

ORDINANCE NO. 4805

AN ORDINANCE authorizing the City Manager to execute the attached 3-year licence Agreement to authorize The Waterfront Market, LLC to utilize a portion of the City Marina Plaza right of way pursuant thereto and to take any other actions necessary to implement the agreement.

WHEREAS, the City Council finds and determines that:

1. On May 7, 2013, the Planning Commission recommended approval and on May 18, 2013 the City Council approved Special Use Permit Number 2013-009 authorizing The Waterfront Market. LLC to operate a restaurant at 101 North Union Street including outdoor dining;
2. The area to be used as outdoor dining for the restaurant would occupy and otherwise encroach on a portion of the City Marina Plaza, pursuant to the terms specifically set forth in the attached 3-year license agreement;
3. All requirements of law precedent to the adoption of this ordinance have been compiled with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City Manager execute the attached 3-year license agreement authorizing The Waterfront Market, LLC to utilize a portion of the City Marina Plaza right of way pursuant thereto and to take any other actions necessary to implement the agreement.

Section 2. That this ordinance shall become effective on the date and time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: May 18, 2013

LICENSE AGREEMENT

The AGREEMENT (the "**Agreement**") is executed in duplicate this ____ day of _____, 2013 by the CITY OF ALEXANDRIA, a municipal corporation of Virginia (the "**Licensor**") and The Waterfront Market, LLC a Virginia Limited Liability Company ("**Licensee**").

A. Licensee desires to obtain the rights to use, subject to the terms and conditions of this Agreement, certain property owned by Licensor located adjacent to the building at 101 North Union Street (the "**Restaurant**") and the holder of Special Use Permit #2013-0009 to operate a restaurant approved by City Council on May 18, 2013 (the "**SUP**").

B. Licensor is willing to permit Licensee to use the property adjacent to the Restaurant as an outdoor dining seating area associated with the Licensee's restaurant, and subject to obtaining all required permits and approvals, for outdoor dining associated with the Licensee's restaurant and as generally depicted in the SUP, on the terms and conditions contained in this Agreement.

NOW THEREFORE

For and in consideration of the sum of One Hundred Dollars (\$100), the receipt and sufficiency of which is hereby acknowledged and of the Recitals which are deemed as a substantive and material part of this Agreement, Licensor and Licensee agree as follows:

1. Premises. The real property for which the license is granted to Licensee, consist of a portion of the City of Alexandria public right of way land shown and designated on the City of Alexandria Tax Map-Block-Lot Number 075 01-04-02 as "Torpedo Plaza and City Marina" (the "**Plaza**") containing approximately 815 square feet of the Plaza public right of way and more fully described and designated: "License Agreement Area" on the plat titled: "Exhibit "A" Showing License Agreement Between The Owners of the Property Located at 101 North Union Street and the City of Alexandria" prepared by Rich Markus Architects dated February 2, 2013 attached hereto incorporated herein by reference as Exhibit A. (the Outdoor Dining Area").
2. License. In exchange for the consideration described herein and based upon the terms and conditions described herein, Licensor grants Licensee a license to use the Outdoor Dining Area for continuous periods during the term of this Agreement exclusively for outdoor seating associated with Licensee's restaurant as described in the SUP. Notwithstanding the foregoing, provided Licensee is not in default and has obtained all required City permits and approvals, Licensee shall have the rights to improve the Outdoor Dining Area in connection with the operation of the Restaurant.
3. Term. The term of this License shall begin the date the Certificate of Occupancy is issued for the Restaurant and shall continue for three (3) years from that date.

