

**LICENSE AGREEMENT FOR TEMPORARY USE OF PUBLIC PROPERTY RELATIVE TO AN
OUTDOOR SEATING AREA AND AS PART OF A TEMPORARY LIQUOR LICENSE
EXTENSION FOR BALLYDOYLE AURORA, LLC.**

This License and Indemnification Agreement (the "License") has been entered into this ____ day of _____, 2016, by and between the CITY OF AURORA, an Illinois municipal corporation, (the "City") and BALLYDOYLE, LLC., an Illinois corporation, (the "Licensee"), in regard to the following:

WHEREAS, the City is the Owner of a parcel of land commonly known as Tivoli Plaza and adjacent to 28 West New York Street, Aurora, Illinois, at the location shown on the plans and depictions in **Group Exhibit A** attached hereto and made a part hereof (the "Licensed Area"); and

WHEREAS, Licensee is the owner of the business commonly known as Ballydoyle Irish Pub & Restaurant (hereinafter referred to as the "Business") located at 28 West New York Street, Aurora, Illinois, directly adjacent to the Licensed Area. Licensee operates the Business which has a current Class E liquor license, and desires to use the Licensed Area for the purposes of operating an outdoor seating area with extended liquor service thereon and entertainment. Towards that end, Licensee seeks approval from the Corporate Authorities of the City for a temporary use for outdoor seating, liquor service and entertainment on the Licensed Area adjacent to the Business subject to execution of this License and certain conditions to be set forth herein; and

WHEREAS, this License is a necessary inducement for the City to allow use of the Licensed Area for outdoor seating, extended liquor service and entertainment purposes.

NOW, THEREFORE, the City grants the Licensee a license for a temporary use to operate and maintain an outdoor seating and liquor service and entertainment area on the Licensed Area in accordance with the following terms and conditions:

1. TERM AND LICENSE FEE: This License shall be deemed dated and become effective on the date that the Mayor and City Clerk sign this License (the "Effective Date"). The License shall terminate at 11:59 p.m. on September 27, 2016, although the provisions relating to Risk of Injury, Waiver of Injury Claims, Release from Liability, Indemnity and Defense, and Restoration of Premises shall survive such termination and will continue in full force and effect. A newly executed License and Indemnification Agreement must be submitted for any subsequent year that a temporary use for outdoor seating is requested.

2. CONDITION OF PREMISES: By taking possession of the Licensed Area, Licensee accepts the Licensed Area in the condition existing as of the Effective Date of this License. Licensee acknowledges that it has inspected the Licensed Area and acknowledges that it is in good condition. The City makes no representations or warranty with respect to the condition of the Licensed Area. Licensee acknowledges that the City has made no representations or promises to Licensee to alter, repave or otherwise improve the condition of the Licensed Area, other than allowing Licensee to establish, at its sole cost, the outdoor seating and entertainment area in conformance with the Site Plans included as part of **Group Exhibit A**, including installation of the fencing and gate system and planters shown on such Plans.

3. USE: Licensee shall be permitted to use the Licensed Area for outdoor seating, liquor service and entertainment purposes. Liquor service within the Licensed Area is authorized as an

extension of Licensee's existing liquor Class E license. Licensee's use shall comply with all statutes, ordinances, requirements and laws (including environmental laws and regulations) of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Licensed Area. The use of the Licensed Area shall consist of a maximum of ten (10) tables with seats, in conformance with the Site Plans and Depictions attached hereto as part of **Group Exhibit A** and made a part hereof.

4. CARE AND MAINTENANCE OF PREMISES: Licensee shall, at its own expense and at all times, be responsible for maintaining the Licensed Area in good condition. Such maintenance shall include daily clean-up from use by patrons of the Business, daily washing of the Licensed Area in order to remove any food or drink residue, as well as upkeep and replacement of damaged private or public property.

5. RESTORATION OF PREMISES: At the termination of this License by lapse of time or otherwise, Licensee shall, at its own cost, return the Licensed Area in as good condition as on the Effective Date of this License, ordinary wear and loss by casualty, third-parties, the public and the City excepted. The City may direct Licensee to make such repairs and restorations as the City deems necessary in order to so restore the Licensed Area to its previous condition.

6. COMPLIANCE WITH LAWS AND OTHER CONDITIONS: Licensee's use of the Licensed Area is contingent upon its continuing compliance with all State, County and local regulations relative to the operation of the Business and compliance, and with this License, including, but not limited to:

- a. compliance with all State, County and local laws and regulations pertaining to the serving of alcohol and noise;
- b. compliance with all State, County and local health code regulations, and all other City Ordinances at all times;
- c. construction of an under-deck system protecting the diners below from food and liquids that might drop from the deck area above;
- d. tables and chairs shall be neatly secured outside or brought inside during non-operating hours, and all tables, chairs, planters and other appurtenances removed by September 27, 2016 or if required by the City at any time;
- e. operation of the outdoor dining and entertainment area only between the hours of 11:00 a.m. and 10:00 p.m. each day;
- f. installation of planters or other barriers at the identified areas of the Licensed Area to delineate the licensed seating area. Planters or barriers are to be in a form and design approved by City staff prior to installation; and
- g. removal of planters or other barriers at the identified areas of the Licensed Area at the expiration of this License in order to restore access to Tivoli Plaza during the months where no outdoor dining will take place.

