

AGREEMENT

This Agreement is made as of the _____ day of _____, 2020, between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a consolidated local government and political subdivision of the Commonwealth of Kentucky, with an address at 527 W. Jefferson Street, Louisville, KY 40202-2814 ("Metro") and WHISKEY ALLEY INC., a Kentucky non-profit corporation with an address at _____ ("Whiskey Alley").

RECITALS:

A. Metro owns and controls a system of public rights-of-way depicted on Exhibit A attached hereto and incorporated herein (the "Premises").

B. Whiskey Alley is a non-profit corporation whose members are comprised of the owners of certain properties adjoining the Premises (the "Owners").

C. Whiskey Alley is applying for an entertainment destination center alcoholic beverage license (the "License") that would permit the sale of alcoholic beverages within the Premises.

D. Whiskey Alley intends to hold events from time-to-time in the portion of the Premises known as Washington Street that will require the periodic closure of Washington Street as a public right-of-way.

E. Whiskey Alley intends to maintain (which term shall hereafter include the right to construct, install, maintain, improve, reconstruct, relocate, and/or repair), at its sole expense, certain improvements to the Premises including, without limitation (i) signature entrances crossing over Washington Street, (ii) decorative materials (such as planters and lights), (iii) sidewalk appurtenances (such as benches, restaurant tables, and chairs), and (iv) removable barriers which limit access to portions of the right-of-way (collectively, the "Improvements").

F. Metro and Whiskey Alley are entering into this Agreement to govern the rights and obligations of Whiskey Alley with respect to the periodic closure of Washington Street and the operation of the Improvements.

NOW, THEREFORE, in accordance with the foregoing statements, which are hereby incorporated herein subject to the following terms hereof, and for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Metro and Whiskey Alley agree as follows:

1. Terms and Conditions. This Agreement shall be subject to the terms and conditions described on Exhibit B attached hereto and incorporated herein.

2. Use of Premises. Metro grants to Whiskey Alley the right and privilege to use the Premises for the purpose of hosting events that are consistent with outdoor community activities consisting of food and beverages, music, art, and sporting events (the "Permitted Activities"),

subject to the terms of this Agreement. Metro agrees to execute such memoranda of lease consistent with this Agreement as may be required to enable Whiskey Alley to obtain the License. Whiskey Alley agrees that it will not grant any third party the right to sell food or beverages within the Premises during Permitted Activities except for (i) the members of Whiskey Alley and their respective tenants, and (ii) if determined by Whiskey Alley to be appropriate under the circumstances, an owner or operator of a business adjacent to the Premises that is not a member of Whiskey Alley.

3. Improvements. Whiskey Alley shall have the right to maintain Improvements in the Premises upon the approval of Metro's Department of Public Works. Whiskey Alley covenants to spend at least \$100,000.00 on such Improvements. Whiskey Alley shall be responsible for constructing and maintaining such Improvements in good condition and repair, and all costs and expenses related to such maintenance and repair shall be borne entirely by Whiskey Alley. Whiskey Alley acknowledges that Metro will operate a public right-of-way on the Premises, and the parties agree that Metro shall have the same maintenance obligations with respect to such right-of-way that it has with all rights-of-way for which it has responsibility, provided that Metro shall have no responsibility to maintain the Improvements and that Whiskey Alley shall be responsible for repairing any damage to the right-of-way resulting from the Permitted Activities. If Whiskey Alley wishes to have maintenance beyond that described in the preceding sentence, it shall perform such maintenance at its own expense. Whiskey Alley agrees that any work required or performed pursuant to this Agreement shall be coordinated with the Department of Public Works.

4. Temporary Closures of Washington Street. Whiskey Alley shall be entitled to temporarily close the Premises as a public right-of-way for the purpose of hosting Permitted Activities during the periods described on Exhibit C attached hereto. Whiskey Alley will ensure that such closures are conducted in a manner that does not unreasonably interfere with deliveries to the business adjoining the Premises. Metro agrees to cause the issuance of the required permits for such temporary closures without the need for payment of any permit fees other than the annual license fee required for this Agreement (which is the same fee Metro charges for license agreements and equals \$200.00 per year as of the date hereof). Notwithstanding any such closure, Metro shall at all times have the right to access the Premises to determine Whiskey Alley's compliance with the terms of this Agreement or to conduct maintenance, repairs, or replacements for which it is obligated. In the event of an emergency situation which Metro reasonably believes may threaten life or property, Metro may cause the Improvements to be removed but shall use reasonable care under the circumstances to avoid damage to the Improvements. Any closure permitted hereunder shall not affect the rights of the holder of any franchise or easement in the Premises.

