

LICENSE AGREEMENT (PUMPHOUSE)

THIS AGREEMENT made as of this day of May, 2023

B E T W E E N:

THE CORPORATION OF THE TOWN OF WHITBY

(the "**Licensor**")

- and -

TOWN BREWERY INC.

(the "**Licensee**")

WHEREAS the Licensor is the registered owner of the property legally described as: Part Lot 26, Concession Broken Front, Township of Whitby; Part Beach & Water Lots in front of Lot 26, Concession Broken Front, Township of Whitby; Part 2, Plan 40R-4674; WHITBY (PIN 26486-00 (LT)) and municipally known as 269 Water Street, Whitby, as outlined in red on **Schedule "A"** attached hereto (the "**Licensor's Property**");

AND WHEREAS the Licensee is desirous of using approximately seven hundred and fifty (750) square metres of the Licensor's Property, as outlined in blue on **Schedule "A"** attached hereto (the "**Licensed Space**"), as a pop-up food and beverage area;

AND WHEREAS the Licensor is agreeable to licensing the Licensed Space on a temporary basis to the Licensee for the purpose of conducting a pilot for the operation of a pop-up food and beverage area ("**Pop-up Pilot**") in the Licensed Space as herein described and subject to terms and conditions hereinafter contained.

NOW THEREFORE in consideration of the fees, covenants and agreements herein contained and hereby assumed, the parties for themselves and their respective successors and assigns do hereby covenant and agree with one another as follows:

1. USE OF LICENCED SPACE

- 1.01 The Licensee shall use and occupy the Licensed Space for the purpose of operating a pop-up food and beverage area, including the sale of Town Brewery branded merchandise, and for no other purpose (the "**Pop-up**").
- 1.02 The Licensee shall not do or permit to be done at the Licensed Space anything that may:
 - a) constitute a nuisance;
 - b) cause damage to the Licensed Space;

- c) cause injury or annoyance to the occupants of neighbouring properties;
- d) make void or voidable any insurance upon the Licenced Space or the Licensor's Property; and/or,
- e) constitute a breach of any by-law, statute, order or regulation of any municipal, provincial or other competent authority relating to the Licenced Space.

1.03 The Licensee shall have access to the Licensed Space from May 1 to September 30 each year of the Term ("**Occupancy Period**").

1.04 The Licensor reserves the right to license the Licenced Space to other users from October 1 to April 30 each year of the Term.

2. TERM

2.01 The term of this Licence shall be for two (2) years commencing on the first (1st) day of June, 2023 and ending on the thirty-first (31st) day of December, 2024 (the "**Initial Term**").

3. OPTION TO EXTEND

3.01 Provided the Licensee is not in breach of the terms of this Licence at the expiry of the Term, the Licensee shall have three (3) further options to renew for an additional one (1) year upon the same terms and conditions as contained in this Licence (the "**Renewal Terms**"). In order to exercise such option, the Licensee shall give notice in writing to the Licensor no later than ninety (90) days prior to the date of expiry of the then current Term. If no such notice is given, all subsequent options to extend shall be null and void and the Licence shall terminate and be at the end of the last day of the Term or then current Renewal Term (hereinafter the Initial Term, and Renewal Term, are collectively referred to as the "**Term**").

4. END OF POP-UP PILOT

4.01 Following the end of the Pop-up Pilot (the Term of the Licence), the Licensor shall have the option to negotiate directly with the Licensee on a new License Agreement. Notwithstanding the foregoing, if, after the Term, the Pop-up Pilot is not successful and/or there is different direction received from Town of Whitby Council, the Licensor may not exercise this option.

5. FEES AND EXPENSES

5.01 The Licensee shall pay fees to the Licensor during the Occupancy Period of the Term of the Licence as follows:

- a) \$2,000.00 per month being payable on the first day of each and every month of the Initial Term; and,