7. COMPLIANCE WITH CONDITIONS: The Site Plans and Depictions attached as **Group Exhibit A** are subject to the following conditions:

- a. installation of the planters or other barriers and outdoor seating and entertainment area in strict conformance with the Site Plans and Depictions approved; and

- b. the removable of planters or other barriers at the identified areas of the Licensed Area must be kept locked and/or secured at all times during the term of this License, and shall remain intact at all times. In the event any of such barrier is removed or otherwise compromised, or in the event not kept in a locked and secured condition at all times during the term of this License, this License shall immediately terminate.

8. INTERFERENCE: Licensee represents and warrants that its use of the Licensed Area shall not interfere in any way with the use of the remainder of Tivoli Plaza, or otherwise obstruct or interfere with the use of the public area.

If the use of the Licensed Area for outdoor seating and entertainment purposes interferes with a public event, emergency or planned work or repairs, or other public need for use of the Licensed Area, the public event, work or repairs, or use shall take precedence. The City shall endeavor to notify the Licensee thirty (30) days in advance of the scheduled event, work or repair or use that will require the use of the public Licensed Area being used by Licensee.

9. ASSIGNMENT AND SUBLETTING: This License may not be assigned or subletted by Licensee without the prior written consent of the City. In the event of Licensee's unauthorized assignment or subletting, this License shall immediately terminate.

10. ENTRY AND INSPECTION: Licensee shall permit the City and the City's agents to enter upon the Licensed Area during business hours and at other reasonable times and upon reasonable notice, for the purpose of inspecting the same.

11. RISK OF INJURY: Licensee assumes the full risk of injuries, including any death, damages, or losses which it or its employees, patrons or members of the public may sustain in any way in, on or about the Licensed Area or arising out of, connected with, or in any way associated with the use of the Licensed Area by the Licensee for outdoor seating and entertainment purposes.

12. WAIVER OF INJURY CLAIMS: Licensee agrees to waive and relinquish any and all claims or causes of action of any kind that it or its officers, employees, volunteers, and agents may have against the City and its officers, appointed and elected officials, employees, volunteers and agents arising out of, connected with, or in any way associated with the use of the Licensed Area by Licensee for outdoor seating and entertainment purposes.

13. RELEASE FROM LIABILITY: Licensee does hereby fully release and discharge the City and its officers, appointed and elected officials, employees, volunteers and agents, from any and all claims or causes of action of any kind, including, but not limited to death, damages, or losses which Licensee, or its officers, employees, contractors, subcontractors, volunteers, agents, patrons or members of the public may have or which arise out of, are connected with, or are in any way associated with the use by Licensee of the Licensed Area for outdoor seating and entertainment purposes.

14. INDEMNITY AND DEFENSE: Licensee agrees to indemnify, hold harmless, release and defend the City and its officers, appointed and elected officials, employees, volunteers, and agents, from any and all claims or causes of action of any kind, including, but not limited to death, damages, and losses which any person, including Licensee, or its officers, employees, contractors, subcontractors, volunteers, agents, patrons, or members of the public, may have or

which arise out of, are connected with, or are in any way associated with the use by Licensee of the Licensed Area for outdoor seating purposes.

15. INSURANCE: The Restaurant Lease requires Licensee to maintain certain insurance coverages in certain amounts, and that such insurance coverages name the "City of Aurora, and its appointed and elected officials, officers, employees, volunteers, attorneys and agents," as additional primary insureds under all insurance coverages required by the City. Licensee shall provide proof to the City of extension of those insurance coverages to cover the outdoor seating and entertainment area and use. The insurance coverage of Licensee shall be primary to the City's own insurance which shall be secondary and non-contributory. A copy of the certificate evidencing the extension of those insurance coverages to the outdoor seating and entertainment area shall be attached hereto as **Exhibit B** and made a part hereof.

16. ALTERATIONS: Licensee shall not, without first obtaining the written consent of the City, make any alterations, additions, or improvement (collectively, "alterations") to the Licensed Area. The City may review plans, specifications and a list of contractors and suppliers before granting consent for alterations. All alterations to the Licensed Area, whether temporary or permanent in character and whether made or paid for by Licensee or the City, shall, without compensation to Licensee, become the City's property upon installation on the Licensed Area and shall, unless the City requests their removal, be relinquished to the City in good condition, ordinary wear and tear and loss by casualty, third-parties, the public and the City excepted, at the termination of this License by lapse of time or otherwise.

Alterations shall be installed in a workmanlike manner with quality, high-grade materials. Licensee shall pay for all alteration work. Upon completion of all alteration work, Licensee shall pay all costs for said alterations and furnish the City with full and final waivers of lien and receipts for bills, covering all labor and materials expended and used to complete said alterations. Licensee shall not permit any mechanics lien to be filed against the Licensed Area and agrees to indemnify and hold the City harmless against any such liens and all damages, costs, expenses and attorneys' fees in connection therewith.

