

LICENSE AGREEMENT

_____ [LICENSEE BUSINESS NAME]

This License Agreement (the "Agreement") is made this ____ day of _____, 2020, by and between the City of Willmar, Minnesota, a municipal corporation under the laws of the State of Minnesota (the "Licensor" or "City"), and _____ [Licensee Business Name] (the "Licensee"); (collectively the "parties").

RECITALS:

WHEREAS, the Licensor is the owner of _____ [identify right-of-way or other city property] in the City of Willmar, County of _____, State of Minnesota (the "public area"); and

WHEREAS, the Licensee is the [owner/lessee] of real property located adjacent to the public area at _____ [street address], Willmar, MN, at which Licensee operates the _____ [name of establishment]; and

WHEREAS, the Licensee is the holder of a license issued by the City on _____ [date of liquor license issuance] for the sale of _____ [type of on-sale license, e.g. intoxicating liquor, beer and wine, brew pub, tap room] for on-premises consumption at _____ [name of establishment] (Licensee's "liquor license"); and

WHEREAS, the Licensee desires to use the public area for commercial retail purposes, including the sale and service of food and beverages, including alcoholic beverages, pursuant to the City's Emergency Ordinance No. 1451, adopted May 29, 2020 (the "Emergency Ordinance"), as the same may be extended or modified by adoption of subsequent emergency ordinances by the City; and

WHEREAS, the Licensor is willing to permit such use, subject to the terms, covenants, and conditions contained herein.

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

1. Premises. The Licensor is the owner of the public area. Licensor hereby grants to Licensee a non-exclusive, terminable license to use that portion of the public area as included in the depiction on Exhibit A, attached hereto and incorporated herein by reference (the "licensed public area"), for commercial retail purposes as more particularly described in Section 3 below. The Licensee shall use the specified public area only for such authorized purposes.
2. Term. The term of this Agreement shall be for the period commencing at 1:00 a.m. on June 1, 2020 and shall expire at such time as the City's Emergency Ordinance, or any

extension or modification thereof by subsequent emergency ordinance adopted by the City, expires, is repealed, or otherwise ceases to be in effect.

3. Purpose. Licensor authorizes Licensee to use the licensed public area for commercial retail purposes pursuant to the City's Emergency Ordinance, specifically including the sale and service of food and beverages to Licensor's patrons, including, subject to the requirements herein, alcoholic beverages (the "authorized purposes"). A copy of the City's Emergency Ordinance is attached hereto and incorporated herein by reference as Exhibit B.
4. Permits and Inspections. Nothing in this Agreement shall be interpreted to exempt the Licensee from observing all applicable ordinances and state statutes applicable to Licensee's business, including with respect to the sale and/or consumption of alcohol. Inspections shall be made by staff of Licensor to ensure Licensee's compliance with all applicable local laws and state statutes, as applicable and under the jurisdiction of Licensor.
5. Alcoholic Beverages. The Licensee shall obtain all applicable licenses or permits with regard to the sale and/or consumption of alcoholic beverages within the licensed public area. By executing this Agreement, Licensor consents to and approves of the sale, service and consumption of alcoholic beverages from open containers on the licensed public area, and further agrees that for the duration of this Agreement, the licensed public area shall be considered to be an additional patio space/service area within the outdoor spaces included in the compact and contiguous premises to which Licensee's liquor license applies. A depiction of said compact and contiguous licensed premises to which Licensee's liquor license applies, which includes the licensed public area, is attached hereto as Exhibit A and incorporated herein by reference, and shall temporarily supersede and replace the depiction of said licensed premises in Licensee's liquor license for the duration of this Agreement.
6. Use of Licensed Public Area. Subject to the other terms and provisions contained herein, the Licensee shall be permitted to use the licensed public area only for the authorized purposes for the term stated herein. During the term of this License, the Licensee shall comply with all applicable laws, regulations, conditions, and covenants affecting the licensed public area, whether federal, state, local, or contractual. The Licensee shall not commit or allow to be committed any waste on, destruction of, or damage to, or maintain any nuisance on, the licensed public area. Should the Licensee commit or allow to be committed any waste on or destruction to the licensed public area, the Licensee shall immediately restore the licensed public area to its original condition at the inception of this License Agreement, or, alternatively, pay to the Licensor the cost of restoring the licensed public area to the condition herein stated, such payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs.

