

Sublease Agreement

THIS SUBLEASE AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2019, by and between the **CITY OF AURORA, an Illinois Municipal Corporation** (herein referred to as the "**City**") and **TWO BROTHERS ROUNDHOUSE, INC., an Illinois corporation**, (herein referred to as "**Roundhouse**"). The City and Roundhouse are sometimes individually referred to as "Party" and collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the City is an Illinois Municipal Corporation and a home rule unit of government under Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, Roundhouse is a duly organized Illinois corporation who owns and operates a restaurant and brewery known as the Two Brothers Roundhouse located at 205 N. Broadway, Aurora, Illinois; and

WHEREAS, the City is the lessee, under a Contract and Lease Agreement with the Burlington Northern Santa Fe Railroad Company, of certain real estate commonly known as the Aurora Transportation Center ("ATC"), as legally described in said Contract and Lease Agreement and its amendments; and

WHEREAS, the City desires to sublease to Roundhouse eighty-seven (87) parking spaces in the west lot of the ATC (hereinafter the "West Lot") and such additional spaces as may be needed in the north lot of the ATC (hereinafter the "North Lot") to use during Valet Hours as defined below for its valet service provided to customers and patrons of the Roundhouse. An aerial view of the ATC and surrounding areas, which depicts and identifies the West Lot and the North Lot, is attached hereto as **Exhibit A** and made a part hereof.

NOW, THEREFORE, in consideration of the Preliminary Statements set forth below, the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Sublease of Parking Spaces for Valet Service.

- A. **Valet Parking.** The City hereby subleases to Roundhouse the right to use eight-seven (87) parking spaces in the West Lot during Valet Hours, as defined below, for the sole purpose of providing valet service to customers and patrons of the Roundhouse and for no other purpose.
- B. **Valet Overflow.** In the event that all eight-seven (87) of the parking spaces in the West Lot are occupied during Valet Hours as a result of valet parking by Roundhouse, then Roundhouse shall have the right to valet park additional vehicles in the North Lot.

- C. Valet Hours. For purposes of this Agreement, Roundhouse shall have the right to use parking spaces in the West Lot and the North Lot, as provided above, only during the following Valet Hours (“Valet Hours”):

Weekday Hours:

Monday, Tuesday, Wednesday and Thursday – 5:00 p.m. to 4:00 a.m.

Weekend Hours:

Beginning at 5:00 p.m. on Friday through 4:00 a.m. on Monday

2. Additional Employee Parking at the North Lot

- A. The City hereby agrees to provide 30 parking placards (permits) for use in the North Lot by Roundhouse employees during ValetHours.
- i. For ease of administration and safety, the City will require the following to administer the additional employee parking spaces:
1. Roundhouse will provide up to Thirty (30) license plate numbers to the City. Please email CKoch@aurora-il.org the license plate numbers.
 2. Thirty (30) hanging tags will be provided to Roundhouse. The tags are not necessarily tied to a plate but we do need to know the tag numbers and the 30 plate numbers. If a former employee does not return their tag, Roundhouse must inform the City of the tag number and the assigned plate number to update City records.
 3. A lost tag replacement fee will be charged \$10 to the Roundhouse for a new tag.
 4. If rent (see section 5) is late, parking tickets may be given to anyone parking using these 30 tags.
- B. Roundhouse agrees to responsibly distribute placards to authorized employees only, and for the exclusive use of said employees during their shifts that occur during Valet Hours.

3. Term

The term of this Lease shall commence on the date of execution (hereinafter referred to as the “Sublease Commencement Date”) and shall continue for an initial term of ten (10) years. Said term may be extended by written agreement of the Parties. Either Party shall have the right to terminate the Agreement by providing the other party with sixty (60) days advance written notice of termination.

3. Condition and Use of Land

Roundhouse acknowledges and agrees that no representations, warranties (expressed or implied) or covenants with respect to the condition or maintenance of the Lots have been made by the City to Roundhouse. The City makes no representation that the Lots are suitable for the use intended by Roundhouse or for any other use or purpose. ALL IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY AND HABITABILITY ARE HEREBY EXCLUDED. Roundhouse accepts use of the Lots “AS-IS” and “WITH ALL FAULTS”. Roundhouse

acknowledges that it has inspected the Lots and has satisfied itself as to the adequacy thereof.