It is expressly understood by the parties that in requesting to perform alterations to the Licensed Area, the Licensee agrees to indemnify, hold harmless, and defend the City and its officers, appointed and elected officials, employees, volunteers and agents, from any and all liabilities, costs, expenses, damages, claims or causes of action of any kind, including, but not limited to death, damages, and losses which any person, including Licensee, or its officers, employees, volunteers, agents, contractors, subcontractors, patrons, or members of the public, may have or which arise out of, are connected with, or are in any way associated with the construction or performance of the alterations by Licensee of the Licensed Area for outdoor seating and entertainment purposes.

Licensee shall furnish the City with certificates of insurance from all contractors performing labor or furnishing materials in connection with said alteration work, insuring the City against any and all liabilities that may arise out of or be connected with said alteration work, in amounts and in such coverages acceptable to the City.

17. DEFAULT: Each of the following acts or omissions of Licensee or occurrences shall constitute an "Event of Default":

- a. Failure or refusal by Licensee to comply with any of the obligations of Licensee set forth in this License or the Liquor License; or

- b. The entry of a decree or order for relief by a court having jurisdiction over Licensee in an involuntary case under the federal bankruptcy, insolvency or other similar law, or appointing a receiver, liquidation, assignee, custodian, trustee, or any guarantor of Licensee's obligations hereunder; or
- c. The commencement by Licensee of a voluntary case under the federal bankruptcy laws, or any other applicable federal or state bankruptcy, insolvency or other similar law; or
- d. Closure of the Business for any reason for more than a seven-day period following its initial opening.

18. CITY'S REMEDIES ON DEFAULT: If Licensee defaults in the performing of any of the other covenants or conditions hereof, or in the occurrence of any Event of Default, the City shall give Licensee notice of such default. If Licensee does not cure any such default within five (5) days after the giving of such notice (or if the default is of such nature that it cannot be completely cured within such period, if Licensee does not commence such curing within five (5) days and thereafter proceed with reasonable diligence and in good faith to cure such), then the City may terminate this License. Upon termination of the License, Licensee shall quit and surrender the Licensed Area to the City. Where other provisions of this License call for a different notice period or for an immediate termination of the License under certain specified circumstances, those provisions shall control.

19. NON-WAIVER: Failure by Licensee or the City to insist on strict performance of any of the conditions, covenants, terms or provisions of this License or to exercise any rights hereunder shall not waive such rights, but Licensee and the City shall have the right to enforce the terms and conditions of this License at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

20. ATTORNEY'S FEES: In case suit should be brought by the City for recovery of the Licensed Area, or because of any act which may arise out of the use of the Licensed Area by Licensee, the City shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees.

21. OPTION TO RENEW: This License is not renewable and a new License is required each year the Licensee applies for a temporary use for outdoor seating and entertainment after the initial term of this License.

22. NOTICES: Any notice which either party may or is required to give, shall be given by mailing the same, by United States Registered or Certified Mail, postage prepaid, to Licensee at the Business adjacent at 28 West New York Street, Aurora, Illinois 60507, or to the City at 44 East Downer Place, Attention: City Clerk, Aurora, Illinois 60507, or at such other places as may be designated by the Parties from time to time.

23. SEVERABILITY: Wherever possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this License.

24. RIGHT TO TERMINATE: This License may be terminated at any time by mutual agreement of the Parties. The City or Licensee may terminate this License anytime and for any reason upon seven (7) days written notice to the other. This License shall terminate automatically upon termination of the Liquor License for any reason. Upon termination, Licensee agrees to restore the Licensed Area to its condition as of the Effective Date, as required by Section 5. If Licensee's temporary use for outdoor seating and entertainment is revoked or otherwise terminated for any reason, this License shall terminate automatically upon such revocation or termination.

25. VENUE: The Parties agree that for the purpose of any litigation relative to this License and its enforcement, venue shall be in the Circuit Court of Kane County, Illinois and the Parties consent to the in personam jurisdiction of said Court for any such action or proceeding. This License, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois.

26. COMPLETE DEFENSE: It is expressly understood and agreed by the Parties that this License may be pleaded by the City as a complete defense to, and in bar of, any and all claims or causes of action of any kind brought, maintained or conducted by the Licensee, or by a third-party in connection with or on account of any of the matters set forth in this License. The Parties agree that this License shall be admissible in evidence in any action in which the terms of this License are sought to be enforced.

27. AUTHORITY TO BIND: The Parties warrant and represent that the execution, delivery of, and performance under this License is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of this _____ day of _____, 2016.

CITY OF AURORA

LICENSEE BALLYDOYLE, LLC.
D/B/A BALLYDOYLE IRISH PUB & REST

BY: _____
MAYOR

BY: _____
PRESIDENT

DATE: _____

DATE: _____

ATTEST:

BY: _____
CITY CLERK

BY: _____
SECRETARY

DATE: _____

DATE: _____

GROUP EXHIBIT A

Site Plan and Depiction of the Licensed Area

(attached)

EXHIBIT B

Insurance Certificate

(attached)