7. Assignment or Transfer of License. Licensee shall have no right to assign its interest in this Agreement without the prior written consent of Licensor.
8. Maintenance/Alteration of Licensed Public Area. At all times while this Agreement is in effect, the Licensee shall keep the licensed public area in a sanitary condition and keep the same free from refuse. The Licensee shall be responsible for the repair of any damages to the licensed public area resulting from its use thereof pursuant to this Agreement. The Licensee shall not be permitted to make any alterations to the licensed public area without the prior written consent of the Licensor. On termination of this Agreement, the Licensee shall, at the Licensee's expense, restore the licensed public area to the condition they were originally in at the inception of this Agreement, excepting reasonable wear and tear.
9. The Licensor's Access. The Licensor, its employees, and its agents shall have the right to enter the licensed public area at all times for all reasonable purposes, including, without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting, cleaning, repairing, altering, or improving the licensed public area. Nothing in this Agreement shall be interpreted as requiring the Licensor to perform any such acts independent of the requirements of the other provisions of this Agreement.
10. Insurance and Hold Harmless Provisions.
 - A. Hold Harmless Agreement. The Licensee assumes and agrees to pay for all loss or damage to property whatsoever and injury to or death of any person or persons whomsoever, including all costs and expenses incident thereto, however arising from or in connection with the existence, construction and maintenance or use of the licensed public area by the Licensee in connection with this Agreement. The Licensee shall indemnify the City against and agree to save it harmless from any and all claims, demands, lawsuits, or liability for, and such loss or damage, injury, death, and costs and expenses incident thereto. The indemnification provisions of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the Licensor. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.
 - B. Liability Insurance Coverage. The Licensee shall, at its expense, maintain in effect liability insurance with limits not less than specified in the City's Emergency Ordinance or any ordinance or requirement applicable to Licensee by virtue of Licensee's liquor license, whichever is greater. The insuring company shall deliver to the City Clerk, certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied.
11. Contact Information. The Licensee shall designate the contact persons responsible for the Licensee's use of the licensed public area pursuant to this Agreement and provide the

same to the City Clerk commensurate with execution of this Agreement.

12. Termination of License. If at any time the Licensee breaches a material term of this Agreement, then this Agreement shall become null and void, at the option of the Licensor, immediately upon the City Clerk's provision of written notice of the same to the Licensee.

13. **GENERAL TERMS**

- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.
- d. No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the parties.
- e. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Licensee agrees that the Licensor, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Licensee and involve transactions relating to this Agreement. The Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.
- f. Governing Law. This Agreement shall be deemed to have been made and accepted in Kandiyohi County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

- g. Data Practices. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- h. No Waiver. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- i. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- j. Survivability. All covenants, indemnities, guarantees, relicenses, representations and warranties by any party or parties, and any undischarged obligations of the Licensor and the Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- k. Recitals. The recitals hereto are made a part hereof by reference.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

LICENSEE: _____

By: _____

Print Name: _____

Its: _____

And By:

By: _____

Print Name: _____

Its: _____

LICENSOR: CITY OF WILLMAR

By: _____

Print Name: _____

Its: _____

EXHIBIT A

**DEPICTION OF LICENSED PUBLIC AREA INCLUDING EXPANSION OF
LIQUOR LICENSED PREMISE**

EXHIBIT B

CITY EMERGENCY ORDINANCE

EMERGENCY ORDINANCE NO. 1451

AN EMERGENCY ORDINANCE TEMPORARILY PERMITTING LIMITED SALES OF GOODS AND DELIVERY OF SERVICES WITHIN PUBLIC RIGHTS-OF-WAY AND OTHER CITY PROPERTY DURING THE COVID-19 LOCAL EMERGENCY

The City Council of the City of Willmar hereby ordains as follows:

Section 1. PREAMBLE - STATEMENT OF EMERGENCY. An emergency exists due to the COVID-19 pandemic, which has resulted in the declaration of a local emergency by the Mayor and City Council of the City of Willmar by adoption of Resolution No. 2020-044 on March 16, 2020, which Resolution is incorporated herein by reference. The COVID-19 pandemic has also resulted in the declaration of a Peacetime Emergency and the issuance of successive executive orders by Minnesota Governor Walz. The COVID-19 pandemic and the requirements of Governor Walz's executive orders have limited or otherwise affected the operation of many commercial and not-for-profit establishments in the City of Willmar. There is a pressing and emergent need for these establishments to expeditiously, safely and efficiently sell goods and deliver services to the public so that the businesses may continue to generate revenues and the public may maintain access to necessary products and services to the greatest extent possible while limiting close personal exchanges between customers and employees and practicing physical and social distancing between persons during the COVID-19 pandemic.

