

## **LIQUOR OPERATING AGREEMENT – FULL SERVICE RESTAURANT LICENSE**

THIS AGREEMENT is made and entered into by and between the CITY OF BROOKINGS, a municipal corporation of the State of South Dakota, hereinafter referred to as the “City” and Den-Wil Hospitality Group, Inc. (owner), doing business as The Lodge, hereinafter referred to as “Licensee.”

WITNESSETH;

WHEREAS, the City is authorized by State law to issue Full-Service On-Sale Restaurant Licenses, and

WHEREAS, the City desires to enter into an Operating Agreement with the Licensee for the purpose of setting forth the requirements and agreements between the City and the Licensee.

NOW, THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1.

This Agreement is made and entered into between the parties hereto to allow the Licensee to operate as a Full-Service Retail On-Sale Restaurant Licensee, pursuant to and in accordance with all of the terms and conditions of this Agreement, in accordance with all State laws, particularly SDCL 35-4-110 to 35-4-120, inclusive, and City Ordinance 30-08.

2.

This Full-Service On-Sale Restaurant License is located upon real estate in the City of Brookings, South Dakota, described as: BLOCK 12, TELKAMP ADDITION , City of Brookings, Brookings County, South Dakota

3.

The Licensee will dispense only alcoholic beverages supplied by the Municipal off-sale establishment.

4.

This Agreement will be in full force and effect for a period of five (5) years, with the Licensee having the option and privilege of a five (5) year extension, subject to the approval of the governing body of the City of Brookings.

5.

This Agreement will continue in full force and effect unless the Licensee ceases business, or does not comply with the requirements for Annual Renewal of its License, which requires that at least 60% of gross revenue from the preceding 12 months operation of the restaurant was derived from the sale of food and nonalcoholic beverages.

6.

The City reserves the right to request that the Department of Revenue suspend or revoke the Licensee’s Licenses for alcohol-related violations in accordance with the provisions of Resolution No. 25-88 or any amendments thereto.

7.

The Licensee will pay to the City for all alcoholic beverages sold by the City to the Licensee for resale on the above-described premises, the actual cost of distilled spirits and wine supplied by

the City, plus eleven percent (11%) in excess of such cost; the Licensee will also pay to the City for all malt beverages sold by the City to the Licensee for resale on the above-described premises, the actual cost of malt beverages, plus ten percent (10%) in excess of such cost. The actual cost will include cost price and transportation charges. The markup percentages provided in this Agreement are subject to change by the City of Brookings. In the event markup percentages are changed by Ordinance, then the markup percentages provided by City Ordinance shall supercede the markup percentages provided herein. The Licensee further agrees that if either of the markup percentages are increased at any time by the City, the Licensee will pay the markup as so increased.

8.

A complete and detailed record will be maintained by the City of all alcoholic beverages supplied to the on-sale Licensee, and such alcoholic beverages so supplied will be evidenced by pre-numbered invoices prepared in triplicate showing the date, quality, brand, size, and actual cost of such item, and such invoice will bear the signature of the authorized representative of the on-sale restaurant Licensee or its authorized representative. One copy thereof will be retained by the Municipal off-sale establishment, one copy will be retained by the on-sale establishment, and one copy will be filed with the City Clerk. All copies will be kept as permanent records and made available for reference and audit purposes. The Licensee also agrees to maintain a complete record of all alcoholic beverages received from the City.

9.

The Licensee agrees to pay the CITY OF BROOKINGS a one-time Fee of One Hundred Thousand and no/100 Dollars (\$100,000), at or prior to the execution of this Agreement.

The Licensee also agrees to pay the CITY OF BROOKINGS, an Annual Renewal License Fee of One Thousand Five Hundred and no/100 Dollars (\$1,500.00) on or by November 1<sup>st</sup> of each year of this Agreement, so the application can be timely processed by the Department of Revenue.

10.

In accordance with State law, a restaurant that has a Full-Service On-Sale Restaurant License may only be advertised or held out to the public as primarily a food eating establishment. No Licensee that has a Restaurant On-Sale License may allow smoking on the licensed premises.

11.

The Licensee further agrees to operate the on-sale restaurant establishment only on such days and at such hours as permitted by State law and City Ordinances.

12.

The Licensee agrees to abide by the credit policies of the City and acknowledges, by execution of this Agreement, receipt of a copy of the credit policies of the City. The City reserves the right to change or terminate its credit policies at any time, but shall be required to provide written notice to Licensee prior to the effective date of the change or termination date of the credit policies. This Operating Agreement will also be subject to suspension or termination if payments for alcoholic beverages supplied by the Municipal off-sale establishment to be sold on the premises of Licensee are late or not fully paid.

13.

The Licensee agrees to observe all Federal and State laws and Ordinances of the City of Brookings, and to file its Annual Report pursuant to SDCL 35-4-113.

14.

The City will have the right to audit the records of the Licensee relating to the On-Sale Restaurant License in order to verify the Licensee's compliance with SDCL 35-4-113 (which sets forth the renewal requirements based upon 60% food and nonalcoholic beverage sales).

15.

It is further specifically understood and agreed that the waiver of the rights of the City under this Agreement will not constitute a continuous waiver, and any violation or breach of the terms of this Agreement by the Licensee will constitute a separate and distinct offense and grounds for immediate action to terminate or revoke this Agreement.

16.

This Agreement is not assignable to another person or location without the written consent of the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 11<sup>TH</sup> day of December, 2018

CITY OF BROOKINGS, South Dakota  
A Municipal Corporation

By: \_\_\_\_\_  
Paul Briseno, City Manager

ATTEST:

\_\_\_\_\_  
Shari Thornes, City Clerk

LICENSEE

By: \_\_\_\_\_  
Dennis Bielfeldt  
Den-Wil Hospitality Group, Inc.