

**CITY OF BROKEN ARROW USE AGREEMENT WITH INDIAN BREWING  
COMPANY, LLC**

This Agreement is entered on the 28<sup>th</sup> day of FEBRUARY, 2017, by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**City**) and the Indian Brewing Company, LLC (**Licensee**).

**I. LICENSE**

City grants an exclusive license and agrees to allow **Licensee** to use land in the City of Broken Arrow described as NEED LEGAL DESCRIPTION (**Premises**).

**II. TERM**

This agreement shall be in effect from the date of its approval by both parties through June 30, 2018. Thereafter this agreement may be renewed for successive one-year periods corresponding with the City's fiscal year of July 1<sup>st</sup> through June 30<sup>th</sup>. The agreement shall expire automatically on June 30, 2018 unless the parties renew the agreement for another year. If either party desires to let the agreement expire, that party shall notify the other in writing of its desire by the first day of May of the fiscal year preceding expiration.

**III. IMPROVEMENTS**

The **Premises** shall remain the property of the **City**, and may not be modified, altered, or destroyed without the prior written permission of the Director of Development Services (**Director**). Further, no improvements, structures or fixtures of any kind may be built or brought upon said property without the prior written permission of the **Director**.

Any improvements, structures or fixtures of any kind, which are built or brought upon said property, shall become the property of the **City** upon the termination of this Agreement unless the **City** gives prior written permission for their removal. Any additions or modifications authorized to be removed shall be removed in a manner approved by the **Director** immediately upon termination of the Agreement and **Licensee** shall restore the **Premises** to the condition that existed prior to the additions or modifications. All such equipment and furnishings provided by **Licensee** for use at the **Premises** shall remain the property of **Licensee** unless otherwise donated to **City**.

**IV. MAINTENANCE**

**Licensee** acknowledges that it has inspected the **Premises** thoroughly, and has full knowledge of the conditions of the **Premises**. The **City** makes no representations or warranties, express or implied, as to the condition of the **Premises**.

**Licensee** shall inspect the **Premises** monthly and shall immediately notify the **Director** of any damages or of any repairs, which may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, **Licensee** shall not allow individuals to utilize the **Premises** until the defective portion of the **Premises** has been repaired or replaced.

**Licensee** agrees to take all reasonable precautions to prevent waste, damage or injury to the **Premises** by **Licensee** or by any volunteers, guests, invitees or others who may be on the **Premises** that the **Licensee** has allowed use of the **Premises**.

The **Licensee** shall be responsible for all upkeep and maintenance of **Premises**.

**Licensee** shall perform all custodial duties of the **Premises** as needed, and on a regular basis to ensure cleanliness of **Premises**. **Licensee** shall pick up all trash and deposit in an appropriate trash receptacle.

**Licensee** shall promptly reimburse the **City** for the cost of parts and labor for any replacement or repair on the **Premises** as a result of the negligent acts of **Licensee** or by its volunteers, guests, or invitees, and for the **City's** cost in performing any of **Licensee's** contractual duties.

The **City** retains the right to enter any portion of the **Premises** at any and all times, without prior notice, to inspect the **Premises** or to conduct maintenance or repairs, or for the purpose of determining whether **Licensee** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the **City** under this Agreement.

**Licensee** shall be responsible for all repair, maintenance and upkeep to **Premises** due to normal wear and tear. That in the event this Agreement is terminated by either party, **Licensee** agrees to restore **Premises** to its original condition.

## V. INDEMNIFICATION

**Licensee** is not affiliated with the **City** in any respect under this Agreement. This Agreement shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the **City** and **Licensee** or its officers, employees, contractors or representatives for any purpose. **Licensee** understands that all persons furnishing services in implementing this Agreement are employees, independent contractors and volunteers, solely of **Licensee**, and not of the **City**.

As partial consideration for this Agreement, **Licensee** agrees to indemnify, defend (at the **City's** option), and hold harmless the **City**, its employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or

proceedings, reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or misconduct of **Licensee**, its guests, invitees, licensees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including but not limited to any injury or damage that occurs relating to **Licensee** activities, or **Licensee's** performance or failure to perform the terms and conditions of this Agreement. Such obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the **City** and in accordance with the terms, conditions and exceptions in the Governmental Tort Claims Act. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

**Licensee** shall provide the **City** with prompt written notice of any serious injuries (serious injuries include all injuries which require medical treatment), written or oral complaints received, and actual or anticipated disputes with or claims by any individual.

#### VI. INSURANCE AND WAIVER OF SUBROGATION

Without limiting the **City's** right to indemnification, **Licensee** and each of its contractors, shall obtain insurance in no less than or in terms more restrictive than the following: General Liability Insurance covering all premises and activities, with an applicable limit of liability not less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate; and Comprehensive Automobile Liability Insurance applicable to all owned, hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence; and **Licensee** shall include the **City** as an Additional Insured on all required insurance policies. **Licensee** shall also require its contractors to list the **City** as an Additional Insured. **Licensee** shall submit certificates of insurance to the **City's** Risk Manager for approval before allowing any individuals, including but not limited to any contractors, to commence work or engage in any activities under this Agreement. **Licensee** and its contractors shall maintain the required insurance with insurers that carry a Best's "A" rating and which are licensed and admitted to write insurance business in Oklahoma. Failure of **Licensee** or its contractors to obtain and maintain any required insurance does not relieve **Licensee** from any liability hereunder.

#### VII. TERMINATION

This Agreement shall be subject to termination for any reason at any time by the terminating party notifying the other party in writing of termination. The termination shall be effective immediately upon notification. Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure to require exact, full, and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping the **City** from enforcing the full provisions thereof.

Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned or encumbered by **Licensee**.



This Agreement is not a waiver of any permit or other legal requirements, and does not assure approval based upon any circumstances other than compliance with the law.

This Agreement shall be construed under the laws of the State of Oklahoma. Exclusive Original Jurisdiction and venue for any action relating to this Agreement shall be solely in the Tulsa County District Courts of Oklahoma. **Licensee** shall conform to and abide by all Federal, State and local laws and regulations, including, but not limited to all laws regarding employment of aliens, and that no person shall be subjected to discrimination under a project, program or activity supported by this Agreement.

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Agreement.

This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by the parties.

The parties have caused this Agreement to be executed on the dates hereinafter set forth.

As approved to form:

City of Broken Arrow


\_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Michael L. Spurgeon, City Manager

Attested:

\_\_\_\_\_  
City Clerk / Seal

Indian Brewing Company, LLC

By:  \_\_\_\_\_  
Member-Manager

Date of Execution:

Printed Name: Austin James Lee Ferguson

Mailing Address (other than the premises address):

2605 W. FREDERICKS BLVD ST

BROKEN ARROW, OK 74011

State of Oklahoma     )  
                                  ) ss.

County of Tulsa

Before me, a Notary Public, on this 28 day of February, 2017, personally appeared Austin Ferguson, known to me to be the identical person who executed the within and foregoing instrument, and as a Member-Manager of Indian Brewing Company, LLC, acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

2/23/2018

Tara L Bidwell  
Notary Public