4. Permitted Uses.

The Lots shall be used by Roundhouse solely and exclusively for parking in connection with its restaurant and brewery business at the Roundhouse during Valet Hours and shall be in full compliance with all applicable laws, rules and requirements. Roundhouse shall not construct any buildings, structures, lighting or other improvements upon the Lots, but may erect temporary blockades during Valet Hours and block public access to the West Lot.

5. Rent.

Commencing on the Lease Commencement Date, Roundhouse shall pay to the City rent in the amount of \$300.00 per month, due the first day of each month.

6. Access and Parking Lot Maintenance, Resurfacing or Reconstruction.

Nothing in this Agreement shall restrict the access of any employees, officers or agents of the City to the Lots. Further, the City shall have the right to suspend this Agreement for the purpose of performing maintenance, resurfacing, restriping or reconstructing the Lots by providing Roundhouse with thirty (30) days advance written notice. During the maintenance, resurfacing, restriping or reconstruction work, Roundhouse shall have no right to use the West Lot, the North Lot, or the Lots, as the case may be, for any purpose and its obligation to pay the City rent shall be prorated.

7. Security.

Roundhouse assumes and exercises full responsibility for the security of all automobiles and the contents thereof during all times and activities contemplated by this Agreement. Roundhouse shall provide security for the Lots in the manner and to the extent it deems necessary, at its expense, provided that access by the City is assured and not unreasonably restricted according to the provisions contained herein.

8. Supervision.

The Roundhouse assumes and exercises full responsibility for the supervision of its employees, agents, contractors, assignees, vendors, invitees, guests, patrons, customers and attendees (collectively, the "Roundhouse Agents") during the term of this Agreement. The Parties agree that the City has no duty to supervise any person or activity in connection with Roundhouse's use of the Lots.

9. Maintenance, Repairs and Compliance with Laws.

- A. Roundhouse shall use and occupy the Lots in a safe and careful manner, and shall comply with all applicable municipal, state and federal laws and rules and regulations pertaining to the use of the Lots.
- B. Roundhouse, at its expense, shall maintain and keep the Leased Premises in good order during Valet Hours. In addition, Roundhouse shall reimburse the City for the cost of any repairs necessitated by the acts or omissions of Roundhouse, its invitees, employees, licensees, contractors and agents, however, the City shall be solely responsible for all lot maintenance including snow removal, striping, permanent signage and general repairs not caused by the negligence of Roundhouse.
- C. Roundhouse shall not do any act nor permit any act to be done as a result of this

Agreement which will in any way mar, deface, alter, injure, or damage in any way, normal wear and tear excepted, any part of the Lots, or any property associated therewith.

- D. Roundhouse shall be responsible for the payment of all costs, expenses, claims, fines, or penalties, that may arise out of the Roundhouse's use and occupancy of the Lots.

10. Indemnification:

To the fullest extent permitted by law, Roundhouse shall save, defend, indemnify and hold harmless the City, its officers, officials, employees, contractors, sub-contractors, agents and attorneys from all loss, cost and expense (including reasonable attorneys fees) as a result of the use of the Lots under this Agreement, including, but not limited to, that arising out of any liability, or claim of liability for injury or damages to persons or property or both, sustained or claimed to have been sustained by any person whatsoever, by reason of the operation, use or occupancy of the Lots or adjoining facilities, premises, areas, or any property, (real or personal) of the City. Roundhouse shall similarly save, defend, indemnify and hold harmless the City against and from any and all claims, costs, causes, actions and expenses including, but not limited to, reasonable legal fees, incurred by reason of Roundhouse's breach of any of its obligations under, or Roundhouse's default of, any provision of this Agreement.

Roundhouse further agrees to assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided thereunder. Roundhouse shall save, defend, indemnify and hold harmless the City, its officers, officials, employees, contractors, sub-contractors, agents and attorneys from and against all such loss, expense, damage or injury, including reasonable attorney fees, which they may sustain as a result of personal injury claims by Roundhouse's employees and contractors and their respective employees.

11. Waiver and Discharge of Liability.

The City assumes no responsibility whatsoever as a result of Roundhouse's use and occupancy of the Lots, the letting of this Agreement or for any property placed in or about the Lots, and the City and its officers, officials, employees, contractors, sub-contractors, agents and attorneys are hereby expressly released and discharged from any and all liability for any loss, injury or damage to any person or property that may be sustained by reason of the negligent use or occupancy of the Lots under this Agreement. Further, Roundhouse waives any claim for liability, damages, losses or refund of any sum hereunder against the City, due to failure of utilities, or any issues in any way related to the failure of any component, service or system, within, or serving the Lots due to malfunctions of any type.

