

LICENSE

I. PARTIES

A. **CITY OF CONCORD**, a municipal corporation duly existing under the laws of the State of New Hampshire and having a usual place of business at 41 Green Street, Concord, New Hampshire 03301 (“City”).

B. **SUNDAY’S SCOOPS AND TREATS, LLC**, a New Hampshire corporation, having a principal place of business at 138 North Main Street, Concord, NH 03301 (“Licensee”).

C. The City and Licensee are collectively referred to as the “Parties.”

II. PURPOSE

The purpose of this License is for the City to authorize the Licensee to install and maintain a fabric awning attached to the front façade of the Licensee’s business located at 138 North Main Street, Concord, NH that encroaches over the public sidewalk. The Licensee shall install the awning so that no portion of the awning is less than 9’ above the sidewalk. The awning shall not project more than 36” horizontally over the sidewalk.

III. TERM

The term of this License shall commence on or after June 14, 2021, and shall remain in effect for ten (10) years subject to the termination conditions set forth under sub-section VII.

IV. USE OF LICENSED AREA

In accordance with applicable local ordinances; and state and federal laws, rules, and regulations, the City hereby grants to Licensee a License to maintain a fabric awning over the sidewalk at 138 North Main Street, Concord, NH (“Licensed Area”). The Licensed Area is shown on Exhibit A which by reference is made a part of this License.

V. MAINTENANCE

Licensee shall keep the awning in clean and functioning order. Licensee shall monitor the awning for signs of damage, significant wear and tear and vandalism. Any such instance observed by Licensee or reported to Licensee by the City shall be rectified by the Licensee within thirty (30) days to the satisfaction of the Licensor.

Licensee shall be solely responsible for any and all damages that may occur to the City’s property, or abutting properties, as a result of the awning. Licensee shall repair any and all damage to the City’s property and/or abutting properties that may result from installation and/or maintenance of the awning. All repairs shall be completed to the sole satisfaction of aggrieved property owners.

Any and all maintenance work on the awning shall be at Licensee's sole cost and expense. Any such maintenance shall be coordinated with the City prior to commencement.

VI. RENEWAL

The City, may at its sole option, without returning to the City Council for approval, extend the Term of the License, on the same terms and conditions set forth herein, or upon additional terms and conditions as the City may solely determine, for an additional ten (10) years (the "Extension Term"), subject to the following: (i) the Licensee shall give ninety (90) days prior written notice to the City of its intent to extend the License unless this License has been earlier terminated. If the City does not extend the Term of the License, the City shall provide written notice to the Licensee, which shall, within thirty (30) days of the final Term of the License, remove its awning from the Licensed Area.

VII. TERMINATION

Either party may terminate this License at any time and for any reason with thirty (30) days written notice to the non-terminating party. In the event of termination, the Licensee shall promptly, but no more than thirty (30) days following notice, at its sole expense, remove the awning from the Licensed Area.

VIII. ASSIGNABILITY

The Licensee shall not assign or otherwise transfer this License without the express written approval of the City of Concord; approval which shall not be unreasonably withheld.

IX. INSURANCE

During the Term of this License Agreement, Licensee shall furnish to the City a certificate that the Licensee has in force general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this license, in an amount not less than \$1,000,000 per incident or occurrence. Upon issuance of a Certificate of Occupancy, the Licensee shall maintain, during the Term of this License Agreement and for so long as Licensee continues Licensee's use within the Licensed Area, the following insurance:

A. Commercial General Liability

- General Liability Insurance in the Aggregate of Two (2) Million Dollars.
- Each Occurrence of Injury One (1) Million Dollars.
- Medical Expense (any one person) \$5,000

B. General Requirements. The following conditions shall apply to the insurance policies required herein:

(1) Licensee shall submit certificates of insurance for all coverage required hereunder on the effective date and on each anniversary thereof, or at the City's reasonable request, together with such other relevant insurance documentation as the City may reasonably request. All the insurance required under this License Agreement shall name the City as additionally insured with respect to commercial general, and all insurance policies and certificates shall include a provision requiring thirty (30) business days' written notice to the City by certified mail of any cancellation, material change, or reduction in coverage.

(2) All insurance of Licensee shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.

(3) Licensee's failure to obtain, procure, or maintain the required insurance shall constitute a material breach of this License Agreement.

(4) Licensee's obligation to hold harmless and indemnify the City shall not be limited by the requirement for, or existence of, insurance coverage.

(5) The City shall have the right to require Licensee to increase such limits when, during the term of this License Agreement, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Licensed Area by responsible owners or Licensees are more or less generally increased, it being the intention of this sentence to require Licensee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to Licensee.

X. INDEMNIFICATION

Licensee shall defend, indemnify and hold harmless City and its officials, agents and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability, and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation set forth in this License Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Licensee (or its contractors, agents or employees) in connection with this License Agreement; provided, however, that nothing herein shall require the Licensee to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the City. Additionally, to the fullest extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable for any obligation or liability of Licensee under this License Agreement.

Further, Licensee agrees that the City, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to Licensee for any damage within

the Licensed Area or to any other property or employee of Licensee or to any other person or entity hired by or affiliated with Licensee resulting from or arising out of any ownership and use within the Licensed Area, including but not limited to maintenance, construction, reconstruction, rehabilitation, and repair.

The indemnification obligations set forth herein shall survive the term of this License Agreement. Licensee must choose defense counsel acceptable to the City and obtain the City's consent to any proposed settlement.

XI. COMPLIANCE WITH LAW

Licensee shall use, possess, maintain, repair, and replace its awning within the Licensed Area in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules, and regulations, and in accordance with any and all federal, state, and local permits and approvals.

XII. NOTICES

Any notice or other communication required by this License Agreement will be deemed to have been duly given, if deposited in the U.S. Mail, postage prepaid, and addressed to the other party at the address set forth in the identification of the Parties in this Agreement.

XIII. DISPUTES

The Parties hereby submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this License or any related agreement, and further waive any and all objections they may have as to venue in such courts and waive all rights to bring any such action or proceeding before any other court or tribunal. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court.

XIV. NO ORAL WAIVER, MODIFICATION, OR TERMINATION

This License may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.

XV. GOVERNING LAW

This License shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

XVI. SEVERABILITY

If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and be enforced to the fullest extent permitted by law.

XVII. NO THIRD PARTY BENEFICIARIES

This License is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto.

XVIII. CAPTIONS

The captions and headings throughout this License are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify, or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this License, nor in any way affect this License, and shall have no legal effect.

XIX. ENTIRE AGREEMENT

This License embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties.

XX. AUTHORITY OF THE CITY

Authority for the City Manager to enter in this License Agreement on behalf of the Licensor was granted by the City Council on June 14, 2021, and is hereby incorporated into this Agreement by reference.

CITY OF CONCORD

Date

Thomas J. Aspell, Jr.
City Manager

**SUNDAY'S SCOOPS AND TREATS,
LLC**

Date

Cole Glaude
Manager