

BEER GARDEN AGREEMENT

THIS AGREEMENT is made and entered into by and between Westallion Brewing Company (the "BREWER") whose street address is 1825 S. 72nd St., West Allis, WI 53214, and the City of West Allis (the "HOST"), with offices located at 7525 W. Greenfield Avenue, West Allis, WI 53214 (the "AGREEMENT").

PRELIMINARY RECITALS

WHEREAS, BREWER is the owner and operator of the Westallion Brewing Company.

WHEREAS, BREWER is in the business of selling alcoholic beverages and possesses the necessary licensing, experience, and resources to create a beer garden experience at HOST facilities, and HOST wishes to have a qualified business operate a beer garden at HOST facilities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and adequacy of which are acknowledged, the BREWER and HOST agree to the following terms:

TERM/RENEWAL

This AGREEMENT shall commence on date of acceptance by BREWER and HOST and terminate upon the conclusion of the event. HOST and/or BREWER may terminate this AGREEMENT for any reason upon not less than thirty (30) calendar days written Notice to the other party.

BEER GARDEN

The BREWER shall provide a beer garden experience at the HOST Farmer's Market facilities as identified below. "Beer Garden" is defined as an event at which BREWER may sell alcoholic and non-alcoholic beverages, all of which shall be in compliance with any applicable State and Local codes, laws and regulations.

GRANT OF RIGHT AND PRIVILEGE OBLIGATION TO SELL AND PROVIDE

The HOST grants the BREWER the right and privilege to provide alcoholic and non-alcoholic beverages at a designated area, as determined by the HOST, on the Farmer's Market premises on September 22, 2018, as set forth herein. Prior to the event, but no later than September 18, 2018, BREWER shall provide HOST with proof that it has complied with any and all Department of Revenue regulations applicable to its participation in such an event.

DATE AND HOURS OF OPERATION

Weather permitting, the Beer Garden will operate on Saturday, September 22, 2018, from 1:00 p.m. to 6:00 p.m. The date and time of operation may be modified upon written approval of the HOST.

BEER GARDEN LOCATION

The Beer Garden will be located at the West Allis Farmer's Market, 6501 W National Ave, West Allis, WI 53214. Prior to the event taking place, the HOST and BREWER shall determine and agree upon the specific location for the Beer Garden to set up on the Farmer's Market premises.

MANAGEMENT OF THE BEER GARDEN

It is the responsibility of the BREWER to manage the distribution of alcohol. BREWER shall issue wrist bands or other similar evidence that persons may be served alcoholic beverages for the event. BREWER shall monitor the service of alcoholic beverages, making sure no one under the age of twenty-one (21) is drinking alcohol and refusing service to people who appear to be intoxicated or using poor judgment in their drinking. The public shall not bring/carry-in any alcoholic beverages to the Beer Garden.

PERSONNEL

The BREWER shall supply all personnel necessary to carry out its responsibilities under this AGREEMENT. If requested by BREWER, the HOST shall assist the BREWER with any electrical needs during setup, with the understanding that in the event electricity is not available in the Beer Garden location the BREWER shall be responsible for supplying its own power source (i.e., a generator).

BEER GARDEN SITE AND EQUIPMENT

BREWER shall be responsible for the site established as the Beer Garden and shall be responsible for cleaning up the Beer Garden area which may include providing containers for refuse and recycling. All Beer Garden equipment and disposable expenses in establishing the Beer Garden are the responsibility of the BREWER. All necessary equipment and personnel to create the Beer Garden experience are the responsibility of the BREWER. The BREWER shall include all labor, merchandise, alcoholic and non-alcoholic beverage supplies, equipment and related items necessary to serve the needs of the customers of a Beer Garden.

If requested by BREWER, HOST shall allow BREWER to use available electric services provided at the Farmer's Market location, however, in the event electricity is not available BREWER shall provide its own power source (i.e., a generator).

CLEANLINESS

BREWER shall keep the premises and the surrounding area, at least twenty-five (25) feet from setup, clean and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain thereon, and BREWER shall prevent any such matter or material from being or accumulating upon the Beer Garden site.

BREWER shall assist with recycling efforts by using #1, #2 or #5 recyclable drink cups for beverage service.

BEVERAGE AND MERCHANDISE FEES

In return for the right to sell merchandise, alcoholic and non-alcoholic beverages through the Beer Garden, the BREWER shall pay the HOST a rental fee of Twenty-five and 00/100 Dollars (\$25.00) per day when the Beer Garden is open.

CANCELLATION OF EVENT

The Beer Garden is an outdoor experience. BREWER shall make every effort to hold the event as scheduled. Cancellation of the event may be dependent upon the weather and other conditions at the Farmer's Market. The decision to cancel the event by either party will be made in as timely a manner as possible. The HOST may limit the size of or shut down the event if it is deemed to be a public safety hazard or public nuisance by the Police Services or the Fire Department, there is a violation of State or Local law, or due to inclement weather.