- b) For each successive year of the Renewal Term, the Licensee shall pay to the Licensor monthly fees in the amount of the immediately preceding licensed period, increased by the percentage increase in the All Item Consumer Price Index published by Statistics Canada, for the Province of Ontario, based on the latest figure available in January of that year, compared to the immediately preceding licensed period, payable monthly in equal installments due the first of each and every month of the Renewal Term and any Extension; and,
 - c) all sums required by the Licence and agrees that all amounts payable by the Licensee to the Licensor or to any other party pursuant to the provisions of this Licence shall be deemed to be fees ("**Fees**" or "**Additional Fees**") whether or not specifically designated as such in this Licence.
- 5.02 The Licensee covenants and agrees to pay the following expenses, where applicable, related to licensing the Licenced Space:
- a) business taxes and licenses;
 - b) realty taxes and rates, charges or levies, duties and assessments;
 - c) all maintenance and repairs to the Licenced Space, except as provided for herein;
 - d) insurance premiums related to insurance as specified in this Licence;
 - e) harmonized sales tax, and/or any like taxes imposed by any governing authority, and
 - f) costs of hydro, water, and sewer (the "**Utilities**"), should the Licenced Space, be serviced during the Term.
- 5.03 The Licensor shall invoice the Licensee for any taxes and Utilities costs at the end of the Occupancy Period or as it may from time to time deem necessary.
- 5.04 The Licensee hereby agrees to indemnify, defend and save the Licensor harmless in respect of any liability to the Licensor in respect of the expenses payable by the Licensee as provided for herein.
- 5.05 The Licensee acknowledges that there are no Utilities servicing the Licenced Space. Should Utilities be installed within the Term of this Licence, the Licensor shall not be liable for any loss of business by the Licensee or for any injury to the Licensee, its servants, agents, employees, customers and invitees or for any injury or damage to the Licenced Space or to any property of the Licensee caused by any interruption or failure in the supply of any Utilities to the Licenced Space.

- 5.06 If the Licensee fails to make any of the payments required by this Licence or perform any of its obligations pursuant to this Licence, then the Licensor may, but is not obligated to, make such payments or perform such obligations and charge the Licensee as Additional Fees. If such payments or charges comprising Additional Fees are not paid by the Licensee on demand, the Licensor shall be entitled to the same remedies and may take the same steps for recovery of the unpaid payments and charges comprising Additional Fees as Fees in arrears.
- 5.07 All payments to be made by the Licensee pursuant to this Licence shall be delivered to the Licensor at the Licensor's address for service set out in Section 22 or to such other place as the Licensor may from time to time direct in writing.
- 5.08 All Fees and/or Additional Fees in arrears and all sums paid by the Licensor for expenses incurred which should have been paid by the Licensee shall bear interest from the date payment was due, or made, or expense incurred at a rate per annum equal to the prime commercial lending rate of the Licensor's bank plus two per cent (2%).
- 5.09 The Licensee acknowledges and agrees that the payments of Fees and Additional Fees provided for in this Licence shall be made without any deduction for any reason whatsoever unless expressly allowed by the terms of this Licence or agreed to by the Licensor in writing; and no partial payment by the Licensee which is accepted by the Licensor shall be considered as other than a partial payment on account of Fees and/or Additional Fees owing and shall be without prejudice to the Licensor's right to recover any Fees and/or Additional Fees owing.

6. RIGHTS AND OBLIGATIONS

- 6.01 The Licensee shall:
- a) Coordinate the set-up and timely removal of services required for the operation of the Pop-up (eg. portable washrooms, portable generators, tables, waste receptacles, etc.) and pay any associated fees and charges;
 - b) Obtain all permits, including Special Occasion Permits from the Alcohol and Gaming Commission of Ontario ("**AGCO**"), required to operate the Pop-up;
 - c) Abide by all requirements and permit conditions of the AGCO;
 - d) Obtain a Certificate from the Medical Officer of Health stating that all health and sanitation requirements for the Pop-up have been met, and will ensure the number of portable washrooms comply with and satisfy the requirements of the Region of Durham Health Unit and the AGCO;

- e) Ensure the Pop-up is appropriately staffed during all hours of operation;
- f) Only operate the Pop-up between the hours of 7:00 a.m. and 9:00 p.m., Sunday to Thursday, and 7:00 a.m. and 11:00 pm., Friday and Saturday;
- g) Be responsible for all staffing, relief, pay, supervision, discipline, health and safety training, employment insurance, leaves, uniforms all other matters arising from the relationship between the employer and their employees or their volunteers, as applicable, in accordance with the Employment Standards Act;
- h) Be responsible for conducting their own negotiations with their suppliers, including the administration of their own contracts;
- i) Be responsible for the removal of waste from operation of the Pop-up, including waste generated from Pop-up patrons;
- j) Reimburse the Landlord for fifty percent (50%) of the cost of new fencing installed around the perimeter of the Licensed Space acknowledging that the Landlord shall retain one hundred percent (100%) ownership in said fencing at the end of the Term;
- k) Return any keys provided to them by the Licensor upon the expiration or termination of the Licence;
- l) Be responsible for maintaining control over storage and safekeeping of the Licensee's property (such as inventory, money and equipment) within the Licenced Space;
- m) Not store any equipment or goods outside the Licenced Space; and,
- n) Not subcontract any services provided by the Pop-up, without the prior written consent of the Licensor.

