

LICENSE AGREEMENT

The AGREEMENT (the “**Agreement**”) is executed in duplicate this _____ day of _____, 2022 (“Effective Date”), by the CITY OF ALEXANDRIA, a municipal corporation of Virginia (“**Licensor**”) and Virtue Feed & Grain, LLC a Virginia Limited Liability Company (“**Licensee**”).

RECITALS

A. Licensee is the holder of Special Use Permit #2018-0022 to operate a restaurant approved by the City Council as an Administrative Change of Ownership on March 28, 2018 (the “**SUP**”) and desires to obtain the right to use, subject to the terms and conditions of this Agreement, certain property owned by Licensor located adjacent to the building it owns at 106 South Union Street (the “**Restaurant**”); and

B. Licensor is willing to permit Licensee to use the property adjacent to the Restaurant as an outdoor dining seating area associated with Licensee’s restaurant, subject to obtaining all required permits and approvals, specifically including the design approval of the Old and Historic Alexandria District’s Board of Architectural Review, and the terms and conditions contained in this Agreement.

NOW THEREFORE

For and in consideration of the sum of One Hundred Dollars (\$100.00), the receipt and sufficiency of which is hereby acknowledged and of the Recitals which are deemed as 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, consists of a portion of the City of Alexandria public right of way land shown and designated on the City of Alexandria Tax Map 75.01 Block 05 as “Wales Alley” (the “**Alley**”) containing approximately 1379 square feet more fully described and designated: “License Area” on the plat titled: “Virtue

Feed and Grain – Outdoor License Area Illustration” prepared by Beckman Architects of Alexandria, VA dated March 11, 2016, attached hereto incorporated herein by reference. (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 right to use the Outdoor Dining Area for construction related activities in connection with the renovation, repairs or maintenance of the Restaurant.

3. Term. The term of this License shall begin the date of execution of this Agreement and shall continue for five (5) 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 five (5) 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 three (3) additional five (5) years terms each to be exercised by Licensee by written notice to Licensor within six months immediately preceding the expiration of the original or renewal term of this Agreement. Each renewal must be approved by the Alexandria City Council after holding a public hearing discussing said renewal.

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

(a) *Calculation of the Annual Fee*. The Initial License Fee for this Agreement is \$34,461.21 The Annual Fee is based on calculation as follows: \$357 (Fair Market Value (license rate) of the adjacent underlying land and parklet rates surrounding 106 S Union Street) x 1379 S.F (size of Outdoor Dining Area) x 7% (a factor representing a reasonable rate of return for a like commercial use consistent with commercial real estate standards). This License Fee

will increase annually on the anniversary of the effective date of this Agreement by multiplying the current year's License Fee by a percentage equal to the previous year's CPI for the Washington D.C. metropolitan area. This increase shall not be less than 3% nor exceed 5%.

(b) *Credit for Alley Improvements.* As set forth more specifically as part of the SUP, Licensee constructed certain improvements to the Alley and the Outdoor Dining Area ("Alley Improvements"). In recognition of the substantial public benefits to City for the portion of the Alley Improvements that are located within the portion of the Alley that is not subject to this License and therefore will remain open to the public, the Licensor is crediting against future annual license fees one half of the costs of the Alley Improvements calculated over the anticipated twenty year life of said improvements (the "**City Reimbursement**"), starting when the Alley Improvements were completed on or about March 1, 2010, by deducting the credit amount from each annual license fee assuming, but not guaranteeing, that the License is renewed for sufficient periods to recapture the amount for the remaining years of the life of the improvements from the initial 20 years. If the License is not renewed, unless such lack of renewal is caused by a fault of or decision by the Licensee, including but not limited to a default under Paragraph 7(a) or Paragraph 9, the City shall pay Licensee the balance of the City Reimbursement within 90 days of the expiration of the License or any renewed license, as applicable.

