

**Agreement for Agreements Related to Special Economic Development
Alcoholic Beverage Permit Allocation**

This Formal Written Agreement and Use Agreement (“Agreement”) is entered into this _____ day of _____, 2017, by and between the Town of Whitestown, Indiana (“Whitestown” or “Town”) and [**Noble Romans, Inc. dba Noble Romans Craft Pizza and Pub**](“Holder”), located at [**6428 Whitestown Parkway, Whitestown, IN 46075**] (“Permit Premises”), and together referred to as the “Parties”.

WHEREAS, IC 7.1-3-20-16.8 (the “Act”) authorized the issuance of limited special alcoholic beverage permits within certain economic development areas, areas needing redevelopment, or redevelopment districts as established under IC 36-7-4 (“Economic Development Alcohol Permits”);

WHEREAS, the Town Council adopted Ordinance 2016-09, Regarding Eligibility and Agreements for Certain Economic Development Alcohol Beverage Permits (“Ordinance”), requiring a formal written commitment as a condition of continued eligibility for all Holders of an Economic Development Alcohol Permit;

WHEREAS, subject to the Act, the Ordinance, and Whitestown’s policy regarding *Criteria for Allocation and Applicant Commitment Requirements*, Holder is required to enter into this Agreement regarding the character and type of business that will be conducted on the Permit Premises; and

WHEREAS, the intent of this Agreement is to ensure that the Holder operates a restaurant that provides a dining experience and is consistent with the Holder’s representations to the Town and its application attached as **Appendix A**.

NOW, THEREFORE, in consideration of receiving favorable continued support from the Town for its Economic Development Alcohol Permit, Holder hereby agrees to the following requirements, covenants, and restrictions on the use of the Permit Premises licensed by the Indiana Alcohol and Tobacco Commission:

Section 1. Recitals. The Recitals set forth above are hereby fully incorporated in and made a part of this Agreement by reference.

Section 2. Location. Pursuant to IC 7.1-3-20-16.8, an Economic Development Alcohol Permit may not be transferred to a new Permit Premises. Any attempt to transfer the Economic Development Alcohol Permit to a new location shall be void and shall constitute a violation of this Agreement, which could cause the Economic Development Alcohol Permit to be revoked by the IATC. The Town may publicly advise against the renewal of the Economic Development Alcohol Permit in lieu of formally voiding this Agreement.

Section 3. Ownership and Management. Except as provided in IC 7.1-3-20-16.8, ownership of an Economic Development Alcohol Permit may not be transferred. Any material change in the equity ownership or management of the Holder or Permit Premises renders this

Agreement voidable at the sole discretion of the Town. The Town may publicly advise against the renewal of the Economic Development Alcohol Permit in lieu of formally voiding this Agreement.

Section 4. Permit Application and Renewals. Holder has provided the Town with its IATC Application for New Permit as set forth in **Appendix B** to this Agreement. All additional renewals, forms, applications, questionnaires, and disclosures that Holder submits to the IATC, at any time, must be submitted to the Town of Whitestown Town Manager's Office with a copy to the Town of Whitestown's Redevelopment Commission within two (2) business days following submission to the IATC.

Section 5. Character and Uses. Holder shall use the Permit Premises for the operation of a full-service, upscale restaurant (*e.g.*, a restaurant where food and drink orders are primarily taken from, and served to, seated customers at tables, by wait staff that are not bartenders). The menu and offerings of the Permit Premises shall be primarily designed to provide an upscale dining experience to the public. The Holder shall, at all times of operation, provide to the public its full menu from its kitchen facility. The Holder shall operate a minimum of five (5) days per week and four (4) consecutive hours during each day of operation. The Town may void this Agreement or publicly advise against the renewal of Holder's Economic Development Alcohol Permit if the use of the Permit Premises is merely designed to provide customers with an alcohol consumption experience (*e.g.*, a majority of sales or transactions occur at the bar counter). If the Holder desires to change or amend its use of the Permit Premises, Holder must first receive Town's written consent, which shall become a part of this Agreement. Any unauthorized change in use renders this Agreement voidable at the sole discretion of the Town. The Town may publicly advise against the renewal of the permit in lieu of formally voiding this Agreement.

Section 6. Additional Obligations. Holder covenants the following:

- a) All representations and commitments written in **Appendix A** of this Agreement, as amended or supplemented over time, are full and binding obligations of Holder.
- b) Permit Premises shall be fully non-smoking and Holder must operate the Permit Premises in strict compliance with the Town's No Smoking Ordinance.
- c) Holder agrees to help connect Whitestown businesses to the community through participation as an active member in (and in the creation of) the Whitestown Chamber of Commerce.
- d) Holder agrees and acknowledges that the restaurant and Permit Premises must remain in compliance with all state and local laws, rules, regulations and ordinances, including but not limited to, all building, health, and zoning laws.
- e) Holder agrees to comply with the Act, and Town Ordinance 2016-09, regardless of whether such provisions are specifically expressed in this Agreement.