4. **Renewal.** Provided Licensee is not in default of its obligations of performance under this Agreement at the end of the initial three (3) year term of this Agreement, or at the end of an additional term, Licensee shall have the right to negotiate this Agreement for up to four (4) additional three (3) year terms each to be exercised by the Licensee by written notice to Licensor within six (6) months immediately preceding the expiration of the original or additional term of this Agreement. The City Manager for the City will analyze and review use of the Outdoor Dining Area by Licensee under terms of this Agreement to determine if additional or modifications to the terms of this Agreement are necessary including but not limited recalculating the annual fee. Notwithstanding this option for renewal, the City Manager shall have the right to terminate this Agreement at the end of any term if the City Manager determines the license agreement is no longer in the best interest of the public.

5. **License Fee.** Licensee shall pay the Licensor an annual fee for the license rights to use the Outdoor Dining Area.

(a) **Annual Fee.** The annual fee shall be based on the Fair Market Value (license rate) of the adjacent underlying land factoring reasonable rate of return for alike commercial use consistent with commercial real estate standards. This amount will increase by 3% annually. The annual License Fee is as follows: \$11,851 (year 1); \$11,929 (year 2); and \$12,286 (year 3).

(b) **Due Date.** The initial fee is due within Thirty (30) days from the date the Certificate of Occupancy is issued for the Restaurant. Each subsequent annual license fee after the initial fee will be due on the date that is one (1) year from the date of the initial payment.

(c) **Payment mailing Address.** All payments shall be sent to the Licensor at the following address:

City of Alexandria
Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314

Checks tendered in payment of the annual fee shall be made payable to "City of Alexandria."

(e) **Late Payment.** In the event any payment due to the Licensor hereunder is delayed by more than thirty (30) days business days, such payment shall be deemed to increase by ten percent (10%) of the payment due. Interest on the unpaid amount shall accrue at the rate of 2.5% per month from the due date until paid.

6. Special Condition of License

(a) **Special Use Permit.** The Licensee is required to comply with the conditions of the SUP and in particular the conditions that pertain to the Outdoor Dining Area shall be considered

a violation of this Agreement and the Agreement shall be subject to Termination as described in Paragraph 9 herein.

(b) *Maintenance.* The Licensor shall be responsible for the maintenance of the Outdoor Dining Area (“**Maintenance**”). The Licensee shall be responsible for daily trash and litter pick up and shall be responsible for all maintenance and repair, including power washing, of the surface of the Maintenance area, including replacement of the base material. Failure of the Licensee to do so may be considered a condition of default under Section 9 of this License Agreement. Licensee shall address any maintenance requests from the Licensor within fourteen (14) days from the date the request is received.

(c) *Outdoor Dining Facilities.* Any improvement placed within the Outdoor Dining Area, including but not limited to tables, chairs, umbrellas, shade devices, fencing/railing or any other facilities necessary for the use of the Outdoor Dining Area pursuant to this Agreement (“**Outdoor Dining Facilities**”) shall remain the property and the responsibility of Licensee. In the event this Agreement is terminated pursuant to Paragraph 9 herein or for any reason, Licensee shall remove the Outdoor Dining Facilities within ten (10) days of such termination and shall restore the Plaza to its current condition. Licensee shall be responsible for securing and/or the removal of Outdoor Dining Facilities to ensure public safety in response to extreme weather and high water events.

(d) *Utilities.* The addition or modification of utilities in the Outdoor Dining Facilities shall be approved in advance by the City. The Licensee shall be responsible for all costs associated with the addition or modification, including, but not limited to service fees.

7. Liability

(a) *Insurance.* Licensee agrees to provide, and shall certify to the satisfaction of the Licensor that is covered by (1) liability insurance in the amount of no less than \$1,000,000 per person and \$3,000,000 per occurrence, which insures Licensee against (i) all claims of personal injury and personal property damage arising from the use of the Outdoor Dining Area, which allege that injury or damage has been caused by negligence or gross negligence of the Licensee or the Licensee’s agents and employees, and (ii) claims of personal injury and property damage arising from the use of the Outdoor Dining Area. Licensor shall be named as an additional insured in the policy required by this paragraph 7(a). In the event the Licensee is unable to obtain the required insurance naming Licensor as a named insured, or the required insurance lapses, this License Agreement shall terminate unless, by amendment to this Agreement acceptable to the Licensor, Licensee agrees to indemnify and hold harmless Licensor and all of its agents, officers and employees from and against any and all claims identified in paragraph 7(a), including any and all suits, damages, judgments, liability, losses and costs including reasonable attorneys’ fees and expenses, associated with such claims. Licensee agrees to maintain insurance coverage required by this provision throughout the term of this Agreement and furnish evidence to

Licensor of such prior to the issuance of the Certificate of Occupancy for the Restaurant and throughout the term of this Agreement.

