

LICENSE AGREEMENT

I. PARTIES

A. The City of Concord, a New Hampshire, a municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire ("Licensor").

B. Monitor Statesman, LLC, a limited liability corporation in the State of New Hampshire, having a mailing address of PO Box 4172, Concord, New Hampshire, 03302 ("Licensee"), and the owner of real property located at 10 Pleasant Street Extension, Concord, New Hampshire, Map 7412Z, Lot 15.

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

II. PURPOSE

The purpose of this License is for Licensor to authorize Licensee the right to use and maintain a portion of the property (currently a "pocket park" at the northeast corner of the property) owned by Licensor at the corner of Pleasant Street Extension and Storrs St., Concord, New Hampshire, known as Map 7142Z, Lot 14 (the "Premises"), as shown on the attached map titled, (title / prepared by / date) which is attached to this License as Exhibit A.

III. USE OF PREMISES

In accordance with applicable local ordinances, and state and federal laws, rules, and regulations, the City hereby grants to Licensee a License to maintain an outdoor dining area including patio, pedestrian walkways, outdoor seating and tables, landscaping, lighting, other structures and associated improvements (collectively, "Improvements") on the Premises for the sole and express purpose of providing outdoor dining and other amenities for Licensee's proposed restaurant / café located at 10 Pleasant Street Extension. Unless otherwise approved by the Deputy City Manager – Development, the Improvements shall be consistent with the attached plans "TITLE HERE" prepared by [NAME], dated [DATE HERE] which are hereby attached to this License as Exhibit B. Subject to applicable laws, ordinances, rules, and regulations, outdoor dining shall be permitted at the Premises on a year-round basis.

Pavement, lighting, walls, walkways, and landscaping, constructed at the Premises by the Licensee as part of the Improvements shall become the property of the City of Concord. Unless otherwise agreed to by the City in writing, If the Licensee ceases to use the Premises for purposes set forth herein, the City may require the Licensee to remove the Improvements and restore the Premises to a condition satisfactory to the Deputy City Manager – Development, or designee, at the Licensee's sole expense. If Licensee fails to remove the Improvements from the Premises and restore the Premises within thirty (30) days of the City's request, Licensor may remove the Improvements and restore the Premises. Licensee shall pay Licensor for any and all work performed by Licensor in the restoration of the Premises. For the purposes of this section, ceasing to use means seven (7) or more days where the area is not opened to the public as part of the Licensee's regular business operations.

IV. REGULATIONS AND FEES

Licensee shall conform with all laws, ordinances, rules, and regulations applicable to the Licensee's use of the Premises, including, but not limited to those associated with outdoor dining. Specifically, Licensee must apply for and receive an Outdoor Dining permit. Subject to applicable laws, ordinances, rules, and regulations, the Parties agree that the Licensee shall have the ability to offer outdoor dining at the Premises year-round. Licensee shall also pay all normal and customary fees established by City Ordinance, or in the absence of such Ordinance base fees, fees administratively established by the City Manager, for outdoor dining.

V. TERM AND TERMINATION

This License Agreement shall remain in effect until terminated by the City or the Licensee.

The City or the Licensee may terminate this License Agreement in writing to the other party or its agent(s) at any time and for any reason. It is understood and agreed between the Parties that upon any termination of this License Agreement, Licensee shall have no claim whatsoever upon the City for reimbursement of any of Licensee's costs in the exercise of the license rights set forth in this License Agreement.

In the event of termination, the Licensee shall immediately cease using the Premises. Unless otherwise agreed by the City in writing, no later than thirty (30) days following notice, at its sole expense, the Licensee shall also restore the Premises to a condition satisfactory to the Deputy City Manager - Development. If Licensee fails to restore the Premises within thirty (30) days of the notice of termination, the City may restore the Premises. Licensee shall pay the City for any and all work performed by the City in the restoration of the Premises.

VI. PERMITTING, CONSTRUCTION & MAINTENANCE

The Licensee shall be solely responsible for the design, permitting (including Architectural Design Review, Site Plan Review, and any and all building permitting, utility permitting, and any other local or state permits as determined necessary), installation, ownership, operation and maintenance of the improvements.

Licensee shall be responsible for obtaining any and all necessary permits and approvals required for any improvements constructed pursuant to this License Agreement. Prior to applying for any permits, the Licensee shall provide detailed and accurate design plans (the "Design Plans") prepared by qualified landscape architect and professional civil engineer to the Deputy City Manager - Development for review and approval. No permit application shall be filed without the Deputy City Manager - Development's express written consent.

All construction and other improvements to the Premises undertaken by Licensee shall be at its sole risk and expense. All construction and improvements shall be made in a workmanlike manner and in compliance with all applicable federal, state, and municipal laws and regulations. Licensee shall appropriately safeguard and protect all existing public and private utility infrastructure located at the Premises in conjunction with the Licensee's Improvements. Licensee shall be solely responsible for restoration, repair, or replacement of any damaged infrastructure in conjunction with its Improvements.