6.02 The Licensor shall:

- a) Provide new fencing around the perimeter of the Licenced Space with fifty percent (50%) of the cost being reimbursed by the Tenant;
- b) Provide an exemption to the Town of Whitby's Noise By-law #6917-14 and Public Parks and Park Buildings By-law #7419-18 to allow the Licensee to operate the Pop-up until 11:00 p.m. on Fridays and Saturdays during the Occupancy Period;
- c) Provide keys to the Licensee to access the Licenced Space; and,

- d) Co-ordinate the installation of Utilities subject to:
 - i) A written request from the Licensee committing to the full costs;
 - ii) The Licensor's sole discretion as to the feasibility of servicing the Licenced Space (including cost and disruption to the area); and,
 - iii) the Licensor receiving a cash security, from the Licensee, for the initial cost estimate of the servicing.

7. LICENSOR'S OPTION TO TERMINATE

- 7.01 It is hereby agreed and understood that either the Licensor or Licensee may terminate this Licence for any reason whatsoever, without cause and without any liability, cost or penalty, upon sixty (60) days prior written notice to the other Party.

8. COMPLY WITH ALL LAWS

- 8.01 The Licensee shall obey all federal, provincial and municipal laws, regulations, orders-in-council and by-laws that could in any way pertain to the Licenced Space or the operation of the Pop-up, including (but not limited to) the Licensor's Public Code of Conduct and Noise By-law #6917-14, as well as comply with the agency requirements including the Ontario Provincial Police, Durham Regional Police, Whitby Fire and Emergency Services, Region of Durham Health Unit, AGCO and any other applicable agencies.

9. HEALTH AND SAFETY

- 9.01 The Licensee shall comply with all governing regulations related to employee health and safety. The Licensee shall keep employees and subcontractors informed of such regulations.
- 9.02 All of the Licensee's personnel must be covered by the insurance plan under the Workplace Safety and Insurance Act, 1997, and the Company must provide a copy of their most recent Workplace Safety and Insurance Board ("**WSIB**") Clearance Certificate.
- 9.03 The Licensee shall fully indemnify and save harmless the Licensor from any and all charges, fines, penalties and costs that may be incurred or paid by the Licensor if the Licensor or any of its employees shall be made a party to any charge under the Occupational Health and Safety Act as a result of any violation of the Act by the Licensee.
- 9.04 The Licensee voluntarily assumes any and all risks associated with exposure to COVID-19, which risks include but are not limited to the risk of personal injury, illness and death.

10. ASSIGNMENT

10.01 The Licensee shall not assign, set over, transfer, or sub-license, hypothecate, encumber or in any way deal with or part with a transfer in whole or in part of the Licenced Space to anyone, for or during the whole or any part of the Term without the prior written consent first being obtained from the Licensor and such consent may be unreasonably withheld.

11. ALTERATIONS, REPAIRS AND MAINTENANCE

11.01 No permanent additions, modifications or alterations ("**Permanent Improvements**") are to be made to the Licenced Space by the Licensee without the prior written consent of the Licensor, which consent shall not be unreasonably withheld. All such Permanent Improvements consented to by the Licensor are to be made only at the expense of the Licensee. Upon affixation, such Permanent Improvements shall immediately become the property of the Licensor and shall be regarded for all purposes as part of the Licenced Space. Any and all such Permanent Improvements shall be made in accordance with all applicable laws and regulations.

11.02 The Licensee may install on the Licenced Space its usual temporary fixtures and personal property ("**Licensee's Property**") in a proper manner; provided that no installation or repair shall interfere with or damage the Licenced Space. If the Licensee is not then in default hereunder, the Licensee's Property installed on the Licenced Space by the Licensee may be removed by the Licensee from time to time, in the ordinary course of the Licensee's business, or in the course of reconstruction, renovation or alteration of the Licenced Space by the Licensee, provided that the Licensee promptly repairs, at its own expense, any damage to the Licenced Space resulting from the installation and removal, reasonable wear and tear excepted. The Licensee shall remove the Licensee's Property from the Licenced Space upon the termination or expiration of this Licence.

11.03 The Licensee agrees that it shall, at the end of each Occupancy Period during the Term or other expiration of this Licence, put the Licenced Space back in the same condition as when the Licensee took possession, including the removal of the Licensee's Property, except to the extent that any Permanent Improvement had been previously consented to by Licensor.

11.04 Maintenance and Repair: The maintenance and repair of the Licenced Space shall be governed as follows:

- a) The Licensee shall maintain and repair the Licenced Space at its own expense and keep the area in a clean and sanitary condition and in accordance with all laws, directions, rules and regulations of the governmental agencies having jurisdiction. The Licensee's

obligation under this Section includes keeping the Licenced Space in good order and repair or otherwise presentable and maintained in good operating condition.

