



TOWN OF WINCHESTER SELECT BOARD'S MEETING  
SELECT BOARD MEETING ROOM

A. 6:30 P.M. OPENING

**EXECUTIVE SESSION (closed to public)..... 6:15 PM**

1. Vale & MBTA - MGL Ch. 30 §21(a) 6 - To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have detrimental effect on the negotiating position of the governmental body.

**Notification of Meetings and Hearings (open to public)..... 6:45 PM**

- Thursday, May 6, 2021 – Regular Session before Spring Town Meeting
- Thursday, May 6, 2021 – Spring Town Meeting

B. ACCEPTANCE OF DONATIONS

1. Accept a donation of \$500 from the En Ka Society to the Winchester Police Department for the Winchester Police Explorers Program.

C. TOWN MANAGER REPORT AND COMMENTS

1. Appointments: DPW Maintenance Working Foreman, Promotional – Adam Porter

Building Department Wiring Inspector – Ron Abel

1. General Topics

D. COMPTROLLER'S REPORT

E. LICENSES

F. HEARINGS

G. BUSINESS

1. Warrant Articles 20 – 24 – Discussion & Vote
2. Winchester Hospital/Lahey PILOT
3. Draft Outdoor Dining Licensing Agreement

Documents:

[LICENSE AGREEMENT \(OUTDOOR DINING WINCHESTER\)\(MSM COMMENTS\) \(1272938.1\).PDF](#)

H. CONSENT AGENDA

1. Staging Permit application from Fastsigns for The Branch Olive Oil Co. to install a sign at 3 Thompson Street in early May.
2. Staging Permit application from SignArt Inc for Locatelli Properties to install a sign at 10 Thompson Street by May 19, 2021

I. COMMUNICATIONS AND WORKING GROUP REPORTS

## LICENSE FOR OUTDOOR DINING

**THIS LICENSE FOR OUTDOOR DINING** (“License”) is entered into as of this \_\_\_\_ day of May, 2021, by and between the Town of Winchester, a municipal corporation, acting by and through its Select Board, with a mailing address of Town Hall, 71 Mount Vernon Street, Winchester, MA 01890 (the “Town”) and [NAME OF ENTITY], with a principal place of business at \_\_\_\_\_ (“Licensee”).

**WHEREAS** Licensee operates [RESTAURANT NAME] at [ADDRESS] (the “Property”);

**WHEREAS** in accordance with Chapter 20 of the Winchester Code of Bylaws, the Town may grant a temporary license for outdoor dining areas of appropriate design, configuration, and appearance that will be an amenity to the Town during the spring, summer and fall;

**WHEREAS** Governor Baker’s COVID-19 Order No. 35 dated June 1, 2020 provides that a city or town may approve requests for expansion of outdoor table service pursuant to the process for approving such requests established by the mayor of select board of such city or town;

**WHEREAS** there is adjacent to Licensee’s Property a public sidewalk and parking area, a portion of which is suitable for outdoor table service;

**WHEREAS** the Town possesses a number of [IDENTIFY EQUIPMENT BEING USED, e.g., Jersey barriers] (the “Equipment”), and is interested in making the Equipment available for use by Licensee to establish a safer outdoor dining area;

**WHEREAS** the Town desires to grant to Licensee a license for outdoor dining, pursuant to the terms and conditions of this License.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Licensee hereby agree as follows:

1. **Licensed Premises.** The licensed premises are a portion of the premises located at \_\_\_\_\_, Winchester, Massachusetts, [DESCRIBE eg., comprised of \_\_\_\_ parking spaces] (the “Licensed Premises”) and identified on the plan attached hereto as Exhibit A. The Town hereby grants to Licensee a non-exclusive license to use the Licensed Premises during the Term (as defined below) during Licensee’s normal business hours. Licensee hereby accepts the Licensed Premises in its present condition, "as is" as of the Commencement Date, without any representations or warranties of any kind.
  
2. **Permitted Use.** Licensee shall be authorized to use the Licensed Premises for the limited purpose of outdoor dining in connection with Licensee’s restaurant (the "Permitted Use"). The Licensed Premises shall only be used for the Permitted Use and for no other purpose. Use of the Licensed Premises is subject to Chapter 20 of the Winchester Code of Bylaws such reasonable rules and regulations as may be in effect from time to time including . **Outdoor service of alcohol is subject to separate approval by the Town and modification of Licensee’s existing liquor license.**

3. Equipment. [The Town will deliver the Equipment to the Licensed Premises as shown on Exhibit A Licensee will ensure that the Equipment remain securely in place at all times during which outdoor table service is being provided. [ADD ANY OTHER EQUIPMENT SPECIFIC REQUIREMENTS]. Licensee will be responsible for maintaining the Equipment while it remains at the Licensed Premises, and for returning the Equipment to the Town, at Licensee's expense, at the conclusion of this License in the same condition as it was in upon delivery. It is agreed that the Equipment is and shall remain the property of the Town and Licensee shall not make any improvements to, alter or remove any part thereof without the Town's express prior written consent.]

