

## **LICENSE, MAINTENANCE & HOLD HARMLESS AGREEMENT**

**THIS LICENSE, MAINTENANCE & HOLD HARMLESS AGREEMENT** (“Agreement”), dated \_\_\_\_\_, 2024 (the “Effective Date”) is made by and between The Tavern on Broadway LLC, a Texas limited liability company (“Cox”), and the Town of Prosper, Texas, a Texas home-rule municipality (“Town”), and is made with reference to the recitals set forth below concerning certain Town easements on the east side of 350 West Broadway Street, Suite 60, including the placement of fencing in a portion of a sanitary sewer easement (the relevant portions of the patio area, including the fencing, are hereinafter collectively referred to as the “Property”), as described and depicted in Exhibit A, attached hereto and incorporated by reference.

**WHEREAS**, Cox is the owner of The Tavern on Broadway located at 350 West Broadway Street, Suite 60 in the Town; and

**WHEREAS**, Cox wishes to utilize the Property for patio purposes, including the placement of fencing in a sanitary sewer easement behind 350 West Broadway Street, Suite 60, for The Tavern on Broadway; and

**WHEREAS**, Cox and the Town have agreed to the use of the Property as patio areas, including the placement of a grease trap and a gas meter in a portion of the alley behind 350 West Broadway Street, Suite 60, subject to the terms and conditions contained herein; and

**WHEREAS**, Cox acknowledges and agrees that, at its sole cost and expense, it shall construct and maintain the patio areas, the fencing to be located on the Property.

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. License. Subject to the terms and conditions of this Agreement, and to the extent of the right, title, and interest of the Town, and without any express or implied warranties, the Town grants to Cox permission to encroach into its Property and to construct and maintain patio areas only on the Property, including the placement of fencing in a portion of a sanitary sewer easement on the east side of 350 West Broadway Street, Suite 60, as referenced and depicted in attached Exhibit A. Further, Cox agrees that the patio areas it constructs shall fully comply with all Town ordinances, requirements, and regulations, including all building and construction codes. No other encroachments into or onto Town property are authorized other than those referenced herein.

2. Agreements Regarding the Property. Cox and the Town agree and acknowledge the following understandings and agreements regarding the Property:

A. The Town does not and shall not abandon any of its right-of-way or any easements on or adjacent to 350 West Broadway Street, Suite 60;

B. Other than the patio areas, the remainder of the sidewalk right-of-way and alley right-of-way shall remain open and accessible at all times for use by the public, any emergency vehicles or franchise utilities, and access shall not be impeded in any manner;

C. Cox or its successors and assigns, including any future owners of 350 West Broadway Street, Suite 60, shall fully maintain the patio areas, including the maintenance and mowing of the alley, and shall be responsible for all costs associated therewith, including keeping the patio areas free of trash, litter and debris.

3. Indemnity and Hold Harmless. Cox shall fully indemnify and hold harmless the Town and the Town's Council Members, officers, agents, employees, representatives, successors and assigns from, against, for and in respect of all damages, losses, obligations, liabilities, claims, deficiencies, costs and expenses in any way related to the patio areas to be constructed and maintained by Cox, including any costs in any way associated with the construction, on-going maintenance, and/or on-going repair costs incurred by Cox.

4. Release. Cox hereby releases the Town, its Council Members, officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it may have with regard to the construction, maintenance, or repair of the Property, in whole or in part, directly or indirectly, as provided in this Agreement.

5. No Lease or Conveyance of Property Interest. This Agreement shall not be construed as a lease or as a conveyance of any right, title, or interest in any of the Town's public right-of-way referenced herein, but instead, this Agreement constitutes a grant of the privilege, permit, and license for Cox.

6. Termination of License. The Parties agree and acknowledge that at such time in the future if the Town opts to terminate this Agreement, then this Agreement shall cease upon thirty (30) days' written notice to Cox, and Cox shall remove, or cause to be removed, all patio areas in the Town's right-of-way, at its expense. In the event Cox wishes to terminate this Agreement, it shall give the Town at least thirty (30) days' written notice.

7. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

8. Sovereign Immunity. The Parties agree that the Town has not waived its sovereign or governmental immunity from suit by entering into and performing its obligations under this Agreement.

9. Filing in County Deed Records. Cox and the Town further agree that the provisions of this Agreement shall constitute a covenant running with the land described in Exhibit A, attached hereto. The parties agree that this Agreement shall be filed in the Deed Records of Collin County, Texas.

10. Binding Effect. This Agreement shall inure to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

11. Severability. If any provision in this Agreement be held to be void or unenforceable under the laws of any place governing its construction or enforcement, this Agreement shall not

be void, but shall be construed to be in force with the same effect as though such provision were omitted.

12. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and is specifically performable in Collin County, Texas.

13. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

14. Notice. Any notices required or permitted to be given hereunder (each, a “Notice”) shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town:           Town of Prosper  
                                  250 W. First Street  
                                  P.O. Box 307  
                                  Prosper, Texas 75078  
                                  Attention: Town Manager

If to Cox:                 The Tavern on Broadway LLC  
                                  961 Deer Run Lane  
                                  Prosper, Texas 75078  
                                  Attention: Jason Keats Cox

15. Incorporation of Recitals. The recitals set forth above are incorporated herein as if repeated verbatim.

16. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be signed as of the date first above written.

**TOWN:**

**THE TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_

Name: Mario Canizares

Title: Town Manager, Town of Prosper

**STATE OF TEXAS            )**

**)**

**COUNTY OF COLLIN        )**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**COX:**

**THE TAVERN ON BROADWAY, LLC**, a Texas  
limited liability company

By: \_\_\_\_\_

Name: Jason Keats Cox

Title: President

**STATE OF TEXAS            )**

**)**

**COUNTY OF COLLIN        )**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Jason Keats Cox, in his capacity as President of The Tavern on Broadway LLC, a Texas limited  
liability company, known to be the person whose name is subscribed to the foregoing instrument,  
and that he executed the same on behalf of and as the act of The Tavern on Broadway LLC.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**(Property Description and Depiction)**