- b) The Licensor may enter the Licenced Space, from time to time, to view the state of repair.
- c) Where an inspection reveals repairs or maintenance is necessary and required by the Licence to be done by the Licensee, the Licensor shall give the Licensee written notice of same. The Licensee will, within fifteen (15) days from the delivery of the notice, make, or commence making and diligently proceed to complete, the repairs in a good and workmanlike manner. In addition to any other provision of this Licence, the Licensor may enter the Licenced Space and perform any repairs which the Licensee has failed to make under this Section for which the Licensor is entitled to collect as Additional Fees.

11.05 If the Licensee observes any apparent material damage to the Licenced Space by any cause, it shall immediately notify the Licensor. If any material damage becomes known to the Licensee or reasonably should have been observed by the Licensee and the Licensee fails to notify the Licensor, the Licensee shall be liable for any costs incurred by the Licensor in repairing the defect or damage which can be shown to be directly attributable to the actions of the Licensee and those for whom in law the Licensee is responsible (including failure to give the required notice) after such defect or damage became known to the Licensee or reasonably should have been observed by the Licensee.

12. FIXTURING PERIOD

12.01 The fixturing period for the Licenced Space shall commenced on June 1, 2023, together with the Licensee providing the Licensor with the following:

- a) Evidence of insurance as set out in Section 16 of this Licence;
- b) Receipt of payment of the first month's Fees; and,
- c) Receipt of all necessary approvals and permits, as may be required, including but not limited to WSIB Clearance Certificates, AGCO Special Occasion Permits, approved plans for alterations and/or additions, and building permits.

13. SIGNS

13.01 The Licensee shall, at their own expense, be responsible for the supply and installation of appropriate signate designating the Licenced Space as a Pop-up and posting the hours of operation.

13.02 Notwithstanding 13.01, the Licensee shall not paint, affix, display or cause to be painted, affixed or displayed, any sign, picture, advertisement, notice, lettering or direction on any part of the exterior of the Licenced Space or fencing without first obtaining the written approval of the Licensor, which approval shall not be unreasonably withheld.

13.03 If the Licensee affixes such sign without the Licensor's consent and the Licensor objects to any such item being so painted, affixed or displayed, the Licensee shall immediately remove such item at the Licensee's expense, failing which the Licensee agrees that the Licensor may, without liability on the Licensor's part and without notice to the Licensee, enter the Licenced Space and remove such item at the Licensee's expense.

14. QUIET ENJOYMENT

14.01 Subject to the Licensor's rights under this Licence and provided the Licensee pays all Fees and Additional Fees under this Licence and performs all of the Licensee's covenants contained in this Licence, the Licensee shall have quiet enjoyment of the Licenced Space during the Occupancy Period throughout the Term of this Licence without any interruption or disturbance from the Licensor or any other person or persons lawfully claiming through the Licensor.

15. WASTE

15.01 The Licensee shall not do or suffer any waste or damage, disfiguration or injury to the Licenced Space. No part of the Licenced Space shall be used for any dangerous, noxious or offensive trade or business. The Licensee shall not do anything or permit anything to be brought on the Licenced Space which the Licensor may reasonably deem to be a nuisance.

15.02 The Licensee shall not allow any refuse, garbage or other loose, objectionable material to accumulate in, on or about the Licenced Space and will at all times keep it in a clean, sanitary, and wholesome condition.

15.03 The Licensee shall not carry on any business or operation or permit anything to be done on the Licenced Space which contravenes any provision of the *Environmental Protection Act*, its amending or successor legislation, and shall not discharge any pollutant or contaminant into the natural environment, as those terms are defined in the *Environmental Protection Act*.

15.04 The Licensee shall be responsible for the removal and disposal of any and all debris, garbage and waste generated by the operation of the Pop-up from the Licenced Space to the satisfaction of the Licensor.

15.05 The Licensee shall not generate, store, manufacture, refine, transport, treat, dispose of, or otherwise permit to be present on or about the Licenced Space any hazardous substances. As used herein, the term "**Hazardous Substances**" shall mean any flammable, explosive, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any materials containing asbestos, or any other hazardous or toxic substance or material as defined by any environmental law, rule or regulation. It is understood and agreed that the provisions contained in this Section shall be applicable notwithstanding the fact that any substance shall not be deemed to be a Hazardous Substance at the time of its use by the Licensee but shall thereafter be deemed to be a Hazardous Substance.

