

Formal Written Commitment

This Formal Written Commitment and Use Agreement (“Commitment”) is entered into this ____ day of _____, 2021, by and between the **Common Council of the City of Valparaiso, Indiana** (“City”) and _____ (“Holder”).

Whereas, IND. CODE § 7.1-3-20-16(g) (“Enabling Statute”) allows the Indiana Alcohol and Tobacco Commission (“IATC”) to issue ten (10) additional on-premises alcoholic beverage permits, without regard to the quota provisions of IND. CODE § 7.1-3-22, within the historic district (as defined within the Enabling Statute) of the City of Valparaiso, Indiana (“District Permits”);

Whereas, pursuant to IND. CODE § 7.1-3-19-17 (“Local Approval Statute”), the Common Council of the City of Valparaiso, Indiana adopted **Ordinance 29-2015** (“Ordinance”) requiring a formal written commitment as a condition of eligibility for all Holders of a District Permit;

Whereas, subject to the Enabling Statute, the Local Approval Statute, *Amended Criteria for License Allocation and Applicant Compliance Requirements* and the Ordinance, Holder is required to enter into this Commitment regarding the character and type of business that will be conducted on the Permit Premises (as defined below);

Whereas, Holder acknowledges that the cost of the District Permit was substantially below the cost of a 3-Way Liquor License and that the reduction in cost was meant, in part, to allow the Holder to expend greater resources on food offerings; and

Whereas, the intent of this Commitment is to: i) ensure that the Holder operates a restaurant within the downtown historic district area that provides a food oriented dining experience and is consistent with the Holder’s representations to the City; and, ii) prevent Holder from operating a bar or similar establishment.

Now, therefore, in consideration of receiving favorable continued support from the City for its District Permit, Holder hereby agrees to the following requirements, covenants, and restrictions on the use of the Permit Premises licensed by the Indiana Alcohol and Tobacco Commission:

Section 1. **Recitals.** The Recitals set forth above are hereby fully incorporated in and made a part of this Commitment by reference.

Section 2. **Location.** The location where alcoholic beverages will be dispensed is _____, **Valparaiso, Indiana 46383** (“Permit Premises”). A District Permit may not be transferred to a new location without the written consent of the City. Any attempt to transfer the District Permit to a new location, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. Any change in location renders this Commitment voidable

at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 3. **Ownership and Management.** A District Permit may not be transferred to a new owner without the written consent of the City. Any attempt to transfer a District Permit, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. As provided in the *Amended Criteria for License Allocation and Applicant Compliance Requirements*, any Holder that is a business entity is required to disclose a list of all owners. To the extent that any change in ownership occurs, Holder must provide written notice to the City within 30 days of the effective date. Any material change in the equity ownership or management of the Holder or Permit Premises renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment. For purposes of this Commitment, “material change” shall include, but not be limited to, any change that alters the ownership structure as represented in **Appendix A**.

Section 4. **Permit Application and Renewals.** Holder will provide the City with its IATC Application for Permit. All additional renewals, forms, applications, questionnaires, and disclosures that Holder submits to the IATC, at any time, must be submitted to the City of Valparaiso Mayor’s Office with a copy to the City Attorney within two (2) business days following submission to the IATC.

Section 5. **Character and Uses.** Holder shall use the Permit Premises for the operation of a full service _____ restaurant; meaning, a restaurant where food and drink orders are primarily taken from, and served to, seated customers at tables, by wait staff that are not bartenders. The menu and offerings of the Permit Premises shall be primarily designed to provide a food-oriented dining experience to the public. The Holder shall, at all times of operation, provide to the public its full menu from its kitchen facility. The Holder shall operate a minimum of **five (5) days per week** and **five (5) consecutive hours** during each day of operation. The City may void this Commitment or publicly advise against the renewal of Holder’s District Permit if the use of the Permit Premises is merely designed to provide customers with an alcohol consumption experience (e.g., a majority of sales or transactions occur at the bar counter). If the Holder desires to change or amend its use of the Permit Premises, Holder must first receive City’s written consent, which shall become a part of this Commitment. Any unauthorized change in use renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the permit in lieu of formally voiding this Commitment.