5. No Other Permits, Parking. Because the use of the Premises for Permitted Activities will require Whiskey Alley's commitment of substantial financial and other resources, and in recognition of the need for a coordinated strategy for the use of the Premises for Permitted Activities, Metro agrees not to allow (i) the issuance of any permits for the use of the Premises by any other person or entity (including but not limited to any individual Owner) without the prior written approval of Whiskey Alley, or (ii) the Premises to be used for parking (including but not limited to the installation of parking meters).

6. Failure to Obtain License. Without limiting the other provisions of this Agreement, Whiskey Alley may terminate this Agreement on notice to Metro in the event that Whiskey Alley is unable to obtain the License.

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EXHIBIT A

DEPICTION OF PREMISES

[Sabak, Wilson, & Lingo is working on exhibit showing Washington Street right-of-way and other areas to be included in the proposed boundary of the Entertainment Destination Center.]

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EXHIBIT B**TERMS AND CONDITIONS****I. GENERAL TERMS**

A. Whiskey Alley agrees that this Agreement shall not affect the rights or interest of public service companies or any other entity which may in the past, present or future coexist with Licensee on public right-of-way or land including but not limited to any rights by franchise easement or other recorded document granting or authorizing use of the right-of-way, provided that such rights or interests of such public service companies or other entities as may be granted in the future shall not materially interfere with the rights herein granted to Licensee.

B. Whiskey Alley agrees to cause the Permitted Activities to be conducted in compliance with all federal, state and local statutes, ordinances, rules and regulations which may pertain or apply to public right-of-way or lands or to its use of the Premises and to take appropriate action to prevent any nuisance or disturbance to occur upon the Premises during the Permitted Activities.

C. Whiskey Alley shall not place or permit any permanent commercial advertising signs, banners, balloons, or other inflatables, placards or billboards upon the encroached property without obtaining the prior written approval of Metro.

D. Whiskey Alley shall use the encroached property solely for the Permitted Activities and no other activities may be conducted on said encroached property without the prior written approval of Metro.

E. Whiskey Alley shall, at its expense, keep in good order, condition and state of repair the Premises during the Permitted Activities. Whiskey Alley shall make no permanent alterations to, nor make any improvements on, the encroached property without the prior written approval of Metro.

F. Metro retains the full right and authority to enter, inspect and view the encroached property.

G. The parties agree that Metro may waive the performance of any items, conditions and covenants herein, provided that such waiver shall not be construed or deemed a continuing waiver of the same or any subsequent conduct which may constitute a default of any provision. Any amendments or modifications to this Agreement must be in writing and signed by both parties.

H. Metro and Whiskey Alley, by execution of this Agreement, hereby warrant and represent to each other that they are duly organized, validly existing, are qualified to do business in the State of Kentucky, have full right, power and authority to enter into this Agreement, and that each person signing on behalf of Metro and Whiskey Alley is authorized to do so. Whiskey Alley shall provide Metro with a copy of the board resolution authorizing its participation in this Agreement and its execution of same.

I. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

J. The covenants, conditions, warranties and agreements made and entered into by the parties hereto are declared binding on, and shall inure to, the benefits of their respective heirs, successors and representatives.

K. This Agreement represents the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations and agreements relative thereto. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Metro or Whiskey Alley.

L. This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

II. LIABILITY AND INDEMNITY

A. Whiskey Alley shall indemnify, hold harmless, and defend Metro, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from Whiskey Alley's (or Whiskey Alley's subcontractors, if any) performance or breach of the Agreement or the conducting of Permitted Activities, provided that such claim, damage, loss, or expense is not caused by the negligent act or omission or willful misconduct of Metro or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

B. INSURANCE REQUIREMENTS

Prior to commencing any Permitted Activities, Whiskey Alley shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. Whiskey Alley shall not commence use under this Agreement until all insurance required under the Agreement has been obtained and until copies of policies or certificates thereof are submitted to Metro and approved by Metro's Risk Management Division. **Whiskey Alley shall not allow any subcontractor or vendor to commence work until the insurance required of such subcontractor or vendor has been obtained and copies of Certificates of Insurance retained by Whiskey Alley and submitted to Metro evidencing proof of coverages.**

Without limiting Whiskey Alley's indemnification requirements, it is agreed that Whiskey Alley shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies.