4. Term. The term of this License (the "Term") commences on **April 1, 2021** (the "Commencement Date") and expires on **October 31, 2021** (the "Termination Date"). Notwithstanding anything contained herein to the contrary, the Town or Licensee may terminate this Agreement (a) immediately in the event of fire or other casualty that causes significant damage to the Licensed Premises or if there are any other circumstances which cause the Licensed Premises to become unsuitable for the Permitted Use, as reasonably determined by the Town, or (b) at the sole discretion and convenience of the Town, with or without cause, upon thirty (30) days prior written notice to Licensee.

5. License Fee. [Licensee shall pay the Town \$\_\_\_\_\_ for use of the Licensed Premises for the Term.] [There shall be no license fee charged Licensee for its use of the Licensed Premises during the Term in accordance with this License.]

6. Maintenance of Premises. Licensee shall maintain the Licensed Premises in good upkeep, order and repair, ordinary wear and tear excepted and shall not allow any trash or rubbish to accumulate on the Licensed Premises. Licensee shall use the Licensed Premises in a commercially reasonable manner and generally maintain it in productive use during the Term. For the avoidance of doubt, the Town shall have no obligation to provide any maintenance, repair, upkeep, or management of the Licensed Premises, nor any obligation to furnish any services or utilities.

7. Insurance. Licensee will provide to the Town, prior to Commencement Date, certificates of insurance evidencing that Licensee carries insurance with a licensed insurance company acceptable to the Town. Such insurance shall be endorsed to name The Town as an additional insured and shall not be cancelled or modified without thirty (30) days' written notice to the Town. Licensee shall carry, throughout the Term, the coverages and limits as indicated below:

(i) Commercial general liability insurance, written on an occurrence basis, and including contractual liability coverage to cover any liabilities assumed under this License, for bodily or personal injury or death of persons or damage to property on or about the Licensed Premises. The limit to such liability insurance shall be not less than \$1 million per occurrence and \$3 million in the aggregate. Such liability insurance shall name The Town as an additional insured.

(ii) Worker's compensation insurance as required by the laws of the Commonwealth of Massachusetts covering persons employed by Licensee.

(iii) Personal property insurance in an amount sufficient to cover the loss of any and all of its property stored or kept at the Licensed Premises at 100% of its replacement value.

To the maximum extent permitted by law, this License shall not abrogate or diminish the Town's governmental immunity or limitation of liability under M.G.L. c.258, §§ 1-13, or other applicable law, rule or regulation.

8. Indemnification. Licensee shall indemnify, hold harmless, and defend (with counsel acceptable to the Town) the Town, including its board members, servants, agents, employees, representative and assigns, against any and all injury, loss, claim, penalty, action, lien, demand, liability, expense, fine, judgment, or damage, of whatever nature, including without limitation reasonable counsel fees and expenses, arising out of, relating to, or resulting from: (i) the any act or omission of Licensee or its officers, directors, servants, agents, employees, invitees, and representatives (collectively, the "Licensee Parties") on or about the Licensed Premises; (ii) Licensee's breach of this License; and (iii) generation, treatment, storage, discharge or disposal of Hazardous Substances on the Licensed Premises by the Licensee Parties, and the violation of any Environmental Laws on the Licensed Premises by the Licensee Parties, which shall include, without limitation, reasonable engineering and other professional fees and expenses for evaluating, and/or curing the same and for consulting, engineering, defending against any such claims or removing such Hazardous Substances, and for enforcing this indemnification.

9. Default. Each of the following events shall be deemed an "Event of Default" hereunder:

- (i) failure to pay the License Fee within 5 days of when due;
- (ii) use of the Licensed Premises for other than the Permitted Use,
- (iii) the failure of Licensee to maintain the insurance required hereunder, and
- (iv) the failure of Licensee to comply with or perform any other term, condition, or covenant contained herein, which failure continues for more than ten (10) after written notice from The Town to Licensee.

Upon an Event of Default, in addition to all other rights and remedies available at law or in equity, the Town shall be entitled to terminate this License upon written notice to Licensee.

10. Other Conditions.

10.1 Licensee shall not harm the Licensed Premises, or commit or permit waste, or create any nuisance or disturbance, or make any use of the Licensed Premises other than the Permitted Use.

