DOWNTOWN OUTDOOR DINING (COVID-19) AGREEMENT

THIS AGREEMENT is made this __18__ day of December __________, 2020, by and between THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN, a Pennsylvania municipal corporation with its primary place of business at 100 E. High Street, Pottstown, Montgomery County, Pennsylvania, (hereinafter the “Borough”) and the POTTSTOWN AREA INDUSTRIAL DEVELOPMENT, INC., a Pennsylvania nonprofit corporation with a primary place of business at 152 East High Street, Suite 200, Pottstown, Montgomery County, Pennsylvania 19464, (hereinafter “PAID”).

BACKGROUND:

A. In response to the ongoing COVID-19 pandemic, Governor Wolf issued an Order of the Governor of the Commonwealth Wealth of Pennsylvania Directing Limited-Time Mitigation pursuant to the Emergency Services Code, 35 Pa.C.S. § 7301 which went into effect on December 12, 2020 at 12:01am (hereinafter the “Order”).

B. Section 2 of the Order prohibits all in-person indoor dining at retail food services industry including but not limited to bars, restaurants, breweries, wineries, distilleries, social clubs, and private catered events until at least 8:00pm on January 4, 2021.

C. PAID desires to facilitate outdoor dining for the retail food services industry located in the Borough’s downtown on municipal parking lots and requested permission to do so.

D. On December 14, 2020, Borough Council voted to authorize PAID to operate tented and heated outdoor dining space for use by the downtown restaurants in Lot #2 located at High & Charlotte Streets and Smith Family Plaza through March 18, 2021, subject to the approval of the Borough’s Manager and Solicitor and the Department of Transportation, where applicable.
NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the adequacy of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **INCORPORATION OF BACKGROUND.** Paragraphs A through D above are hereby incorporated into the content of this Agreement as if set forth herein at length.

2. **NON-EXCLUSIVE LICENSE.** The Borough hereby grants PAID a non-exclusive license to operate tented and heated outdoor dining space for use by the downtown retail food services industry on Lot #2 located at High & Charlotte Streets and Smith Family Plaza through March 18, 2021 subject to approval by the Borough's Manager and Solicitor, and the Department of Transportation with respect to Smith Family Plaza. The Borough may revoke approval of the license in whole or modify the license with the imposition of additional conditions, without notice, at any time, and for any reason, including but not limited to the reopening of indoor dining, inclement weather, safety issues, and liability concerns.

3. **OPERATION.** PAID shall provide adequate oversight of the operation to ensure that all participating retail food services industry establishments provide services consistent with industry standards and in compliance with all applicable federal, state, and local laws and regulations.

4. **RELEASE.** PAID hereby irrevocably and unconditionally releases, remises, and forever discharges the Borough, its officers, employees, agents, successors and assigns, of and from any and all actions, causes of action, suit, debts, charges, complaints, liabilities, claims, obligations, damages and expenses of any nature whatsoever, in law or equity, which PAID may have had against the Borough arising from or related to the scope of this Agreement.

5. **INDEMNIFICATION.** PAID shall indemnify and hold harmless the Borough, its officers, employees, agents, consultants, successors and assigns, and any other associated members, from any and all claims, actions, and judgments, including the cost of defense and any attorney's
fees, brought by any third party, arising from the scope of this Agreement including but not limited to the participating retail food services industry establishments and their employees and patrons.

6. **ASSIGNMENT.** PAID is prohibited from assigning this Agreement without the express written consent of the Borough.

7. **CHOICE OF LAW.** This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

8. **INTEGRATION.** The entire agreement between the parties is set forth herein and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this agreement.

**IN WITNESS WHEREOF,** and intending to be legally bound by this agreement, the parties have caused this agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below is duly authorized by all necessary and appropriate action to execute this agreement.

THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN

DATED: 12/18/2020

By: [Signature]
Justin Keller, Manager

Attest: [Signature]

POTTSTOWN AREA INDUSTRIAL DEVELOPMENT, INC.

DATED: 12/32/20

By: [Signature]
Peggy Lee-Clark, Executive Director

Attest: [Signature]