Section 2. TEMPORARY USE OF PUBLIC RIGHTS-OF-WAY AND CITY PROPERTY. Notwithstanding anything to the contrary contained in the City of Willmar City Code, or any special ordinance or policy of the City, but subject to the requirements and restrictions contained in Section 3 of this ordinance, retail businesses having a brick and mortar location within the City of Willmar may place and sell their goods or deliver services, including but not limited to by establishing drive-up or drive-thru areas, customer ordering, waiting or pick-up areas, or customer seating or service areas on the businesses' property or within the following portions of public rights-of-way or other City-owned property, which areas shall collectively be referred to in this ordinance as the "outdoor spaces":

- A. upon the sidewalk located directly in front of the main entrance to such business and equal to the width of the business adjacent to the sidewalk;
- B. upon any public parking spaces immediately adjoining the building where the business is located, to an equal extent as any other businesses adjoining the areas who wish to make use thereof pursuant to this ordinance; and
- C. upon any green spaces or other City-owned property adjoining the building where the business is located and which are approved for business' use under this ordinance by the City Administrator or the City Administrator's designee, to an equal extent as any other businesses adjoining the areas who wish to make use thereof pursuant to this ordinance.

Section 3. TEMPORARY STREET CLOSURES. The City Council or the City Administrator, in their respective judgment and discretion, may close City streets or any portions of City streets, including only one lane or one direction of travel, for events or as otherwise necessary or convenient to facilitate the purposes of this ordinance and the uses approved herein. A written plan for street closure for an event(s) shall be submitted by the business or businesses seeking closure to the City for review and approval. The written plan shall contain the information in this Section and a map showing the location of the event/street closure. The use of streets closed pursuant to this Section shall be subject to requirements and restrictions contained in Section 4. The determination whether to close any street under this Section shall be based on, in the judgment and discretion of the City Council or City Administrator, factors including but not limited to the following: the operational needs of the City; the public health, safety, and welfare; weather conditions; the number of events previously scheduled or frequency of previous closures of such street; the number of streets closed at any given time and the interrelation of such streets; and the needs of and burden upon the traveling public and pedestrians resulting from a proposed street closure. The business making application for street closure shall make arrangements with the City for placement and removal of street closure barricades. The City Administrator shall receive input from the Police Chief, Fire Chief, City Engineer, Public Works Director, and City Clerk in making such determinations for street closures. The City Administrator may bring any request for a street closure to the City Council for consideration by the City Council.

Section 4. REQUIREMENTS AND RESTRICTIONS.

- A. All businesses shall at all times preserve a minimum of five (5) feet in width for pedestrian traffic on sidewalks in addition to the area presently occupied by trees, transformer boxes or other permanent installations, shall not block disabled person parking spaces or ramps, and shall otherwise meet the requirements of the Americans with Disabilities Act as the same pertains to the portion of the sidewalk being used by such business pursuant to this ordinance.
- B. Personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs placed within a public parking area shall be demarcated by bright, highly visible partitions placed within the parking space(s), including but not limited to cones, removable fencing or ropes. The means of demarcation shall not extend beyond the parking spaces and a 12-foot driving lane shall be maintained at all times, unless the street is temporarily closed for an event pursuant to Section 3. The means of demarcation shall be temporary and removable and shall not be lower than 30 inches nor higher than 48 inches.
- C. All other uses of the outdoor spaces not specifically provided for in this ordinance shall remain subject to any other applicable laws, regulations, and license and permit requirements.
- D. No food or beverage shall be sold within any outdoor spaces under this ordinance for immediate consumption except by a licensed bar or restaurant and only in compliance with all state and local regulations for such establishments.

- E. No alcoholic beverages shall be sold or served for on-premises consumption within any outdoor spaces under this ordinance except by an establishment pursuant to a license agreement with the City, which agreement may be administratively approved by the City Administrator or the City Administrator's designee, or otherwise by an establishment holding a valid license encompassing such outdoor spaces pursuant to, and only in compliance with, all state and local regulations for the sale of alcoholic beverages. In such cases, barriers must be established so as to designate a compact and contiguous additional patio space within the outdoor spaces for inclusion in the licensed premises.
- F. Alcohol shall only be consumed upon the licensed premises from which the alcohol was sold.
- G. No personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs, may be placed within any outdoor spaces so as to cause damage to or the physical alteration of such outdoor spaces or any permanent facilities located thereon.
- H. No personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs, may be placed within any outdoor spaces so as to obstruct or interfere with building exits, fire hydrants, standpipes, or other public safety equipment.
- I. If the business is not the fee owner of any public right-of-way made available for business use under this ordinance, such business may only make use thereof pursuant to this ordinance with the written approval from the fee owner of the premises.
- J. All businesses using any outdoor spaces for the purposes herein stated shall make immediate adjustments to said use area in the event City staff notifies them either verbally or in writing that some use by the business is not in compliance with the requirements of this ordinance.
- K. Any business using any outdoor spaces pursuant to this ordinance shall fully indemnify, defend, hold harmless, and release the City, its officers, agents, and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with said business' use or operations within the outdoor spaces.
- L. No business may make use of any outdoor spaces pursuant to this ordinance without first submitting a certificate of insurance to the City Clerk evidencing general liability insurance that includes premises and operations insurance and products and completed operations insurance with minimum coverage amounts of \$50,000 per occurrence, \$10,000 per occurrence for property damage, and \$300,000 aggregate for personal injury or death, and which names the City of Willmar as an additional insured.
- M. All business seeking to use any outdoor spaces pursuant to this ordinance, prior to the use thereof, shall notify the City Clerk verbally or in writing and submit the certificate of insurance required in Paragraph L, and the City Clerk shall keep a list of said businesses.