16. INSURANCE

16.01 The Licensee, at its sole cost and expense, will maintain the insurance described below throughout the Term of this Licence, with insurers licensed and approved to operate in the province of Ontario:

- a) "all risks, including earthquake and flood, property insurance in an amount equal to full replacement cost, insuring (a) all property owned by the Licensee or for which it is responsible, and located within the Licenced Space, including but not limited to, fittings, fixtures, additions, alterations, partitions, and all other Licensor's and Licensee's improvements, and (b) the Licensee's Property;
- b) Public liability insurance in a "commercial general insurance" format to include coverage against bodily injury, including death, and property damage. Such insurance is to name the Licensee as insured and The Corporation of the Town of Whitby as additional insured, and shall:
 - i) include extensions of coverage such as personal injury, contractual liability, premises liability, contingent employers' liability, owners' and contractors' protective liability, products and completed operations, property damage, cross liability and severability of interests clause, liquor liability, and non-owned automobile insurance;
 - ii) cover the Licensee's use of the Licenced Space, including all of the Licensee's and their patron's activities and operations within all areas of Licensor's Property and any other person performing work on behalf of the Licensee, and those for whom the Licensee is responsible;
 - iii) be written on an "occurrence" form with inclusive limits of liability no less than \$5,000,000 per occurrence; and,

- c) Any other forms of insurance that the Licensor requires, from time to time, in form, in sums and for perils or risks insured against which a prudent Licensee would insure and shall name the Licensor as an additional insured. The Licensor reserves the right to request higher limits of insurance coverage depending on the type of exposure and nature of the Licence.

16.02 All insurance carried by the Licensee shall contain a waiver of any right of subrogation which the Licensee's insurers might have against the Licensor and against those for whom the Licensor is in law responsible whether any such damage is caused by the act, omission or negligence of the Licensor or those for whom the Licensor is in law responsible.

16.03 All policies will:

- a) be placed with insurers acceptable to the Licensor, in a form acceptable to the Licensor;
- b) be the primary insurance and not excess or contributing with any other insurance available to the Licensor;
- c) will not be invalidated in respect of the interest of the Licensor, by reason of any breach or violation of warranty, representations, declarations or conditions contained in the policies; and
- d) will contain a condition by insurers to notify the Licensor in writing not less than sixty (60) days before any cancellation or material change in policy conditions is effected.

16.04 Licensee will deliver proof that all of the required insurance described above is in full force and effect to the Licensor on the Licensor's form of Certificate of Insurance, attached hereto as **Schedule "B"**, duly executed by the Licensee's insurers or their duly authorized representatives. Such certificates must authenticate fully the limits and special conditions of such insurance as required by this Section. If required by the Licensor, the Licensee will deliver Certified copies of all policies as soon as possible. No review or approval of any insurance certificate or policy by the Licensor derogates from or diminishes the Licensor's rights under this Licence.

16.05 Licensor's Insurance

- a) The Licensor shall carry insurance throughout the term of this Licence such insurance with such deductibles and in such reasonable amounts as the Licensor shall deem reasonable, expedient and beneficial, including but not limited to the following:
 - i) "all risk" including flood and earthquake property insurance covering all property owned by the Licensor, including the Licenced Space and including all Licensor's improvements and

betterment's, in an amount not less than the replacement cost thereof;

- ii) commercial general liability insurance with respect to the Licensor's ownership and operation of the Licensor's Property, covering third party liability and property damage; and,
- iii) insurance against any other type of loss that the Licensor may require or deem advisable.

16.06 This Section does not relieve the Licensee from liability arising from or contributing to by its negligence or its misconduct nor is any insurable interest conferred upon the Licensee under any insurance policy carried by the Licensor, and the Licensee has no right to receive proceeds from any of those policies.

16.07 If the Licensee desires to receive indemnity by way of insurance for any property of the Licensee or for the Licensee's Property, the Licensee shall insure the same for their own account and not look to the Licensor for reimbursement or recovery in the event of loss or damage from any cause.

16.08 Premium Increases and Cancellation

- a) The Licensee shall promptly comply with all requirements (provided that they are reasonable and not inconsistent with the Licensee's rights under this Licence) of the Licensor's insurance underwriters regarding use and occupancy of the Licenced Space, and the Licensee shall not do or omit to do, or permit to be done or omitted anything that shall cause any insurance premium with respect to the Licensor's Property or any part thereof to be so increased or cause any policy of insurance to be cancelled. If any insurance premium shall be so increased for such a cause the Licensee shall pay to the Licensor forthwith upon demand the amount of such increase. If any insurer threatens to cancel, cancels or refuses to renew any insurance policy carried by the Licensor by reason of the use or occupancy of the Licenced Space by the Licensee for reasons not permitted by this Licence, the Licensee shall forthwith rectify or remedy such situation within the time limit required by the insurer upon being requested to do so in writing by the Licensor, and if the Licensee shall fail to do so the Licensor may at its option, without prejudice to any other rights it may have, terminate this Licence by notice to the Licensee.

