

**CITY OF NAPERVILLE TEMPORARY OUTDOOR SEATING
WAIVER AND RELEASE OF LIABILITY**

By signing this waiver and release of liability, (**"Release"**),

[Corporate Name], an Illinois corporation that owns and controls the premises located at _____ [Premises Address],

Naperville, Illinois _____ [Premises Zip Code] (**"Establishment"**) voluntarily assumes all risk and liability, including all claims, personal injuries or property damage, incurred, claimed, or alleged by any person or entity pertaining to or as a result of the Establishment's decision to provide outdoor dining throughout the duration of Executive Order 2020-10 issued by the Mayor of the City of Naperville on or about May 28, 2020.

The Establishment understands and acknowledges that there are risks and dangers that it, its property, and its representatives, employees, agents, customers, and vendors, as well as members of the public, and others may encounter by the establishment's choice to operate an outdoor food and/or beverage service and dining area during the current COVID-19 pandemic (**"Outdoor Seating"**), including but not limited to exposures to infection and contagions, defects on the premises, inclement weather, conditions caused by inclement weather, theft, and vandalism.

Therefore, in consideration of the mutual promises contained herein, for being permitted by the City of Naperville (**"City"**), pursuant to the rules and regulations of the City, to operate Outdoor Seating and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Establishment agrees and understands that:

1. The Establishment's operation of Outdoor Seating shall be at the Establishment's sole risk and the Establishment assumes all the risk for any injuries or property damage suffered by the Establishment or by any other person or entity as a result of the Establishment's operation of Outdoor Seating.

2. To the fullest extent permitted by law, the Establishment hereby indemnifies, defends, and holds harmless the City and its officials, employees, agents and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from the Establishment's Outdoor Seating or connected with an act or omission of the Establishment, or an agent, invitee, guest, employee, or anyone in, on or about the Premises invited by and/or with the permission and consent of the Establishment, with respect to the Premises or the operations, activities or services, of any nature whatsoever, of Outdoor Seating, including, but not limited

to, liability expense and claims for: bodily injury, death, personal injury, or property damage caused by the negligence, creation or maintenance of a dangerous condition of property, or intentional infliction of harm or violation of state and federal laws.

3. Nothing set forth in this Release shall be deemed a waiver by the City of any defenses or immunities that are or would be otherwise available to the City or its officials, employees, agents or volunteers under the provisions of the Illinois Local Government and Governmental Employees Tort Immunity Act, or that are otherwise available to local governments and their corporate authorities, officers, employees, agents and volunteers under the common law of the State of Illinois or the United States of America. The provisions of this Section shall survive the expiration or earlier termination of this Release or renewal thereof.
4. Without limiting the Establishment's indemnification of the City as provided above, the Establishment shall provide and maintain at its own expense for Outdoor Seating insurance or liability coverage covering the activities, services or operations relating to Outdoor Seating. All such insurance of the Establishment and the insurance of the owners/operators shall be secured through a carrier(s) satisfactory to the City. Satisfactory evidence of such insurance and any required endorsements, including the insurance required of the owners/operators, will be delivered to the City's City Manager prior to operation of Outdoor Seating. The City's insurance or liability coverage shall always be deemed excess over any other insurance or liability coverage whether primary, excess, pro rata, contingent or any other basis.

All policies of insurance or liability coverage shall contain a waiver of subrogation as against the City, its official, employees, agents and volunteers except with respect to the sole negligence of the City.

5. This Release shall be construed broadly to provide a release and waiver to the maximum extent permissible under applicable law.
6. This Release shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. Any disputes that arise as a result of this Release will be heard in a court of competent jurisdiction located in the Eighteenth Judicial Circuit, DuPage County Illinois.
7. It is hereby expressed to be the intent of the parties to this Release that should any provision, covenant, agreement, or portion of this Release or its application to any person or property be held invalid by a court of competent jurisdiction, the

remaining provisions of this Release and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Release to the greatest extent permitted by applicable law.

8. This Release constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Release.
9. This Release shall be construed without regard to the identity of the Party who drafted the various provisions of this Release. Moreover, each and every provision of this Release shall be construed as though all parties to this Release participated equally in the drafting of this Release. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Release.

The Establishment has carefully read this Release, understand its meaning, and agrees to be bound by it. The undersigned represents it has full authority to execute this Release on behalf of the Establishment.

Agreed this _____ day of _____, 2020.

(Establishment)

Signature of Authorized Person

Title