

**ENCROACHMENT LICENSE AGREEMENT**

**Address:**

41 W. Jefferson Ave. Suite #109  
Naperville, IL 60540

**PIN:** 07-13-423-026

**Return to:**

City Clerk  
City of Naperville  
400 South Eagle Street  
Naperville, IL 60540  
Attn: TED

(for Recorder's Use Only)

**ENCROACHMENT LICENSE AGREEMENT**

**41 W. JEFFERSON AVE. SUITE # 109**

**THIS ENCROACHMENT LICENSE AGREEMENT** (hereinafter "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2019, between the City of Naperville, an Illinois municipal corporation and home rule unit of government under the laws and Constitution of the State of Illinois (hereinafter "**City**" or "**Licensor**"), with offices at 400 South Eagle Street, Naperville, Illinois 60540, and Jefferson & Main, LLC (hereinafter "**Licensee**"). The Licensor and Licensee may be referenced herein in the singular as "**Party**" or in the plural as "**Parties**."

**RECITALS**

A. Licensee owns real property located at 41 W. Jefferson Avenue, Suite 109, Naperville, IL 60540 (PIN 07-13-423-026) (hereinafter "**Subject Property**") legally described as follows:

LOT 1 IN R.R. BREITWIESER CORNER, BEING A RESUBDIVISION OF THE WEST 25 FEET OF LOT 15 IN BLOCK 17 IN ASSESSOR'S SUBDIVISION OF BLOCKS 13, 16, AND 17 IN ORIGINAL TOWN (NOW CITY) OF NAPERVILLE, A SUBDIVISION IN THE SOUTH HALF OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AUGUST 30, 2018 AS

DOCUMENT R2018-081767, IN DUPAGE COUNTY, ILLINOIS.

B. A commercial building (hereinafter “**Commercial Building**”) is located on the Subject Property. A tenant space in the Commercial Building has been leased by the Licensee to CINNAHOLICS, with offices at 41 W. Jefferson Avenue, Suite 109, Naperville, IL 60540 (hereinafter “**Tenant**”).

C. Licensor owns or otherwise has an interest in the real property to the west and adjacent to the Subject Property used for Main Street right-of-way as legally described and depicted on **Exhibit A** (hereinafter “**Licensor’s ROW**”).

D. Licensee has requested permission for its Tenant to place a sign, commonly referenced as a “blade” sign, which will attach to the west façade of the Commercial Building on the Subject Property adjacent to Suite #109, and will extend over the Licensor’s ROW as depicted on **Exhibit B** attached hereto and made part hereof (hereinafter “**Encroachment**”).

E. Licensor has determined that the Encroachment as provided for herein will not adversely impact the use of the Licensor’s ROW or impair the public health, safety, and welfare.

F. Licensor and Licensee agree that the license (“License”) granted hereunder is given at the discretion of Licensor and in no way shall be construed as giving Licensee a real property interest in Licensor’s ROW. By execution of this Agreement, Licensee disclaims any possible claim based on adverse possession of any portion of Licensor’s ROW.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and in the exercise of the City’s home rule authority, the Parties hereto agree as follows:

1. Recitals. The Recitals above are hereby incorporated into and made a part of this paragraph 1 as though fully set forth herein.
2. License for Encroachment. To the extent of its authority, Licensor hereby grants to Licensee, for the benefit of Licensee’s Property, a nonexclusive license for the Encroachment described herein, at no cost to Licensee, subject to applicable inspection fees, to extend over and thereby encroach upon Licensor’s ROW as provided herein. The Licensor’s ROW over which said

Encroachment extends shall be known herein as the “**Encroachment Area**”.

Said Encroachment shall:

- (i) be located on the west façade of the Commercial Building adjacent to Suite 109;
  - (ii) extend not more than three feet (3’) over Licensor’s ROW;
  - (iii) have a clearance of at least eight feet (8’) above the Licensor’s ROW; and
  - (iv) be comprised of the design, wording, color, and materials depicted on **Exhibit B** attached hereto and made part hereof unless otherwise approved by the City.
3. Use of Encroachment Area. The License herein granted is limited to the use by Licensee’s Tenant of the Encroachment Area for the purpose of constructing, reconstructing, maintaining, repairing and replacing thereon the Encroachment pursuant to the provisions set forth herein. The License herein granted is solely to Licensee for use by the Tenant and shall not be transferable to any other tenant, individual or entity.
4. Limits of License. Licensee agrees that this grant of License to encroach shall not otherwise modify, impair, or remove rights or restrictions of record. The Parties agree that this License is subject to any rights of third parties in Licensor’s Property and Licensor makes no warranty regarding Licensee’s right to use the Encroachment Area except as regards to the interest of Licensor as provided herein.
5. AS-IS Condition. Licensee accepts the Encroachment Area “AS-IS” in its present condition.
6. Defense, Indemnification, Hold Harmless. Licensee assumes all liability and shall defend (with legal counsel approved by Licensor, which approval shall not be unreasonably withheld), indemnify, hold harmless, and compensate Licensor and its officers, agents, employees, and representatives from any and all claims, causes of action, damages, lawsuits, and/or administrative proceedings including but not limited to injury or damage to person or property, or claim thereof, occasioned by or arising in connection with the Encroachment and/or the Encroachment Area , including but not limited to the existence, use,