12. Insurance.

Roundhouse covenants and agrees that from the Sublease Commencement Date and at all times during the term of this Agreement, it shall maintain, at its own cost and expense, the following types of insurance for the Lots:

- A. Comprehensive broad form general public liability insurance with extended coverage protecting each Party against claims for personal injury, death, and property damage occurring upon, in or about the Leased Premises, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) and excess liability

coverage in the amount of not less than Two Million Dollars (\$2,000,000.00). The insurance coverage required by this section shall extend to any contractual liability arising out of the indemnities provided for in Section 10 herein.

- B. Broad form Property Damage insurance covering the Lots, and all alterations, extensions, improvements thereto, against loss or damage by fire and the risks contemplated within the extended coverage endorsements, including vandalism, and malicious mischief and against such other risks as shall reasonably be required by the Parties in an amount not less than the full actual replacement cost of the real property and appurtenances thereto.
- C. Workers Compensation insurance at the statutory limits and Employer's Liability with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000.00).
- D. All policies of insurance shall be issued by solvent and responsible insurance companies, licensed to do business in Illinois with a general policy holder's rating of not less than A and a financial rating of AAA as rated in the most current and available "Best's Insurance Reports", and qualified to do business in the State of Illinois.
- E. All policies, other than those for Worker's Compensation, shall be written on an occurrence and not on a claims made basis.
- F. The City and its officers, officials, agents and employees and their successors and assigns shall be listed as additional insureds on the general liability, property and extended coverage insurance and any excess policies. In addition, Roundhouse shall furnish certificates of the insurance and/or coverage in place as required herein and including a 30 day notice to the City of cancellation or reduction in limits of any policies or self-insurance or group policy and with no provision limiting the carrier's or the group's liability for failure to give insured parties at least 30 days written notice of cancellation of any such policy to the City. The policy and/or coverage shall also contain a "contractual liability" clause satisfactory to the City.

13. Return of Possession.

Upon termination of this Lease, by lapse of time or otherwise, Roundhouse covenants and agrees that it shall yield immediate possession to the City.

14. Liens.

Roundhouse shall not directly or indirectly create or permit to be created any lien or encumbrance upon the Lots. In the event said liens have been created, Roundhouse shall immediately discharge as of record any such lien.

15. Assignment.

Roundhouse shall not assign or sublet the Lots or any part thereof during the term of the Agreement without the written consent of the other City, which may be denied in the City's sole discretion. Any assignment or subletting agreed to shall be subject to all covenants, conditions, agreements and terms of this Agreement.

16. Relationship Between the Parties.

It is understood, acknowledged and agreed by the Parties that the relationship of Roundhouse to the City arising out of this Agreement shall be that of an independent contractor and the Parties shall not be construed as partners or joint venturers. Neither Roundhouse nor any

employee or agent of Square Peg is an employee or agent of the City for any purpose whatsoever.

17. Environmental.

Roundhouse shall not use, deposit or maintain any hazardous substances upon the Lots and shall hold harmless and indemnify the City from any and all liability, damages, causes of action, fines and penalties and attorneys fees related to the existence, migration and removal of any and all environmental contamination to the Lots caused or permitted by the Roundhouse during the term of this Agreement and any extensions thereof.

18. No Third Party Beneficiary

This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party, other than Roundhouse's indemnification and insurance obligations relative to the City and its respective officers, officials, employees, agents, successors and assigns required herein. Nothing herein shall be construed or interpreted as an express and/or implied waiver of any common law and/or statutory immunity and/or privilege of either the City or Roundhouse and/or any of their respective officials, officers, volunteers, employees, agents, successors and/or assigns, as to any claim, cause, cause of action and/or liability of any kind whatsoever.

19. Default.

The following events shall be deemed to be events of default by Square Peg under this Agreement ("Event of Default"):

- A. Roundhouse shall have failed to pay the rent or any other charge provided herein, or any portion thereof;
- B. Roundhouse shall have failed to comply with any other provision of this Agreement;
- C. Roundhouse abandons its use of the Lots.
- D. In the event either Party to this Agreement should fail to perform or avoid its obligations herein, the party not in breach shall provide written notice to the Party in breach setting forth the action or failure to act that constitutes the breach of this Agreement. The breaching party shall have ten (10) days to cure any breach.

20. Termination for Convenience of the Parties.

Either Party may terminate this Agreement upon sixty (60) days prior notice to the other Party. Such notice of termination shall not relieve either Party of its responsibilities under the term of this Agreement prior to the date of termination.