A copy of this ordinance shall be published on the City's website and readily made available to any business requesting a copy thereof. Further, a copy of this ordinance shall be provided to all businesses at the time the business registers with the City Clerk pursuant to this paragraph. Registration shall include the name of the business, the contact person, the contact information, and the address of the business. This information shall be required in addition to the license agreement required for businesses desiring to sell alcohol and have customers consume alcohol within their licensed premises.

- N. Any business using any outdoor spaces pursuant to this ordinance is responsible for ensuring the area is litter free at all times during such use.
- O. On-site signage and storage are authorized, as well as limited on-site directional signage. Temporary tables, tents and sun shelters may be erected, but any structure requiring state building and fire code permits must submit plans and permit applications for accelerated review by city staff.

Section 5. PENALTY; ENFORCEMENT. Any person using any outdoor spaces in violation of the requirements and restrictions contained in Section 4 of this ordinance shall be subject to a civil penalty in an amount not to exceed \$300. Each day on which a violation occurs shall be a separate offense.

Section 6. EFFECTIVE DATE. This emergency ordinance shall be effective at 1:00 a.m. on June 1, 2020 (if adopted prior to June 1, 2020).

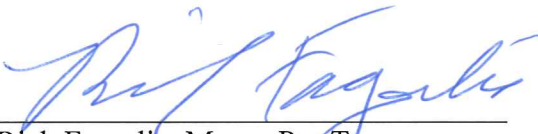
Section 7. EXPIRATION DATE. Pursuant to Section 2.12, subdivision 3 of the City Charter, this emergency ordinance shall expire upon the earlier of (1) the date on which City Council Resolution No. 2020-044, dated March 16, 2020, declaring the local emergency due to the COVID-19 pandemic, is repealed; or (2) the sixty-first day following the date this emergency ordinance was adopted.

Passed by the City Council of the City of Willmar this 29th day of May, 2020.

ATTEST:



Judy Thompson, City Clerk



Rick Fagerlie, Mayor Pro Tempore

VOTE: X ALVARADO X ASMUS X DAVIS X FAGERLIE
 X MUESKE X NELSEN absent PLOWMAN X SCHWANTES

This Emergency Ordinance introduced by Council Member: Fagerlie

This Emergency Ordinance adopted on: May 29, 2020

This Emergency Ordinance published on: May 30, 2020

SUMMARY PUBLICATION OF CITY OF WILLMAR EMERGENCY ORDINANCE NO. 1451

**AN EMERGENCY ORDINANCE TEMPORARILY PERMITTING LIMITED SALES OF
GOODS AND DELIVERY OF SERVICES WITHIN PUBLIC RIGHTS-OF-WAY AND
OTHER CITY PROPERTY DURING THE COVID-19 LOCAL EMERGENCY**

Summary: Emergency Ordinance No. 1451 was adopted by the Willmar City Council on May 29, 2020 in response to the local emergency caused by the COVID-19 pandemic, as declared in City Council Resolution No. 2020-044, dated March 16, 2020, and its negative impacts on local businesses.

This Emergency Ordinance temporarily allows businesses and nonprofits to use certain outdoor spaces, including within public rights-of-way or on other property owned by the City, for their business activities, as allowed by executive order of Governor Walz. This Emergency Ordinance grants authority to the City Administrator to temporarily close City streets, or portions thereof, to traffic, and includes streets so closed in the outdoor areas authorized for business use under the ordinance. This Emergency Ordinance further establishes requirements and restrictions governing business' use of such outdoor areas, including a process for establishments holding a valid liquor license from the City to temporarily expand the boundaries of the licensed premises to include the outdoor areas temporarily authorized for business use under the ordinance.

This Emergency Ordinance will take effect at 1:00 a.m. on June 1, 2020, and will expire not later than the 61st day after it was adopted.

The complete text of Emergency Ordinance No. 1451 may be obtained at no charge at City Hall (333 6th Street Southwest, Willmar, MN 56201), or from the City's website at www.willmarmn.gov.