Upon receipt of all required permits and prior to construction or installation of the Improvements, the Licensee shall 1) complete a preconstruction meeting with the Engineering

Division of the Community Development Department and 2) written authorization from the Deputy City Manager – Development to proceed with construction / installation of the Improvements at the Premises. Any permanent improvements or fixtures constructed by Licensee on the Premises shall become the property of the City. The Licensee shall be responsible for all costs associated with the installation, maintenance, and removal of the Improvements.

The Licensee shall keep the Premises in good condition and repair, clean and aesthetically attractive, safe for public travel and use, and free from snow, ice, and dirt to the satisfaction of the City. The Licensee shall also be responsible for maintaining all landscaping and trees on the Premises. No trees shall be removed without permission from the Licensor.

VII. MUNICIPAL INFRASTRUCTURE

Licensee acknowledges and affirms that Licensee is aware that the City of Concord has subsurface municipal infrastructure, including stormwater & water located at the premises, which shall not be altered without express written consent issued by the Deputy City Manager - Development.

The Licensee shall obtain any and all necessary “dig safe” markouts to ensure that no subsurface or overhead utility infrastructure is impacted by excavation activities for the Improvements.

The Licensee is hereby required to preserve, safeguard, and relocate public art and Railroad Square historic interpretive sign located on the Premises, at the licensee’s expense. The Licensee’s Design Plans shall expressly include provisions to relocate and maintain public art and the Railroad Square historic sign. Relocation and reinstallation of these items shall be subject to the review and express approval of the Deputy City Manager – Development.

Licensee shall appropriately safeguard and protect all existing infrastructure located at the Premises in conjunction with the Licensee’s Improvements. Any municipal infrastructure impacted and/or damaged by the construction or commercial use of the Improvements shall be replaced or relocated per direction from the Deputy City Manager - Development at the cost of the Licensee.

During the term of this License Agreement, should the City have to service, repair, relocate, or otherwise do any work to municipal infrastructure that requires the City, or its agent, to remove any portion of the Improvements, the City shall bear no responsibility for any damage nor any obligation (financial or otherwise) to rebuild any portion of the Improvements. If the City incurs a documentable greater cost to any work it undertakes to maintain its infrastructure to the presence of the Improvements, that cost shall be borne by the Licensee. The City shall make all reasonable efforts to notify the Licensee prior to work being done on the Premises. However, the City is under no obligation to do so in emergency situations where such notice is not feasible.

VIII. INDEMNIFICATION

Licensee shall defend, indemnify and hold harmless the 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 Parties 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 to the Premises 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 the use of the Premises.

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.

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, in an amount not less than \$1,000,000 per incident or occurrence and an aggregate of \$2,000,000. 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 Premises, the following insurance:

A. Commercial General Liability

General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

B. Workers Compensation

NH Statutory including Employers Liability
Each Accident/Disease-Policy Limit/Disease-Each Employee
\$100,000/\$500,000/\$100,000

C. 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) All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

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

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

(6) 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 Premises 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. 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 City or Licensee at the address set forth in the identification of the Parties in this License Agreement.

XI. 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 Agreement 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.

XII. NO ORAL WAIVER, MODIFICATION, OR TERMINATION

This License Agreement 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.

XIII. NO ASSIGNMENT OR TRANSFER

This License is granted to the Licensee, exclusively. This License shall not be assigned or otherwise transferred to any other party.

XIV. IMMUNITY

Notwithstanding any provision of this License Agreement, nothing herein contained shall be deemed to constitute a waiver of the immunity of the City, which immunity is hereby reserved to the City. This covenant shall survive the termination of this License Agreement.

XV. GOVERNING LAW

This License Agreement 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 Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

XVII. AMENDMENTS

This License Agreement may be amended only in writing signed by the Parties.

XVIII. PROPERTY TAXES

Licensee shall have the responsibility to pay any personal property taxes, real estate taxes, assessments, or charges owed on the Premises which are the result of Licensee's use of the Premises and/or the installation, maintenance, and operation of the Licensee's improvements. Pursuant to RSA 72:23, I(b), or other applicable statute or ordinance, the failure of the Licensee to pay the duly assessed personal and real estate taxes when due shall result in termination of this License Agreement.

XIX. ENTIRE AGREEMENT

This License Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof.

XX. AUTHORITY OF CITY

Authority for the issuance of this License Agreement was granted by an affirmative action of the City Council on _____.

CITY OF CONCORD

By: _____
Thomas J. Aspell, Jr., City Manager
Duly Authorized

Date: _____

MONITOR STATESMAN, LLC

By: _____

Duly Authorized

Date: _____

DRAFT