- f) Holder acknowledges and agrees that any breach of the foregoing covenants renders this Agreement voidable at the sole discretion of the Town. The Town may publicly advise against the renewal of the Economic Development Alcohol Permit in lieu of formally voiding this Agreement.
- g) Holder has received a copy of the *Criteria for Allocation and Applicant Commitment Requirements*, which may be amended from time to time. Holder accepts the terms and agrees to be bound by its provisions, as amended.
- h) Holder is responsible for at all times operating its restaurant in compliance with its application, written commitments and supporting information presented to the Town. Holder shall not change the name, location, and/or otherwise make substantial changes in the operation of their restaurants (i.e., change in type of restaurant and/or cuisine, etc.) without notifying the Town, and if deemed necessary by the Town, obtaining the approval of the Town. Requests for approval of the above changes must be submitted in writing to the Town Manager and Redevelopment Commission. Holder will designate one key individual, who will maintain a direct association with the Town, while Holder maintains a permit.
- i) Upon request, Holder shall provide information and documentation to the Town that is requested for the purpose of determining compliance with the written commitments. Holders for Permits shall, upon request, be responsible for attending a meeting with the Town and providing a report to the Town concerning its operations.
- j) Failure to abide by this Agreement shall constitute grounds for the Town to seek suspension or termination of Holder's ability to offer alcohol in its restaurant. If, in the opinion of the Town Council and/or the Town's Redevelopment Commission, the Holder fails to adhere to these requirements; violates any requirements or conditions accepted as part of the Holder's application, and/or breaches any provision of this Agreement, the Town Council and/or the Town's Redevelopment Commission may take any action, including legal enforcement, to seek compliance and/or revocation of the alcoholic beverage permit.
- k) Holder agrees at its sole expense to pay and to indemnify and save harmless the Town and its respective officers and agents harmless of, from and against, any and all claims, damages, demands and expenses and liabilities related to this Agreement.
- l) [Insert any additional commitments to be added by the Town if necessary, in accordance with the discretionary provisions of the *Criteria for Allocation and Applicant Commitment Requirements*.]

Section 7. Town's Permit Recommendation. In consideration and as a material inducement for Holder fulfilling its obligations under this Agreement, the Town shall, upon execution of this agreement, provide the IATC with the following: (1) a copy of this agreement; (2) a copy of the Ordinance and *Criteria for Allocation and Applicant Commitment*

Requirements; and (3) a letter from the Town Manager or his designee indicating that Holder was properly approved through the Town's process.

Section 8. General Provisions. The Parties agree as follows:

- a) This Agreement shall extend to and be binding upon the heirs, personal representatives, and successors of the Holder.
- b) This Agreement may not be modified or amended unless agreed upon in writing and signed by the Parties.
- c) This Agreement may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- d) This Agreement and its Appendices constitute the entire agreement of the Parties with respect to this matter, and it supersedes all prior negotiations, representations, or agreements, either written or oral, between the Parties.
- e) The Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. Any proceeding seeking to enforce any provision of this Agreement may only be brought in a court sitting in Boone County, Indiana.
- f) The IATC and its associated Local Board has independent regulatory authority over these matters and the Town of Whitestown cannot be held liable or responsible for any act of the IATC. Furthermore, the Town of Whitestown has no duty or responsibility to advocate or intervene in any proceeding before the IATC or its associated Local Board.
- g) If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.
- h) This Agreement may not be assigned without the express prior written consent of the Town.
- i) This Agreement shall be deemed to be for the benefit solely of the Parties hereto and shall not be deemed to be for the benefit of any third party.
- j) Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all Parties hereto have executed this agreement and the Town has approved or ratified this agreement as required by law.

k) Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town and Holder or any affiliate thereof.

Section 9. Notice. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier or delivery service to the following addresses, unless otherwise specifically advised.

Notices to the Town shall be sent to:

Town of Whitestown
Municipal Complex
6210 Veterans Drive
Whitestown, IN 46075
Attn: Town Manager

Notices to the Holder shall be sent to:

Section 10. Term. The Agreement shall become effective upon approval by the Town and shall remain effective so long as the Holder continues to hold an active, unexpired Economic Development Alcohol Permit with the IATC.

Section 11. Breach and Remedies. Notwithstanding anything to the contrary contained herein, the Town shall have the right to seek legal, injunctive, or other equitable relief from a court of competent jurisdiction in the event of a breach. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available herein. The Town is not required to exhaust remedies with the IATC before proceeding against Holder in event of breach.

Section 12. Authorized Party. Each individual executing this Agreement represents that he/she has the requisite authority to sign this Agreement.

[Signature Page Immediately Following]

All of this having been agreed to by the Parties on the date first indicated above and memorialized by the signatures contained herein.

Holder: _____

Town of Whitestown, Indiana

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A
Application for Economic Development Alcohol Permit
[See Next Page for Attached Application]

Appendix B
Application to the Indiana Alcohol and Tobacco Commission
for New or Renewal Permit
[See Next Page for Attached Application]