

WINE ON-SALE ALCOHOLIC BEVERAGE OPERATING AGREEMENT
ERL, LLC, dba The Depot
5-year Mid-Term Renewal

THIS AGREEMENT 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 ERL, LLC, dba The Depot, Kathy McClemons, Robb McClemons, and Liz McClemons-Novak, owners, hereinafter referred to as "Manager." The City and Manager are referred to as the "parties" herein.

WITNESSETH;

WHEREAS, the City has been issued an on-sale alcoholic beverage license and is engaged in the sale of alcoholic beverages, and

WHEREAS, the City desires to enter into an Operating Agreement on a limited basis with the Manager for the purpose of operating an on-sale establishment or business for and on behalf of the City pursuant to law, and

WHEREAS, the Manager has offered to have facilities in which to operate said on-sale establishment solely upon the premises hereinafter described.

NOW, THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

I.

This Agreement is made and entered into on a limited basis between the parties to allow the Manager to operate a retail on-sale premises, pursuant to and in accordance with all of the terms and conditions of this Agreement and in accordance with all State laws and City Ordinances now in effect and as may be enacted in the future.

II.

The Manager shall be individually responsible for all operating expenses of said on-sale establishment, including but not limited to utilities, taxes, insurance, and license fees, if any.

The Manager shall furnish all equipment and fixtures necessary to operate the establishment.

III.

The on-sale establishment shall be located upon real property in the City of Brookings, South Dakota, described as:

Lot 7, Block 13, McClemon's Addition.

IV.

The Manager shall dispense only alcoholic beverages supplied by the Municipal Off-Sale establishment.

V.

This Agreement shall be in full force and effect for the remaining five (5) years of the ten (10) year agreement, subject to the approval of the governing body of the City of Brookings.

VI.

Either the Manager or the City may terminate this Agreement without cause upon ninety (90) days written notice served by either party upon the other. The City reserves the right to immediately suspend or revoke this Agreement without ninety (90) days written notice for alcohol related violations in accordance with the provisions of Resolution No. 25-88 or any amendments thereto or for any late payments for alcoholic beverages supplied by the Municipal Off-Sale Establishment to be sold on the premises of Manager.

VII.

The Manager shall receive as full compensation for its services rendered, the net profit from the on-sale establishment under its management, and the sole profit to be derived by the City shall be the markup hereinafter set forth on alcoholic beverages furnished by the municipality to the Manager for the purposes of resale on the premises as above described.

VIII.

The Manager shall pay in a timely manner to the City for all alcoholic beverages sold by the City to the Manager 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 Manager shall pay to the City for all malt beverages sold by the City to the Manager 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 shall 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 Manager further agrees that if either of the markup percentages shall be increased at any time by the City, the Manager shall pay the markup as so increased.

IX.

A complete and detailed record shall be maintained by the City of all alcoholic beverages supplied to the on-sale Manager and such alcoholic beverages so supplied shall be evidenced by pre-numbered invoices prepared in triplicate showing the date, quality, brand, size, and actual cost of such item, and such invoice shall bear the signature of the authorized representative of the on-sale Manager or its authorized representative. One copy thereof shall be retained by the Municipal off-sale

establishment, one copy shall be retained by the on-sale establishment, and one copy shall be filed with the City Clerk. All copies shall be kept as permanent records and made available for reference and audit purposes. The Manager also agrees to maintain a complete record of all alcoholic beverages received from the City.

X.

In consideration of the covenants herein contained, the Manager agrees to pay the CITY OF BROOKINGS, One Thousand Five Hundred, and no/100 Dollars (\$1,500.00), constituting the Annual License Fee on or by the 1st day of November of each year thereafter as long as this agreement shall remain in force and effect. The payment of the Annual Renewal License Fee will not extend the term of this Operating Agreement beyond the term provided therein. The Manager further agrees that if the annual fee shall be increased at any time by the legislature, the Manager shall pay the amount of any such increase.

XI.

The Manager agrees to keep the premises in a neat, clean and attractive appearance, and Manager further agrees to operate said on-sale establishment only on such days and at such hours as permitted by state law and city ordinances.

XII.

The Manager shall have the right to return, at any time, alcoholic beverages received from the City which are eligible to be returned, and to receive in return any deposit made for such alcoholic beverages; in the event of termination of the business, all unused alcoholic beverages, which may be resold without discount may be returned to the City and the Manager shall be reimbursed for the cost of such alcoholic beverages.

XIII.

The Manager 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 Manager prior to the effective date of the change or termination date of the credit policies.

XIV.

The Manager agrees to furnish the City upon demand, evidence of payment of the following:

- A. All salaries of on-sale employees;
- B. Social Security and withholding taxes on said employees;
- C. Worker's Compensation insurance premiums covering said employees;
- D. Unemployment taxes on the payrolls of said employees;
- E. General liability insurance protecting both the City and the Manager against claims for injury or damages to persons or property, said policy to have general liability limits of at least Five Hundred Thousand Dollars (\$500,000.00) single limit, and One Million Dollars (\$1,000,000.00) aggregate, and a limitation of Fifty Thousand Dollars (\$50,000.00) for damage to

- property. The general liability insurance limits are subject to change and Manager agrees to change limits of insurance if required by the City;
- F. Rent and utility bills; and
 - G. Any and all miscellaneous expenses, including taxes.

XV.

The Manager agrees to observe all Federal and State laws and ordinances of the City of Brookings.

XVI.

The City covenants and agrees to furnish the on-sale license to Manager pursuant to the terms and conditions of this Operating Agreement and the terms and conditions of the on-sale license.

XVII.

The City has the right to make inspections and investigations of the premises during the hours of operation, and make audits and examinations of the records of the Manager relating to the on-sale establishment.

XVIII.

It is further specifically understood and agreed that the waiver of the rights of the City under this Agreement shall not constitute a continuous waiver, and any violation or breach of the terms of this Agreement by the Manager shall constitute a separate and distinct offense and grounds for immediate termination and revocation of this Agreement.

XIX.

This agreement shall not be assignable to another person or location without the written consent of the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which is effective this 28th day of January, 2020.

CITY OF BROOKINGS, South Dakota
A Municipal Corporation

By: _____
Paul Briseno, City Manager

ATTEST:

Bonnie Foster, City Clerk

MANAGER

By: _____

By: _____