Section 6. **Additional Obligations.** Holder covenants the following:

- (a) All representations and commitments written in **Appendix A** of this Commitment, as amended or supplemented over time, are full and binding obligations of Holder.
- (b) Permit Premises shall be fully non-smoking and Holder must operate the Permit Premises in strict compliance with the City's Smoking Ordinance.
- (c) Holder must be a full and current dues paying contributor to the Downtown Dining Marketing Fund at all times it possesses a District Permit.
- (d) Both Holder and the Permit Premises must remain in compliance with all State and City laws and ordinances, including, but not limited to, all building, health, and zoning laws, as well as all architectural standards established by the Architecture Review Committee of the City of Valparaiso. The burden of evidencing compliance is on the Holder.
- (e) Holder agrees to comply with the Enabling Statute, the Local Approval Statute, and the Ordinance, as amended, regardless of whether such provisions are specifically expressed in this Commitment.
- (f) Holder has received a copy of the *Amended Criteria for License Allocation and Applicant Compliance Requirements*, as amended from time to time. Such is incorporated by reference into this Commitment. Holder accepts the terms and agrees to be bound by its provisions, as amended.
- (g) Holder acknowledges that the City has adopted rules for outdoor dining on public walkways/easements/property. The rules, in large part, balance the desire of providing outdoor dining options with the need to assure that all pedestrians have sufficient space to safely move in the downtown area. Holder agrees to abide by all such rules relating to outdoor dining.
- (h) Holder acknowledges the benefit of collaboration with other restaurants in the Valparaiso downtown. Holder shall be an active member of the Valpo Downtown Dining group and shall make reasonable best efforts to attend group meetings and participate in group promotional activities.
- (i) Any breach of the foregoing covenants renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 7. General Provisions. The Parties agree as follows:

- (a) This Commitment shall extend to and be binding upon the heirs, personal representatives, and successors of the Holder.
- (b) This Commitment may not be modified or amended unless agreed upon in writing and signed by the Parties.
- (c) This Commitment may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- (d) This Commitment and its Appendices constitute the entire agreement of the Parties with respect to this matter, and it supersedes all prior negotiations, representations, or agreements, either written or oral, between the Parties.
- (e) The Commitment shall be governed by and interpreted in accordance with the laws of the State of Indiana. Any proceeding seeking to enforce any provision of this Commitment may only be brought in a court sitting in Porter County, Indiana.
- (f) The IATC and its associated Local Board has independent regulatory authority over these matters and the City of Valparaiso cannot be held liable or responsible for any act of the IATC. Furthermore, the City of Valparaiso has no duty or responsibility to advocate or intervene in any proceeding before the IATC or its associated Local Board.

Section 8. **Notice.** Whenever any notice, statement or other communication is required under this Commitment, it shall be sent by first class mail or via an established courier or delivery service to the following addresses, unless otherwise specifically advised.

Notices to the City shall be sent to:

City of Valparaiso Attorney
 166 W. Lincolnway
 Valparaiso, IN 46383
 Attn: Downtown Liquor License

Notices to the Holder shall be sent to:

 c/o _____

Section 9. **Term.** The Commitment shall become effective upon approval by the City and shall remain effective so long as the Holder continues to hold an active unexpired District Permit with the IATC.

Section 10. **Breach and Remedies.** Notwithstanding anything to the contrary contained herein, the City shall have the right to seek legal, injunctive, or other equitable relief from a court of competent jurisdiction in the event of a breach. All rights and remedies provided in this Commitment are cumulative and not exclusive of any other rights or remedies that may be available herein. The City is not required to exhaust remedies with the IATC before proceeding against Holder in event of breach.

Section 11. **Authorized Party.** Each individual executing this Commitment represents that he/she has the requisite authority to sign this Commitment.

Section 12. **Additional Commitments.** (to be added if necessary)

All of this having been agreed to by the Parties on the date first indicated above and memorialized by the signatures contained herein.

Holder: _____

Valparaiso Common Council

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

Application for District Permit

[See Next Page for Attached Application]