C. The following clause shall be added to Whiskey Alley's (and approved subcontractors or vendors) Commercial General Liability and Liquor Liability Policies:

1. **"The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract or license for use and operations at Washington Street between 1st Street and 2nd Street."**

D. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the license (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Whiskey Alley's or subcontractors' or vendor's policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, primary and non-contributory, with a **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations
 - c. Contractual Liability
 - d. Broad Form Property Damage
 - e. Independent Contractors Protective Liability
 - f. Personal Injury
2. **WORKERS' COMPENSATION** (if applicable) insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000** Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.
3. **AUTOMOBILE LIABILITY**, insuring all Owned, Non-Owned and Hired Motor Vehicles. The minimum coverage Liability Limit is **\$1,000,000** Combined Single Limit for any one accident. The Limit of Liability may be subject to increase according to any applicable State or Federal Transportation Regulations.
4. **LIQUOR LEGAL LIABILITY - minimum** coverage Liability Limit **\$1,000,000** for any one Occurrence and a **\$2,000,000 million aggregate limit** for the entire duration of the contract. **This coverage is required if Whiskey Alley or vendor is engaged in selling and/or dispensing alcoholic beverages.** This coverage may be written as an Endorsement on the above mentioned Commercial General Liability Policy or as a separate policy. If Whiskey Alley subcontracts this service to a vendor, only the vendor shall be required to purchase this coverage.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A-VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

F. MISCELLANEOUS

1. Whiskey Alley shall procure and maintain insurance policies as described herein and for which Metro shall be furnished Certificates of Insurance. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Agreement, renewal Certificates of Insurance shall be furnished to Metro at least fifteen (15) days prior to the expiration of any policy(s).

2. Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

3. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE:** Whiskey Alley shall notify Metro's Risk Management Division of any policy cancellation within two business

days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Whiskey Alley shall notify Metro's Risk Management Division within two business days. If Whiskey Alley fails to notify Metro as required by this Agreement, Whiskey Alley agrees that such failure shall be a breach of this Agreement. Insurance coverage required under this agreement shall be specifically endorsed to provide Metro notice of cancellation and/or material change of coverage in accordance with policy provisions and a copy of the endorsement shall be provided to Metro's Risk Management Division or shall be specifically referenced on the certificate. When requested by Metro, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.

4. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Whiskey Alley hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Whiskey Alley.

III. TERMINATION OF AGREEMENT

A. If, through any cause, Whiskey Alley shall fail to fulfill its obligations under this License Agreement, or, if it shall violate any of the covenants, terms or conditions herein, and such failure or violation is not cured within thirty (30) days following receipt of notice from Metro, Metro shall thereupon have the right to terminate this Agreement or any part of it by sending written notice to Whiskey Alley of such termination and specifying the effective date thereof. Upon such termination, Whiskey Alley shall not be entitled to any compensation from Metro in any manner, including but not limited to replacement value or fair market value of any improvements placed on the property.

B. Upon any termination of this Agreement, Whiskey Alley shall at once surrender possession of the Premises to Metro. Whiskey Alley shall also, on surrender, remove any and all modifications which have been made to the Premises and any and all equipment and signs placed on the site. Whiskey Alley shall restore the Premises to the same condition in which they existed upon occupancy under this Agreement, normal wear and tear excepted.

C. Whiskey Alley shall have the right to terminate this Agreement at any time for cause or at will by giving notice in writing to Metro.

IV. ASSIGNABILITY

This Agreement does not run with the land. Accordingly, Whiskey Alley shall not transfer or assign any right or interest in it to another. Any action by Whiskey Alley attempting to transfer or assign its interest herein shall constitute a substantial breach of this Agreement and shall render the Agreement a nullity. The provisions of this paragraph shall not cause termination of this Agreement if Whiskey Alley is sold, leased or otherwise transferred, including transfer of stock ownership in the corporation to one or more new owners.

V. MISCELLANEOUS

A. Whiskey Alley shall provide and/or make arrangements for utilities suitable for the Permitted Activities.

B. Whiskey Alley shall provide necessary measures to ensure the Premises is secure during the periods when Washington Street is closed for Permitted Activities. This shall include, but not be limited to (i) arranging for the presence of professional security at a level commensurate with the scope of the specific Permitted Activities being conducted, and (ii) installing removable bollards in the right-of-

way at each end of the block to restrict vehicular traffic during times when the street is closed for Permitted Activities.

C. Whiskey Alley shall provide adequate personnel to clean the Premises after every Permitted Activity at a level consistent with the cleaning program implemented by the Louisville Downtown Partnership. All trash should be deposited into proper containers no later than 8:00 a.m. the following day.

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EXHIBIT C

TEMPORARY STREET CLOSURES

- (a) Thursdays and Fridays from 5:00 p.m. to 12:00 a.m.;
- (b) Saturdays and Sundays from 12:00 p.m. to 12:00 a.m.;
- (c) Federal holidays (including Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, Christmas, New Year's Day);
- (d) Mardi Gras, St. Patrick's Day, Derby Week, Halloween, Wednesday before Thanksgiving, Christmas Eve, New Year's Eve;
- (e) KFC Yum! Center event days; and
- (f) Such other dates and times as may be designated by Whiskey Alley on not less than ten (10) business days prior notice to Metro, unless Metro's Department of Public Works determines within two (2) business days following receipt of such notice that the proposed closure will unreasonably restrict traffic in the vicinity of the Premises due to other events occurring at the same time as the planned Permitted Activities.