(b) *Indemnification.* Subject to the dollar limitations set out in paragraph 7(a), Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, action, causes of action, damages, claims, liability and expenses (including court costs and attorneys' fees), and against any losses incurred by Licensor, resulting from and arising out of any act or omission of the Licensee or any of its employees, agents, invitees, licenses or guests in the course of operating, maintaining or using the Outdoor Dining Area.

(c) *Waiver of Licensor's Liability.* By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensor and its officers and employees shall not be liable to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on the Outdoor Dining Area, or for any property damage to Licensee's facilities located within the Outdoor Dining Area, except to the extent such injury or damage is caused by negligence of the Licensor or its officers or employees.

8. Applicability of Federal, State and Local Laws. This Agreement is subject to the Alexandria City Code, and all applicable provisions of federal and state law. In particular, this Agreement is subject to, Licensee shall comply with criminal, fire, health, and safety laws of the City of Alexandria and the Commonwealth of Virginia. Licensee shall permit officers of the City of Alexandria charged with enforcement of such laws to inspect the Outdoor Dining Area during periods of the Licensee's Use.

9. Termination. In the event the Licensee violates any term of this Agreement, Licensee shall be considered in default. If such continues for a period of thirty (30) days after the Licensee has received written notice of the default, the Licensor may terminate this Agreement effective immediately unless such default is such a nature it cannot be cured within such thirty (30) day period, in which case, Licensee may request that the Licensor agree to extend the cure period for a reasonable amount of time to effect such a cure and such agreement shall not be reasonable withheld by Licensor. Further, Licensor shall have the right to terminate this Agreement, effective immediately, in the event Licensee shall cease to own and operate the Restaurant.

10. Assignment. The Agreement shall not be assigned by Licensee without the written consent of the Licensor, which consent may not be unreasonably withheld, but may require the approval of the Alexandria City Council. An assignment by Licensee to an affiliate, which is under the control of the Licensee or formed for the purpose of operating the Restaurant for Licensee, shall not require the Licensor's consent.

11. Quiet Enjoyment. Licensor covenants that it has full right, power and authority to enter into this Agreement and the Licensee, upon paying the annual license fee, and performing all of licensee's other obligations pursuant to the Agreement, shall peaceably and quietly have, hold

and enjoy the Outdoor Dining Area during the term of this Agreement and any renewal terms, without hindrance, ejection or molestation by any person lawfully claiming by, through or under Licensor, or as a member of the general public. Licensor will vigorously defend all challenges to its authority to enter into this Agreement.

12. Governing Law. The Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

{Signatures to follow}

IN WITNESS WHEREOF

The parties have affixed their signatures and seals as of the date first above written.