(c) *Calculation of City Reimbursement.* The Alley Improvements cost approximately \$147,000 based on information provided by the Licensee ("**Alley Improvement Cost**"). The City Reimbursement for the annual license fee will be based on the Alley Improvement Cost listed in this paragraph 5(c) and is calculated as follows: $50\% \text{ of } \$147,000 = \$73,500.00$; $\$73,500.00 \text{ divided by } 20 \text{ years} = \$3,675 \text{ per year}$. The remaining balance in 2022 is \$29,400 and the \$3,675 annual credit will continue as a credit deduction from the remaining 8 years of the Alley Improvements against the annual fee pursuant to Paragraph 5(a). The annual credit expires in 2029.

(d) *Due Date.* The initial fee is due within thirty (30) days from the Effective Date of this Agreement. Each subsequent annual License Fee after the initial fee will be due on the date that is (1) year from the date of the initial payment.

(e) *Payment Mailing Address.*

All payments shall be sent to Licensor at the following address:

City of Alexandria
General Services (Rent – Unit 25)
Post Office box 178
Alexandria, Virginia 22313

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

(f) *Late Payment.* In the event any payment due to the Licensor hereunder is delayed by more than thirty (30) business days, such payment shall increase by ten percent (10%) of the payment due, additionally, 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. Any violation of the conditions of the SUP pertaining to the Outdoor Dining Area or the Alley 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 both the Alley and the Outdoor Dining Area (“**Maintenance Area**”). The Licensee shall be responsible for daily trash and litter pick up and shall be responsible for all maintenance and repair of the surface of the Maintenance Area including snow removal and repair and replacement of the brick and 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 improvements placed within the Outdoor Dining Area, with the exception of the Alley Improvements constructed pursuant to the SUP, including but not limited to tables, chairs, elevated decking, awnings, fencing or railings, 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 Alley including the Alley Improvements.

7. Liability

(a) *Insurance.* Licensee agrees to provide, and shall certify to the satisfaction of the Licensors that it is covered by (1) liability insurance in the amount not 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 and the Alley, which allege that the injury or damage has been caused by the negligence or gross negligence of the Licensee and the Licensee's agents and employees, and (ii) claims of personal injury and property damage arising from the use of the Outdoor Dining Area. Licensors 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 Licensors as a named insured, or the required insurance lapses, this License Agreement shall terminate. Licensee agrees to maintain insurance coverage required by this provision throughout the term of this Agreement and furnish evidence to Licensors of such prior to the issuance of the Certificate of Occupancy for the Restaurant and throughout the term of this Agreement.

(b) *Indemnification.* Licensee agrees to indemnify and hold harmless the Licensors 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 attorney's fees), and against any losses incurred by Licensors, resulting from or arising out of any act or omission of the Licensee or any of its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Outdoor Dining Area.

(c) *Waiver of Licensors' Liability.* By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensors and its officers and employees shall not be liable to Licensee or 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.

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 and Licensee shall comply with the 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 the periods of the Licensee's use.

9. Termination. Except as provided in Paragraph 7(a), in the event Licensee violates any term of this Agreement, Licensee shall be considered in default. If such continues for a period of thirty (30) days after Licensee has received written notice of the default, the Licensor may terminate this Agreement effective immediately unless such default is of such a nature that it cannot be cured within such thirty (30) day period, in which case, Licensee may request that Licensor agree to extend the cure period for a reasonable amount of time to effect such a cure and such agreement shall not be unreasonable 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. This Agreement may not be assigned by Licensee without the written consent of 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 the Agreement and that Licensee, upon paying the annual license fees, 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.

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

[Signatures Follow]

IN WITNESS WHEREOF

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

Virtue Feed & Grain, LLC, a Virginia limited liability company

By _____
William Smith, Manager

Date _____

CITY OF ALEXANDRIA a municipal corporation of the Commonwealth of Virginia

By _____
James F. Parajon, City Manager

Date _____