing, if it identifies any damage to the City-Provided Furnishings and to identify any furnishings that may be in need of repair or replacement. The Business shall also immediately designate the damaged furnishing(s) with signage, tape, or other appropriate measures and prevent them from being used. The City reserves the right to limit or prohibit access to the Licensed Area and/or City-Provided Furnishings, or to temporarily or permanently remove the furnishings from the Licensed Area, in the event that the public health, safety, or welfare require it, including but not limited to inclement weather events, or when it is otherwise in the public interest to do so. The City shall not be liable for any costs or expenses incurred by the Business as a result of any such limitation or prohibition of use.

3. Term of the Agreement & Renewals. The term of this Agreement shall be one (1) year from full execution of the Agreement, unless sooner terminated as provided in the Agreement (the "Term"). Provided the Business is in full compliance with the Agreement upon the end of the Term, this Agreement shall automatically renew in annual one (1)-year increments (each a "Renewal Term") up to four (4) Renewal Terms for a total of five (5) years, unless the Business or the City provides the other party written notice of its intent not to extend the Agreement prior to the end of the applicable Term or Renewal Term.

4. Condition of the Property. Upon the end of the Term, the Business shall withdraw its agents and invitees from the Licensed Area and cease any further temporary use of the Licensed Area. The Business shall restore the Licensed to substantially the same condition as it was prior commencement of this Agreement, free of trash, material, equipment, and debris.

5. Liability, Indemnity, and Claims. Business assumes the entire responsibility for any and all damages to persons or property arising out its use of the Licensed Area of this Agreement. Business shall indemnify, hold harmless and defend the City, its agents, officers and employees, from and against all claims in connection with this Agreement.

6. Applicable Law. This Agreement shall be deemed to be a Virginia contract and shall be governed by the laws of the Commonwealth of Virginia. All suits for any claims or for any breach or dispute arising out of this Agreement may be brought in the appropriate court of competent jurisdiction in a state or federal court of competent jurisdiction located in the City of Hampton, Virginia or the United States District Court for the Eastern District of Virginia.

7. Insurance. Business shall maintain insurance in such amounts and such coverages as may be required by the City of Hampton's Risk Manager, naming the City of Hampton as an additional insured in a form satisfactory to the Risk Manager.

8. Termination of Agreement. The City of Hampton reserves the right to temporarily suspend this Agreement at any time if the Business does not adhere to terms and conditions thereof, or if the use of the Licensed Area threatens the public health, safety, and welfare, including but not limited to storm events, crowds in excess of permitted capacity, and construction activity. Further, both the City and the Business may terminate this Agreement by providing the other party 30 days' written notice of such fact.

9. Business agrees that Hampton Police Division ("HPD") officers will retain the authority to enforce criminal violations, including trespass at this location. Any persons who are not permitted upon this property for legitimate purposes or business patronage, and /or are violating any law including any executive order are trespassing. Business authorizes any officer of the HPD to ask any such person to leave the property and ban them from further admittance. Business agrees to support prosecution of any trespassers and will appear in court to testify if necessary.

10. Use of the term "City" in this Agreement shall be interpreted to include the City, its agents, officers, employees, and invitees.

11. This Agreement shall not be amended, changed, modified, waived or discharged in whole or in part except by written agreement of the Parties.

WITNESS the following signatures and seals:

BUSINESS:

By: _____

Its: _____

CITY OF HAMPTON:

By: _____
City Manager / Authorized Designee

Date: _____