The Waterfront Market, LLC, a Virginia limited liability company

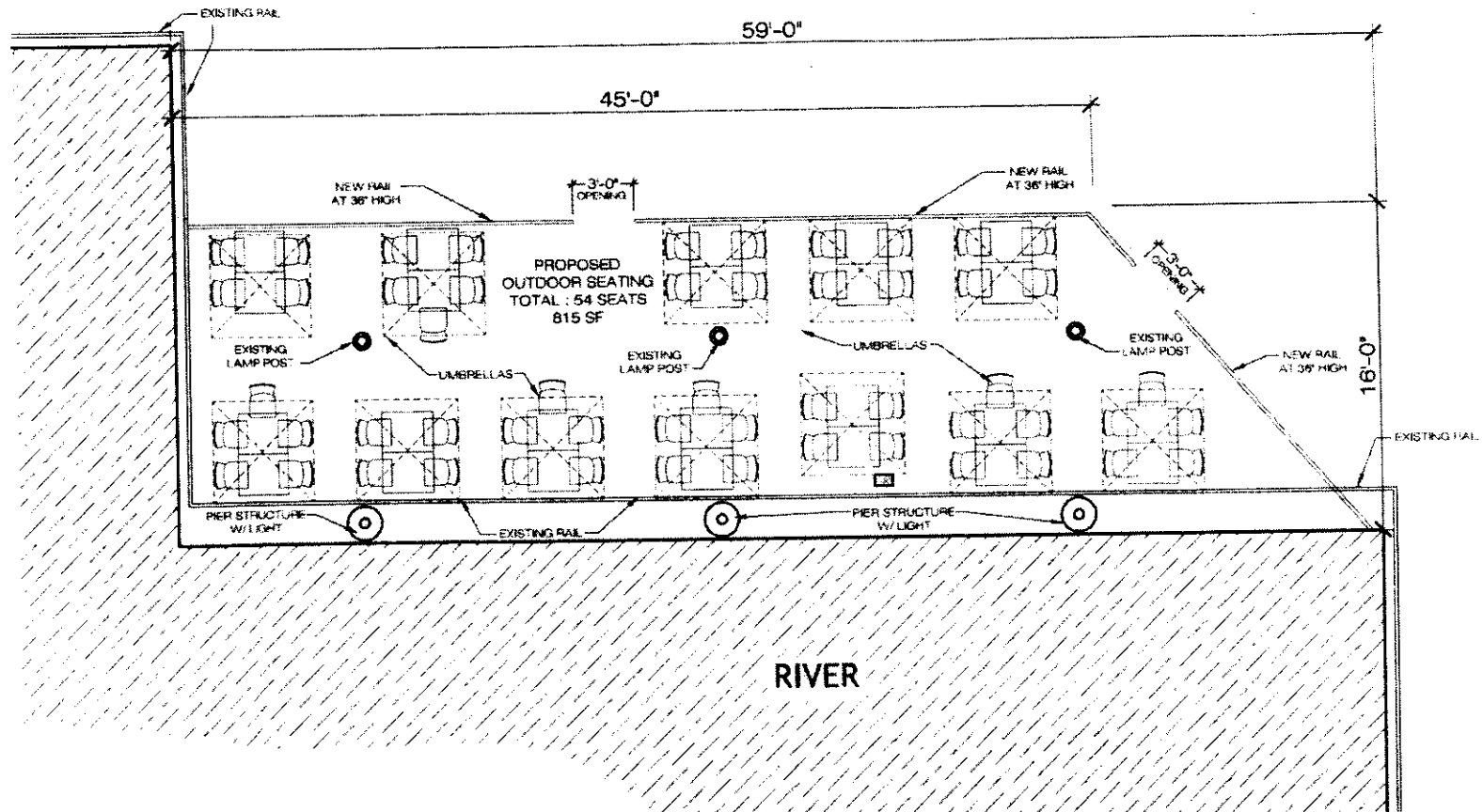
By _____

Date _____

CITY OF ALEXANDRIA a municipal corporation of the Commonwealth of Virginia

By _____

Date _____



1 PROPOSED OUTDOOR SEATING PLAN
3/16" = 1'-0"

The Waterfront Market

RICH MARKUS ARCHITECTS
2801 P. STREET, NW 2ND FL.
WASHINGTON, DC 20007
202.333.9733
www.richmarkus.com/office/copy1

PROPOSED SPACE
101 N UNION STREET
OLD TOWN ALEXANDRIA, VA 22314

PROPOSED
OUTDOOR
SEATING PLAN

DATE: 02-18-2013

AS SHOWN

02-18-2013

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