16.09 Limitations of Licensor's Liability

- a) The Licensor shall not be liable for death or injury of any nature whatsoever that may be sustained by the Licensee or any employee, agent or customer of the Licensee or any other person arising from any occurrence in, upon, at or relating to the Licenced

Space or elsewhere. Without limiting the generality of the foregoing, the Licensor shall not be liable for any damage or damages of any nature whatsoever to persons or property on the Licenced Space, caused by explosion, fire, theft, breakage, by drainage, snow, rain, or ice removal, by the interruption of any public utility or service, by steam, gas, water, rain, snow, or other substances leaking, issuing or flowing into any part of the Licenced Space, or by anything done or omitted to be done by any Licensee, occupant or person in the buildings.

- b) In addition, the Licensor shall not be liable for any loss or damage for which the Licensee is required to insure pursuant to Section 16 hereof, nor for any loss or damage resulting from construction, alteration or repair; provided always that the Licensor shall not knowingly or persistently be in default of any of its obligations under this Licence.

17. LICENSEE'S INDEMNITY OF LICENSOR

- 17.01 The Licensee shall indemnify, defend and save the Licensor, it's elected and appointed officials, employees and agents, harmless of and from all claims, actions, costs and loss of every nature which the Licensor shall become liable for or suffer by reason of any breach, violation or non-performance by the Licensee of any covenant, term or provisions of this Licence or by reason of any injury or death resulting from, occasioned to or suffered by any person or persons or any property by reason of any act, neglect or default on the part of the Licensee or any of its agents or employees.
- 17.02 Notwithstanding any other provisions of this Licence, this indemnification shall survive termination of the Licence, with respect to any matter referred to in this Section which occurs during the Term.

18. CONSTRUCTION LIENS AND ENCUMBRANCES

- 18.01 The Licensee shall indemnify, defend and hold the Licensor harmless from and against any liability, claim, damages or expenses (including legal expenses) arising from any claim made against the Licenced Space or the Licensor's Property for construction liens related to work done by or on behalf of the Licensee and all work which the Licensee is obliged to do and any such liability, claims, damages or expenses incurred by the Licensor shall be paid by the Licensee to the Licensor on demand.
- 18.02 The Licensee shall cause all registrations of claims for construction liens and/or certificates of action under the Construction Act for any work done by or on behalf of the Licensee, and all work which the Licensee is obliged to do, to be discharged or vacated, as the case may be, within fifteen (15) days of such registration or within five (5) days after notice from the Licensor, failing which the Licensor, in addition to any other rights or remedies it may have, may, but shall not be obligated to,

discharge such liens and/or certificates by payment to the claimant, make payment into court, or otherwise; and, any such payments and the Licensor's legal costs (on a solicitor and his client basis) and other costs of obtaining and registering such discharges shall be repaid by the Licensee to the Licensor on demand.

18.03 Licensee shall ensure that no lien, and no charge, mortgage, security interest, floating charge, debenture or other encumbrance (collectively, "**Encumbrance**") is registered against the Licenced Space or any part of the Licensor's Property, against the Licensor's interest in Licensor's Property, or against the Licensee's interest in the Licenced Space, and if any such lien or Encumbrance is made, filed or registered, the Licensee shall immediately discharge it or cause it to be discharged at the Licensee's sole expense.

18.04 If the Licensee fails to immediately discharge or cause any such lien or Encumbrance to be discharged within the timeline set out in Section 18.02, then, in addition to any other right or remedy of the Licensor, the Licensor may, at its option discharge it by paying the amount required to discharge it into Court or directly to the lien claimant or holder of the Encumbrance and the amount paid by the Licensor and all costs and expenses including but not limited to solicitor's fees (on a solicitor-client basis) incurred as a result of the making, filing or registration of any such lien or Encumbrance including, without limitation, for the discharge of such lien or Encumbrance shall be immediately due and payable by the Licensee to the Licensor on demand.

19. ACTS OF DEFAULT AND LICENSOR'S REMEDIES

19.01 An Act of Default has occurred when:

- a) the Licensee has failed to pay Fees for a period of fifteen (15) consecutive days;
- b) the Licensee has breached its covenants or failed to perform any of its obligations under this Licence; or,
 - i) the Licensor has given notice specifying the nature of the default and the steps required to correct it; and,
 - ii) the Licensee has failed to correct the default as required by the notice within a reasonable time or the time indicated on the notice, taking into account the nature and effect of the Act of Default;
- c) the Licensee has:
 - i) become bankrupt or insolvent or made an assignment for the benefit of Creditors; or,