10.2 Licensee agrees that upon the Termination Date or earlier termination of this License, Licensee shall promptly remove all of its personal property, equipment, and debris from the Licensed Premises, repair any damage caused by such removal and peaceably yield up the Licensed Premises in clean condition and in the same order and repair as required under Section 6 of this License. Any personal property or equipment of Licensee not removed prior to such expiration or earlier termination shall, at the Town's option, become the property of the Town.

10.3 During the Term of this License, Licensee shall comply, at its own cost and expense, with all applicable laws, by-laws, ordinances, codes, rules, regulations, orders, Environmental Laws,

and other lawful requirements of the state, federal, and local governmental bodies having jurisdiction ("Regulations"), which are applicable to the Licensed Premises and Licensee's particular use of the Licensed Premises or to the fixtures and equipment therein (including without limitation, the zoning bylaw and other bylaws of Winchester, Massachusetts, and Regulations governing hazardous substances or waste) and the requirements of all policies of public liability, fire and all other types of insurance at any time in force with respect to the Licensed Premises.

10.4 The Town grants to Licensee by this License a license only. To the extent permitted by law, this License does not create the relationship of landlord and tenant and is not subject to the laws of the Commonwealth of Massachusetts relating to leasing or the landlord and tenant relationship.

11. Access. The Town shall be permitted to enter the Licensed Premises at any time and shall provide any keys, passes or codes required to access the Licensed Premises to Licensee. The Town agrees to exercise its rights under this Section 12 in such manner as to prevent, or minimize to the extent practicable, any unreasonable interference with Licensee's use of the Licensed Premises.

12. Force Majeure. In no event shall the Town be liable to Licensee for any direct, indirect or consequential damages to Licensee if Licensee is delayed in or prevented from using the Licensed Premises as permitted under this License by reason of any cause beyond the Town's reasonable control, including, without limitation, acts of God, strikes, lockouts, labor troubles, failure of power or other utility services, riots, insurrection, war, pandemics, epidemics, or the requirements of any Regulations (herein "Force Majeure Events"). The failure of either party hereto to perform its obligations, covenants and agreements hereunder shall be excused during such period as the party failing to perform is unable to so perform by reason of Force Majeure Events; provided, however, Licensee shall not be excused from any monetary obligations hereunder by reason of any Force Majeure Events; and provided further, however, that in each such instance of inability of either party to perform, the non-performing party shall exercise due diligence to eliminate the cause of such inability to perform, to secure alternate sources of supply and the like.

13. Non-Assignment. Licensee shall not assign or otherwise transfer this License or any interest therein or permit any other person to use or occupy the Licensed Premises or any portion thereof except with the prior written consent of the Town, which consent the Town expressly reserves the right to withhold in its sole discretion. This License shall be binding upon the parties' respective successors, assigns and legal representatives.

14. Notices. Any notice required or permitted hereunder shall be in writing and shall be hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and addressed: if to the Town to:

Town Manager  
Town Hall  
71 Mount Vernon Street

Winchester, MA 01890  
scrane@concordma.gov

and if to Licensee to:

[Licensee]  
[Address]  
[email]

15. Miscellaneous.

15.1 The failure of either Licensee or the Town to insist upon the strict performance of any provision of this License shall not constitute a waiver of compliance with the remaining provisions of this License.

15.2 This License shall constitute the only agreement between Licensee and the Town relative to the use of the Licensed Premises, and no oral statements and no prior written matter not specifically incorporated herein shall be of any force and effect. In entering into this License, Licensee relies solely upon the representations and agreements expressly contained herein.

15.3 The parties acknowledge that this is a license and the rights to use the Licensed Premises and Equipment shall be deemed to be a license only and shall not be construed to be a lease, joint venture, partnership or as evidencing any relationship between the parties other than as a LICENSEE and LICENSOR. No interest in the Licensed Premises or Equipment or any other property of Licensee or the Town is hereby conveyed by the parties.

15.4 This License may be amended only by written agreement of both Licensee and the Town. This License may be executed in one or more counterparts, each of which shall constitute a part of the same instrument. Emailed or electronic signatures on this License shall have the same force and effect as an original signature.

15.6 This License shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

15.7 If any provision of this License is determined to be unenforceable by final judgment of a court of competent jurisdiction, the remaining provisions shall continue in effect to the extent permitted by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date above first written.

**TOWN OF WINCHESTER**  
**By its Select Board:**

By: \_\_\_\_\_  
Name: Lisa Wong  
Title: Town Manager, duly authorized

**[NAME OF LICENSEE]**

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Name:  
Title:



Exhibit A

[Attach plan showing Licensed Premises and location of Equipment]