21. Additional Representations and Warranties.

In addition to any other representations and warranties set forth in this Agreement, each Party represents and warrants to the other as to the real property to be transferred by it as follows:

- A. Upon execution of this Agreement neither Party shall take or permit an action, whether by amendment, release, termination nor otherwise, which could cause transferring Party to be unable to carry out its obligations pursuant to the terms of this Agreement.
- B. Upon execution and delivery of a copy of this Agreement, each Party has obtained all signatures and approvals whatsoever required of said Party, and this Agreement shall then be a fully binding obligation of the each of the Parties without any additional actions or consents required.
- C. Neither Party has notice or knowledge of any litigation, arbitration, or administrative hearing before any governmental agency concerning or affecting the Lots, which is instituted or has been threatened.
- D. Neither Party shall take, or omit to take, any action that would have the effect of violating any of the representations, warranties, covenants, nor agreements contained in this Agreement.

22. Limitation on City's Damages .

In no event shall the City be liable to Roundhouse and/or Roundhouse's Agents for any consequential, incidental, special, and/or indirect damages or losses (in contract, tort and/or otherwise), including but not limited to any lost revenues in connection with this Agreement and/or any breach and/or default by the City hereunder.

23. Assumption of Liability.

To the fullest extent permitted by law, Roundhouse and Roundhouse's Agents assume, related to business operations, all liability for claims, causes of action, and damages from any personal injury, personal loss or damages to property arising out of or attributable to use of the Lots by Roundhouse and/or Roundhouse's Agents. Roundhouse and Roundhouse's Agents are aware of the risks associated with use of the Lots and Roundhouse and Roundhouse's Agents voluntarily assume those risks in consideration of the lease herein granted.

24. Headings and Captions.

The headings and captions of the paragraphs of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

25. Severability.

In the event that any paragraph, section, sentence, clause or phrase contained in this Agreement becomes or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

26. Notices.

(A) Notices under this Agreement to Roundhouse shall be delivered as follows:

Two Brothers Roundhouse Inc.
30w315 Calumet Ave W
Warrenville, IL 60555
Attn: James Ebel

(B) Notices under this Agreement to the City shall be delivered as follows:

City of Aurora Law Department
44 E. Downer Place
Aurora, IL 60507

(C) All notices shall be in writing and shall be sent by courier, or by facsimile or e-mail with a copy sent by regular mail, or by certified or registered mail, return receipt requested, or by personal service.

27. Miscellaneous.

- A. This Agreement constitutes the entire understanding of the Parties with respect to its subject matter, supersedes any other prior understandings which the Parties may have had or offers which it may have made, and may be amended only by written instrument executed by both Parties.
- B. All obligations of the Parties in this Agreement shall be binding upon and all rights of the Parties hereby shall inure to the benefit of the applicable successors and assigns of the respective Parties.
- C. The laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Agreement.
- D. The Parties hereto expressly agree that time is of the essence with respect to this Agreement.
- E. The Parties agree that no change or modification to this Agreement, or any exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both Parties, and attached to and made a part of this Agreement.

- F. The Parties agree that the titles of the Paragraphs of this Agreement, hereinabove set forth, are for convenience of identification only and shall not be considered for any other purpose.
- G. The Parties agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.
- H. This Agreement may be executed in any number of counterparts, and by the City and Roundhouse on different counterparts, each of which when executed shall be deemed an original and all of which together shall constitute one and the same Agreement.
- I. Changes in the number, gender and grammar of terms and phrases herein when necessary to conform to this Agreement to the circumstances of the Parties hereto shall in all cases be assumed as though in each case fully expressed therein.
- J. Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Agreement.
- K. The City and Roundhouse hereby waive trial by jury in any action, proceeding or counterclaim brought by one party against the other on any matter arising out of or in connection with this Agreement.
- L. In the event of any controversy, claim, or dispute relating to this instrument or the breach thereof, the City shall be entitled to recover from Roundhouse reasonable expenses, attorney's fees and costs.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials this ____ day of _____, 2019.

CITY OF AURORA, TWO BROTHERS
ROUNDHOUSE, INC, an Illinois municipal corporation. An Illinois corporation.

By: _____

Richard C. Irvin, Mayor

By: _____

President

ATTEST:

ATTEST:

By: _____

Jennifer Stallings, City Clerk

By: _____

Secretary

EXHIBIT A

Aerial Depiction of ATC Identifying West Lot and North Lot