- ii) had its property seized or attached in satisfaction of a judgment; or,
 - iii) had a receiver appointed; or,
 - iv) subject to the provisions of Section 18 committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Licensor's property; or,
 - v) taken action if the Licensee is a corporation, with a view to winding up, dissolution or liquidation; or,
 - vi) failed to conduct its business in a professional and businesslike manner so as to have a demonstrably negative impact on the Licensor's municipal corporate image;
- d) any insurance policy is cancelled or not renewed by reason of the use or occupation of the Licenced Space, or by reason of non-payment of premiums;
- e) the Licenced Space:
- i) becomes vacant or remains unoccupied for a period of thirty (30) consecutive days during the Occupancy Period; or,
 - ii) is not open for business on more than thirty (30) business days (Monday to Friday) or for any twelve (12) consecutive business days in the Occupancy Period; or,
 - iii) is used by any person or persons other than the Licensee or anyone else the Licensee is responsible for by law; or,
 - iv) is used for any other purpose than as provided for in this Licence without the written consent of Licensor.

19.02 When an Act of Default on the part of the Licensee has occurred:

- a) the current month's Fees, together with any Fees in arrears and one additional month's Fees, shall become due and payable immediately; and,
- b) the Licensor shall have the right to terminate this Licence and to re-enter the Licenced Space and deal with it as it may choose.

19.03 If, because an Act of Default has occurred, the Licensor exercises its right to terminate this Licence and re-enter the Licenced Space prior to the end of the Term, the Licensee shall nevertheless be liable for payment of Fees and all other amounts payable by the Licensee in accordance with the provision of this Licence. The Licensee agrees to be liable to the Licensor, until the end of the Term, of the Licence for

payment of all Fees agreed to by the Parties to be paid during the Term.

- 19.04 If, when an Act of Default has occurred, the Licensor chooses not to terminate the Licence and re-enter the Licenced Space, the Licensor shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Licensee and to charge the costs of such rectification to the Licensee and to recover the costs as Fees.
- 19.05 If, when an Act of Default has occurred, the Licensor chooses to waive its right to exercise the remedies available to it under this Licence or a law, the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Licensor to prevent its exercising its remedies with respect to a subsequent Act of Default. No covenant, term, or condition of this Licence shall be deemed to have been waived by the Licensor unless the waiver is in writing and signed by the Licensor.

20. ABANDONMENT OF GOODS

- 20.01 Any goods, chattels, fixtures, inventory, equipment and other property of the Licensee not removed from the Licenced Space at the end of the Occupancy Period, or within seven (7) days from the date of expiry of the Term or termination of the Licence, shall be deemed to have been abandoned by the Licensee and the Licensor may remove and dispose of them (by private or public sale), destroy them, retain them or convey them to a new Licensee or otherwise deal with them in any manner whatsoever without compensation to the Licensee.

21. NO PARTNERSHIP

- 21.01 The Licensor does not in any way or for any purpose become a partner of the Licensee, in the conduct of its business or otherwise, or a joint venture or a member of a joint enterprise with the Licensee, nor is the relationship of principal and agent created by this Licence or any dealings between the Licensor and the Licensee.

22. NOTICE

- 22.01 Any notice required or permitted to be given by one party to the other pursuant to the terms of this Licence may be given:

To the Licensor at:

575 Rossland Road East
Whitby, Ontario L1N 2M8
Email: clerk@whitby.ca

To the Licensee at:

1632 Charles Street
Whitby, Ontario, L1N 1B9
Email: jeff@townbrewery.ca

22.02 The above addresses may be changed at any time by giving ten (10) days written notice.

22.03 Any notice given by one party to the other in accordance with the provision of this Licence shall be deemed conclusively to have been received on the date delivered if the notice is served personally or seventy-two (72) hours after mailing if the notice is mailed or on the date of sending of an email.

23. FORCE MAJEURE

23.01 Notwithstanding anything to the contrary contained in this Licence, if either Party hereto is bona fide delayed or hindered in or prevented from doing anything required by this Licence by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, pandemic, act of God, or other reason whether of a similar nature or not which is not the fault of the Party delayed, then the required performance is excused for the period of the delay but the Party delayed shall perform within the appropriate time period after the expiration of the period of delay. However, the provisions of this Section do not operate to extend the Fixturing Period as noted in Section 12 of this Licence, nor to excuse the Licensee from the prompt payment of Fees.

24. REGISTRATION

24.01 The Licensee shall not at any time register notice of or a copy of this Licence on title to the Licensor's Property of which the Licenced Space form's part.

25. INTERPRETATION

25.01 The words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

25.02 The headings used in this Licence are included for convenience only and shall not affect the interpretation hereof.

25.03 Unless the context otherwise requires, the word Licensor and the word Licensee wherever used herein shall be construed to include the executors, administrators, successors and assigns of the Licensor and Licensee, respectively.

25.04 The obligations of the parties designated by this Licence as the Licensee or Licensees are joint and several and each and every covenant and obligation of the Licensee herein shall be the covenant and obligation of each of them.

