

## LICENSE AGREEMENT

The AGREEMENT (the “**Agreement**”) is executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by the CITY OF ALEXANDRIA, a municipal corporation of Virginia (the “**Licenser**”) and ARP Waterfront, LLC a Virginia Limited Liability Company (“**Licensee**”).

- A. Licensee is the holder of a Special Use Permit to operate a restaurant at 101 and 107 North Union originally approved as SUP 2013-0009 by City Council in May 2013, as amended through Special Use Permit 2017-0002 approved by City Council on March 18, 2017 and currently known as Vola’s Dockside Grill (the “**Restaurant**”) (the “**SUP**”).
- B. Licensee desires to obtain the rights to use, subject to the terms and conditions of this Agreement, certain property owned by Licenser located adjacent to Restaurant.
- C. Licenser is willing to permit to use the property adjacent to the Restaurant as an outdoor dining seating area associated with the Restaurant, and subject to obtaining all required permits and approvals for outdoor dining associated with the 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, Licenser and agree as follows:

- 1. **Premises**. The real property for which the License is granted to, consists 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 1225 square feet of the Plaza public right of way and more fully described and designated: “Proposed Outdoor Seating Area” on the plan titled: “Exhibit “A to the License Agreement Between ARP Waterfront, LLC and the City of Alexandria” prepared by Beckmann Architects attached hereto and 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, Licenser grants 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 the Licensee is not in default and has obtained all required City permits and approvals, 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 April 1, 2023 and shall continue for five (5) years from that date ending on March 31, 2028.
4. **Renewal.** Provided Licensee is not in default of its obligations of performance under this Agreement at the end of the five (5) year term of this Agreement, Licensee shall have the right to negotiate this Agreement for up to five (5) additional years 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 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 is calculated with reference to the market value of the restaurant's commercial floor space adjusted 15% for nonuse because the space is outdoors. The annual fee shall be based on the License rate per square foot of the indoor restaurant space at 101 North Union Street. The annual License Fee, discounted by 15% annually, will be in quarterly installments (April 1, July 1, October 1 and January 1) with the first fee due on April 1, 2023. therefore, annual payments are as follows:

**Year 1:** \$55,061.51

**Year 2:** \$56,713.36

**Year 3:** \$58,414.76

**Year 4:** \$60,167.20

**Year 5:** \$61,972.22
  - b. **Due Date.** Each quarterly fee will be due on the first day of the quarter (April 1, July 1, October 1 and January 1) with the first fee due on April 1, 2023.

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

City of Alexandria  
Recreation, Parks and Cultural Activities  
C/O Jack Browand, Deputy Director  
1108 Jefferson Street  
Alexandria, Virginia 22314

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

- d. 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 Conditions of License

- a. Special Use Permit. The Licensee is required to comply with the conditions of the SUP. Any violations of the SUP 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. 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 Outdoor Dining Area, including power washing and replacement of the base material, as necessary. No objects, including but not limited to, umbrellas, storage containers, heaters, fans, and furniture, shall be placed outside of the Outdoor Dining Area. Failure of the Licensee to comply with these requirements 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 the 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.
- e. Adjacent Uses. The Outdoor Dining Area is adjacent to a portion of the property that is Licensed by the City to the Alexandria Waterfront Associates Limited Partnership (AWA) by License dated March 27, 1986 ("Parcel 4A"). Parcel 4A and the Outdoor Dining Area are directly next to each other so that if both were in use, there would be no pedestrian access area through and to the Plaza. The Licensee must obtain control of Parcel 4A through an agreement with the current Licensor of that property and shall leave the 21' pedestrian path containing approximately 969 square feet as identified on Exhibit A ("Pedestrian Path") open for pedestrian circulation at all times and shall provide signage indicating that the Pedestrian Path must remain open at all times. If at any time the Licensee no longer has legal control of Parcel 4A, then this License shall automatically terminate, and no additional payments will be due.

## **7. STORAGE & REINSTALLATION OF LIGHT POLES:**

Licensee shall:

- a. At the termination of the License Agreement, Licensee shall reinstall and/or replace the light poles removed from the Dining Area. The City shall make the final determination whether the light poles are in a condition to be reinstalled or whether they should be replaced. If the light poles are to be replaced, subject to the written approval of the City, the replacement light poles shall be consistent in design, quality and operability as the existing light poles installed at the City Marina. All costs for the installation, repair (if needed) of the removed light poles or the purchase, installation of the replacement light poles shall be paid by the Licensee.
- b. Any and all electrical work, including but not limited to permits, which is required for the removal and reinstallation of the three existing light poles and/or installation of any new light poles to replace the three poles removed pursuant to this Amendment, shall be done and paid for by the Licensee subject to the written approval of the City. All work shall be performed to industry standards, subject to the approval of the City.
- c. Licensee shall be responsible for any unanticipated work or additional costs and expenses resulting from the removal and/or installation of the three light poles. Licensee shall be responsible to ensure lighting and other electrical service is operable outside the Plaza.

## 8. 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 the 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 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. 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.
9. 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 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.

10. 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 unreasonably withheld by Licensor. Further, Licensor shall have the right to terminate this Agreement, effective immediately, in the event the Restaurant, as may be amended through subsequent approvals, is no longer in operation.
11. 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 or formed for the purpose of operating the Restaurant for, Licensee shall not require the Licensor's consent.
12. 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.
13. Governing Law. The Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

Attachment: Exhibit A

**SIGNATURES FOLLOW**

**IN WITNESS WHEREOF**

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

	<b>The ARP Waterfront, LLC, a Virginia limited liability company</b>  By Name: _____  Title: _____  Date: _____
	<b>CITY OF ALEXANDRIA a municipal corporation of the Commonwealth of Virginia</b>  By _____ James F. Parajon, City Manager  Date: _____
Approved as to form:  _____ Karen Snow, Senior Assistant City Attorney	

# TORPEDO FACTORY

BREEZEWAY

6

## PEDESTRIAN WALKWAY

21'-0" MIN. PEDESTRIAN PATH TO  
BE MAINTAINED AROUND  
OUTDOOR SEATING AREA

UNENCUMBERED  
REALCO LEASE AREA  
653 SF TOTAL

REALCO LEASE AREA WITHIN  
PEDESTRIAN PATH - 969SF

21' PEDESTRIAN  
PATHWAY CLEARANCE LINE

37'-9"

24'-8"

SEATING AREA  
114 SEATS

CITY LEASE AREA: 1,225sf  
TOTAL AREA: 1,225sf

POTOMAC RIVER

0 2'-8" 5'-4" 10'-8"  
SCALE: 1/8" = 1'-0"

N