

## LICENSE AGREEMENT

This License Agreement (this "Agreement") is made this \_\_\_\_ day of November, 2021, by and between Rivalries Falmouth LLC, a Maine limited liability company, whose mailing address is 2 Hat Trick Drive, Falmouth, ME 04105 ("Rivalries") and the TOWN OF FALMOUTH, a Maine municipal corporation, whose mailing address is 271 Falmouth Road, Falmouth, Maine 04105 (the "Town").

WHEREAS, Rivalries owns and operates restaurant business located at 2 Hat Trick Drive in Falmouth; and

WHEREAS, Rivalries desires to conduct certain of its activities outside on that portion of the abutting property of the Town described in Schedule A attached hereto and made a part hereof (the "Town Property") and is prepared to obtain all necessary municipal approvals with respect thereto; and

WHEREAS, the Town is agreeable to Rivalries' conducting such activities on the Town Property provided that: (a) Rivalries obtains all necessary municipal approvals for such outside activities, including approval by the Falmouth Town Council (the "Council"), prior to any commencement of such activities, (b) such activities do not impede use of the Town's property adjacent to the Town Property, if any, (c) Rivalries maintains the Town Property so long as such activities are conducted thereon, and (d) the Town is not liable in the event that employees, agents, and members of the general public are injured on the Town Property; and

WHEREAS, Rivalries and Town desire to formalize their agreements in regard to Rivalries' use of the Town Property for such activities as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the sufficiency of which is acknowledged, the parties hereto do hereby agree as follows:

1. Use of Town Property. The Town agrees that Rivalries shall be permitted to use the Town Property for the activities described in Schedule B attached hereto and made a part hereof (the "Outside Activities"), subject to the terms and conditions hereinafter set forth. Rivalries shall make no improvements to the Town Property that are not specifically described herein.
2. Maintenance and Repair. Rivalries understands and agrees that it shall be solely responsible for maintaining and repairing the Town Property in a neat, clean and safe condition, to use the Town Property for the Outside Activities in compliance with all local and State requirements, and to keep it clearly marked off and segregated from any adjoining Town Property. Rivalries agrees that the Town will have no responsibility for any such maintenance and repair, and no liability whatsoever for the repair of any damage caused to the Town Property so long as Rivalries continues to conduct the Outside Activities thereon, or otherwise, as provided herein.

3. Termination. Rivalries agrees that it shall not acquire any permanent rights in or to the Town Property, or any portion thereof, by virtue of this Agreement, and further acknowledges and agrees that the Town shall have the right to require that Rivalries cease such Outside Activities and promptly remove any and all of its personal property and any improvements it makes to the Town Property as permitted under this Agreement, upon sixty (60) days written notice from the Town. Rivalries shall have the right to terminate this Agreement at any time following written notice to the Town in which case Rivalries shall thereafter promptly remove any and all of its personal property and any improvements it makes to the Town Property as permitted under this Agreement. In any event, upon termination of this Agreement by either party, Rivalries shall promptly repair any damage to the Town Property resulting from Rivalries use thereof such that the Town Property is returned to its condition prior to the commencement of Rivalries' use thereof.

4. Indemnification. Rivalries hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend and save harmless the Town, and its officers, officials, agents, subcontractors and employees (the "Indemnitees"), from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys, paralegals, and consultants' fees, expenses and disbursements) of any kind or nature whatsoever by whomever asserted which may at any time be imposed upon, incurred by, or asserted or awarded against any Indemnatee relating to, resulting from, or arising out of use of the Town Property by Rivalries and its employees, agents, and members of the general public as provided herein.

5. Insurance. Rivalries agrees that it shall maintain general liability insurance and all other required insurance relating to its business and the Outside Activities, which insurance policy or policies shall name the Town as an additional insured. Rivalries further agrees to provide copies of all such insurance policies, or a certificate thereof, to the Town Manager at the time this Agreement is executed by the parties, and upon further request by the Town Manager, so long as this Agreement remains in effect.

6. Maine Tort Claims Act. Nothing contained in this Agreement shall in any way alter or lessen the Town's immunity from lawsuit as set forth in the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., as the same may be amended from time to time, and the Town is not waiving any defense, immunity or limitation of liability which may be available to it, its officers, agents or employees, under the Maine Tort Claims Act, or any other defenses, privileges or immunities as may be provided by law.

7. Local Ordinance Applicability. Nothing contained in this Agreement shall be deemed to waive the applicability of any requirements under local ordinances or regulations, as those provisions may be amended from time to time, relating to the conduct of the Outside Activities on the Town Property.

8. Notices. Any notices required to be sent pursuant to this Agreement, or in the application or enforcement thereof, shall be sent by certified mail, return receipt requested, or sent by federal express or similar overnight express mail service, prepaid, each to the addresses listed below:

To the Town:           Town Manager  
                              Town of Falmouth  
                              271 Falmouth Road  
                              Falmouth, Maine 04105

To Rivalries:         Amy and Lance Meader, Owners  
                              Rivalries Falmouth LLC  
                              2 Hat Trick Drive  
                              Falmouth, ME 04105

Any party may change its address for purposes of this Paragraph by giving the other parties notice of the new address in the manner described herein.

9. Council Approval. This Agreement was approved by the Council at a meeting thereof held on \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day, month and year first above written.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
    Its \_\_\_\_\_

TOWN OF FALMOUTH

\_\_\_\_\_

By: \_\_\_\_\_  
    Nathan A. Poore  
    Its Town Manager

## Schedule A

### Description of Town Property

\* See Addendum A attached.

Approximately 3 feet of depth onto Town owned property.

## Schedule B

### Description of Outside Activities

Extension of outdoor patio seating contained within a roped-in area that does not obstruct any public sidewalks, walkways, entrances/exits, roads/streets/drives or parking.