26. CORPORATE LICENSEE

26.01 The Licensee warrants that it has the corporate power and capacity to enter into this Licence and to effect the matters contemplated and that this Licence has been duly authorized, executed and delivered to the Licensor and constitutes a valid and binding obligation of the Licensee.

27. SCHEDULES

27.01 Schedules "A" and "B" are attached hereto and shall form part of this Licence.

28. TIME OF THE ESSENCE

28.01 Time is of the essence of this Licence.

29. APPLICABLE LAW

29.01 This Licence shall be governed by and interpreted in accordance with the laws of the Province of Ontario. The parties agree that the Courts of Ontario shall have jurisdiction to determine any matters arising hereunder.

30. SEVERABILITY

30.01 If any provision of this Licence is illegal, unenforceable or invalid, it shall be considered separate and severable, and all the remainder of this Licence shall remain in full force and effect as though such provision had not been included in this Licence but such provision shall nonetheless continue to be enforceable to the extent permitted by law.

31. WHOLE AGREEMENT

31.01 This Licence constitutes the entire agreement between the parties.

32. COUNTERPARTS

32.01 This Licence may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If the signature is delivered by fax transmission or by email delivery of a scanned data file (Adobe PDF or otherwise), such signature shall create a valid and binding obligation on the party executing the Licence with the same force and effect as if the fax or scanned data file (Adobe PDF or otherwise) were an original thereof.

IN WITNESS WHEREOF, and in consideration of the foregoing covenants, the Licensor and the Licensee have executed this Licence as of the date first written above.

THE CORPORATION OF THE TOWN OF WHITBY

Per: _____
Elizabeth Roy, Mayor

Per: _____
Christopher Harris, Town Clerk

We have authority to bind the Licensor.

TOWN BREWERY INC.

Per: _____
Jeff Talmey
President

Per: _____
Keith Jackson
Chief Financial Officer

We have authority to bind the Licensee.

SCHEDULE "A" – The Licensed Space



SCHEDULE "B" – Licensor's Form of Certificate of Insurance



Certificate of Insurance

**Proof of liability insurance will be accepted on this form only (no amendments)
 This form must be completed and signed by your insurer or insurance broker
 Insurance company must be licensed to operate in Canada**

This is to certify that the Named Insured, hereon is insured as described below

Named Insured	Address of the Named Insured
Operations of the insured for which this certificate is issued:	

Automobile Liability Insurance (minimum limit to be evidenced - \$2,000,000 unless otherwise required)

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	Primary			
	Excess			

The above policy(ies) must cover all vehicles owned in whole or in part and licensed in the name of the insured including all vehicles leased on a long term basis for which the insured is required by contract to provide bodily injury and property damage insurance.

Commercial General Liability Insurance (minimum limit to be evidenced - \$2,000,000 unless otherwise required)

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	CGL	Per Claim/Annual Aggregate		
		Deductible, if any		
	Excess Liability (if applicable)	Per Claim/Annual Aggregate		

Provisions of Amendments or Endorsements of Listed Policy(ies)

Professional Liability – Claims Made Basis - Yes No

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	Professional Liability	Per Claim/Annual Aggregate		
	Excess Professional Liability (if applicable)	Per Claim/Annual Aggregate		

- Is the limit inclusive of indemnity and claims expenses – Yes No
- If the policy is on a claims made basis have there been any claims notices given for this policy term Yes No

Commercial General Liability Insurance is written on an occurrence basis and is extended to include Premises Liability, Products/Completed Operations, Cross Liability and Severability of Interests Clause, Personal Injury Liability, Contractual Liability, Property Damage, Non-Owned Automobile Liability, Owner's and Contractor's Protective Coverage, and Contingent Employers Liability.

With respect to the Commercial General Liability Insurance excluding non owned auto coverage, The Corporation of the Town of Whitby, is added as Additional Insured but only with respect to liability arising out of the operations of the Named Insured.

Other Additional Insureds as per contractual conditions are as follows: (Note if Applicable)

The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to The Corporation of the Town of Whitby.

These policies shall not be cancelled or changed so as to reduce the coverage as outlined on this certificate without thirty (30) days, prior written notice by registered mail by the Insurer(s) to the Corporation of the Town of Whitby, Corporate Services Department, Purchasing Section, 575 Rossland Road East, Whitby, Ontario L1N 2M8.

I certify that the insurance is in effect as stated in this certificate and that I have authorization to issue this certificate for and on behalf of the insurer(s).

Date: DD/M/YR	Broker/Insurer's Name, Address, Telephone, Fax and E-Mail:	Signature and Stamp of Certifying Official:
		Print Name

Revision Date: October 10, 2019