INDEMNIFICATION

The HOST, forever discharges, holds harmless and indemnifies the BREWER, its agents and employees, and its, or their successors and assigns, from and against any and all claims, demands, damages, costs including attorney fees, actions and causes of action of whatever kind or nature, incurred by BREWER (its agents and employees, and its, or their successors and assigns) for any third party claim to the extent arising out of (a) a material breach or non-fulfillment of any material representation, warranty or covenant in this Agreement by HOST (or its personnel) or (b) any negligence or more culpable act or omission of HOST (or its personnel) in connection with the performance of its obligations under this Agreement.

Nothing contained within this Agreement is intended to be a waiver or estoppel of the HOST or its insurer to rely upon the limitations, defenses and immunities contained within Wisconsin Statutes sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the HOST or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

The BREWER, forever discharges, holds harmless and indemnifies the HOST, its Departments, Commissions, Officials, Agents and Employees, his, her, its, or their successors and assigns ("Released Parties") from any and all claims, demands, damages, costs including attorney fees, actions and causes of action of whatever kind or nature, incurred by the Released Parties for any third party claim to the extent arising out of (a) a material breach or non-fulfillment of any material representation, warranty or covenant in this Agreement by BREWER (or its personnel) or (b) any negligence or more culpable act or omission of BREWER (or its personnel) in connection with the performance of its obligations under this Agreement.

INSURANCE

In order to protect against potential liability arising out of the activities performed hereunder, BREWER shall obtain and maintain, in full force and effect, comprehensive general liability, bodily injury and property damage insurance coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate. Said insurance may not be cancelled, reduced or changed in any way without at least thirty (30) day written notice to the HOST. Failure to provide proper notice, in and of itself, shall be grounds for termination of this AGREEMENT. Brewer shall obtain Certificates of Insurance as well as Endorsements, acceptable as to form by HOST, to its insurance policies as follows:

- 30-day notice of cancellation to HOST.
- BREWER's primary insurance.
- Waiver of rights of recovery against others to us.
- Naming the HOST as an additional insured.

ASSIGNMENT

This AGREEMENT may not be assigned by the BREWER without the prior written consent of the HOST.

INDEPENDENT CONTRACTOR

For purposes of this AGREEMENT, the BREWER is an independent contractor and not the employee or agent of the HOST. The BREWER is not an employee of the HOST for any purpose whatsoever, to include coverage under the Wisconsin Worker's Compensation Statute.

JURISDICTION/VENUE

The circuit court of Milwaukee County, Wisconsin, shall have exclusive jurisdiction for any legal proceedings concerning this AGREEMENT, and Milwaukee County shall be the exclusive venue for such proceedings. All such proceedings shall be governed by the laws of the State of Wisconsin.

DISPUTE RESOLUTION

Should disputes arise between parties during the course of this AGREEMENT, the parties shall make a good faith attempt to resolve disputes through dialogue and negotiation. If such efforts fail to resolve the differences, prior to the commencement of legal action, the parties will attempt to resolve the issues through mediation conducted in Milwaukee County, State of Wisconsin, by a Wisconsin mediator chosen by AGREEMENT of the parties. The parties shall share equally in all costs associated with Mediation.

RELATIONSHIP

Nothing contained in this AGREEMENT shall constitute or be construed to create a partnership or joint venture between the HOST and the BREWER or successors or assigns. This AGREEMENT does not create the relationship of principal and agent.

FORCE MAJEURE

The obligation of the Parties shall be excused by detention of key personnel by sickness, accident, riot, strike, epidemic, act of God, Force Majeure or any other legitimate condition beyond the control of the obliged Party. In case of Force Majeure, neither Party shall be liable for indirect, special or consequential damages arising from any breach of this Agreement.

SEVERABILITY

In the event that any provision of this AGREEMENT is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any Governmental Authority, the validity, legality and enforceability of the remaining terms and provisions of this AGREEMENT shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this AGREEMENT.

ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with any attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

NOTICES

BREWER:

Westallion Brewing Company
Attn: Erik Dorfner
1825 S. 72nd St.
West Allis, WI 53214

HOST:

City of West Allis
Attn: Sally Nusslock, Health Commissioner
7120 W. National Avenue
West Allis, WI 53214

In Witness Whereof, the parties hereto agree to this AGREEMENT:

BREWER:

Westallion Brewing Company

BY: _____
Erik Dorfner,
Owner

Date: _____

HOST:

City of West Allis

BY: _____
Sally Nusslock,
Health Commissioner

Date: _____