

LICENSE AGREEMENT

I. PARTIES

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

B. WTR Enterprise, Inc., a domestic limited liability company, with president Todd Richard Roy and a mailing address of 52 Buckmeadow Road, Nashua, NH 03062, (“Licensee”), as the owner of Cheers Restaurant, located at 17 Depot Street, U-1, Concord, NH 03301, Map 45, Block 8, Lot 2.

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

II. PURPOSE

The purpose of this License Agreement is to permit the Licensee to maintain a patio area, a pedestrian walkway and to construct a commercial grade awning structure located on property owned by the City at Map 45, Block 8, Lot 1 and Map 45, Block 8, Lot 6 (collectively, “Premises”).

III. 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 construct a commercial grade awning structure, and maintain a patio area, pedestrian walkway, retaining walls and associated improvements (collectively, “patio improvements”) on the Premises.

If the Licensee ceases to use the Licensed Area for purposes that necessitate the patio improvements, the Licensee shall immediately, at its own expense, remove the patio improvements and restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to remove the patio improvements from the Licensed Area and restore Licensed Area within thirty (30) days of ceasing to do business that necessitates the patio improvements, the City may remove the patio improvements and restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area.

IV. FEE

If applicable, Licensee shall pay a fee for use of the Licensed Area as determined by the City Manager.

V. TERM AND TERMINATION

This License Agreement shall remain in effect until terminated by the City at any time and for any reason.

The City may terminate this License Agreement in writing to Licensee 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 exercise the license rights set forth in this License Agreement.

In the event of termination, the Licensee shall immediately, but no more than thirty (30) days following notice, at its sole expense, restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to restore Licensed Area within thirty (30) days of the notice of termination, the City may restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area.

VI. CONSTRUCTION & MAINTENANCE

All construction and other improvements to the Licensed Area 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 law and regulations. Licensee shall be responsible for obtaining any and all necessary permits and approvals required for any improvements constructed pursuant to this License Agreement. Any permanent improvements or fixtures constructed by Licensee on the Licensed Area shall be considered the property of the City. The Licensee shall be responsible for all costs associated with the installation, maintenance and removal of the patio improvements.

The Licensee shall keep the Licensed Area in good condition and repair, safe for public travel and use, and free from snow, ice, and dirt to the satisfaction of the City.

VII. MUNICIPAL INFRASTRUCTURE

Licensee acknowledges and affirms that Licensee is aware that the City of Concord has two water lines under the patio; a 6" line laid in an east-west orientation and an 8" line in a north-south trajectory. In addition to the Licensee's responsibility to obtain any and all necessary "digsafe" markouts to ensure that no underground or overhead utility infrastructure is impacted by any patio improvements requiring digging, the Licensee shall also provide the City Engineer with an accurate plan depicting the improvements and how they will be installed to the City Engineer's satisfaction. Only upon express written consent issued by the City Engineer shall the Licensee begin the installation of any sub-grade infrastructure including, but not limited to, support columns for the awning.

Any municipal infrastructure impacted and/or damaged by the construction or commercial use of the patio improvements shall be replaced or relocated per direction from the City Engineer 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 this water system infrastructure in a manner that requires the City, or its agent, to remove any portion of the patio improvements, the City shall bear no responsibility for any damage nor any obligation (financial or otherwise) to rebuild any portion

of the patio improvements. If the City incurs a documentable greater cost to any work it undertakes to the water main due to the presence of the patio improvements, that cost shall be borne by the Licensee. The City shall make an effort to notify the Licensee prior to work being done on the water main. However, the City is not under any 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 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 the use of the Licensed Area.

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, 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 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 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. COMPLIANCE WITH LAW

The Licensee shall use, possess, maintain, repair, and replace said Licensed Area, and any improvements to 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. This includes, but is not limited to, Concord Planning Board approval, if applicable.

XI. 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.

XII. 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.

XIII. 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.

XIV. ASSIGNMENT

This License Agreement shall run with the land for the Term hereof. Licensee may assign or otherwise transfer this License Agreement upon the City's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

XV. 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.

XVI. 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.

XVII. 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.

XVIII. NO THIRD PARTY BENEFICIARIES

This License Agreement 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.

XIX. AMENDMENTS

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

XX. CAPTIONS

The captions and headings throughout this License Agreement 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 Agreement, nor in any way affect this License Agreement, and shall have no legal effect.

XXI. PROPERTY TAXES

Licensee shall have the responsibility to pay any personal property taxes, real estate taxes, assessments, or charges owed on the Licensed Area which are the result of Licensee's use of the Licensed Area and/or the installation, maintenance, and operation of the patio improvements, including any increase in real estate taxes at the Licensed Area which arises from the Licensee's improvements and/or Licensee's use of the Licensed Area. Pursuant to RSA 72:23, I(b), 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.

XXII. ENTIRE AGREEMENT

This License Agreement 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.

XXIII. AUTHORITY OF CITY

Authority for the issuance of this License Agreement was granted by an affirmative action of the City Council on February 14, 2022.

City of Concord

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

Date: _____

WTR Enterprise, Inc.

By: _____
Thomas Richard Roy, President
Duly Authorized

Date: _____