or condition of said Encroachment and/or of the Encroachment Area . Licensee further agrees to defend, indemnify, and hold harmless Licensor and its officers, agents, employees, and representatives against: (i) any claims, causes of action, damages, lawsuits and/or administrative proceedings, including, but not limited to injury or damage to person or property, or claim thereof, arising out of this Agreement, the Encroachment, the condition of the Encroachment Area, or any act or omission of Licensee, Licensee's agents, or assigns, or any independent contractor action on Licensee's behalf; and (ii) any claim, costs, or expenses (including but not limited to attorneys' fees, whether in-house or outside counsel) incurred by Licensor in enforcing the terms and provisions of this Agreement. Nothing contained herein shall be constructed as a limitation or waiver of defenses available to the Licensor and its agents, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

7. Insurance. Licensee shall at all times maintain insurance on the Commercial Building including but not limited to the Encroachment. Licensor, and its officers, agents, and employees shall be named as an additional insureds with respect to said Encroachment. Upon a request by the City, Licensee shall provide a certificate of insurance and additional insured endorsement which evidence compliance with this provision.
8. Obligations as to Condition of the Encroachment.
  - a. Licensee shall construct, reconstruct, repair, restore, and maintain the Encroachment as depicted on **Exhibit B**, and in accordance with any permits issued therefor by the City of Naperville. The design, wording, and materials of the Encroachment shall not be modified without written City approval.
  - b. The Encroachment shall at all times be maintained in an aesthetically pleasing, safe and clean condition, free of graffiti, peeling or cracked materials, spalling, or any deteriorated condition.
  - c. Upon demand from Licensor, Licensee shall immediately correct any violation of the provisions set forth herein and shall correct any defect

which, in the sole determination of Licensor, presents an unsightly or unsafe condition.

- d. Licensor shall have the right, but not an obligation, to enter upon the Licensee's Property to remove or otherwise render safe the Encroachment when, in the reasonable determination of the Licensor, such action is needed to protect the public health, welfare or safety and Licensee shall have failed to take appropriate remedial action after five (5) business days' written Notice from Licensor describing the existing condition (except in the case of emergency, in which case no prior notice shall be required). Licensee shall reimburse Licensor for all reasonable costs and expenses incurred by the Licensor in undertaking the foregoing actions.
  - e. Nothing contained herein shall impose upon Licensor any duty or obligation to construct, reconstruct, repair, restore, or maintain the Encroachment Area.
9. Restoration of Encroachment Area. Upon completion of any work affecting the Encroachment Area, Licensee shall promptly restore the Encroachment Area as required by Licensor to the same or better condition than that which existed prior to the beginning of any work.
10. Binding Effect. Unless the License granted herein is revoked by Licensor as to the Encroachment, or is otherwise terminated as provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns and upon any subsidiary, affiliate or parent of Licensee or any corporation or other business entity that has a controlling interest in Licensee either now or in the future.

Every person or entity now or hereafter owning or acquiring any rights, title or interest in or to the Subject Property and/or the Commercial Building, or any portion thereof, is and shall be conclusively deemed to have consented and agreed to every obligation, condition and restriction contained herein whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired such right, title or interest.

11. Applicability of License. The License granted herein shall be applicable only to the blade sign approved by City of Naperville Permit 19-4221 and shall not be applicable to any other sign unless this Agreement is amended to include such sign.
12. Notice. Except as otherwise provided herein, when notice is required herein (“Notice”), it shall be given by FedEx or overnight mail, or by prepaid registered or certified mail, addressed to the individuals or entities set forth below:

**IF TO THE CITY:**

City of Naperville  
Attention: City Engineer  
400 South Eagle Street  
Naperville, IL 60540

**WITH COPIES TO:**

City of Naperville  
Attention: City Attorney  
400 South Eagle Street  
Naperville, IL 60540

**IF TO THE OWNER:**

Jefferson & Main, LLC  
510 White Oak Drive  
Naperville, IL 60540

The Licensor and Licensee, may, by written Notice to the other Party, substitute names and addresses for notices as appropriate.

13. Revocation/Termination

- a. Licensor Revocation. The License granted by Licensor herein may be revoked by Licensor as to the Encroachment upon sixty (60) days’ Notice to Licensee if: (i) Licensor determines, in Licensor’s reasonable discretion, that Licensee has failed to properly maintain the Encroachment or comply with the terms of this Agreement; (ii) the Encroachment presents a potential danger to or is determined by Licensor to be inconsistent with the public’s health, safety or welfare; (iii) Licensee gives Notice to Licensor of its decision to cease using the Encroachment; or (iv) the Encroachment is removed or destroyed and

is not replaced or repaired within sixty (60) days or such other timeframe as may be agreed upon by the City Engineer.

- b. Licensee Termination. Licensee may terminate this Agreement and the License granted hereunder upon sixty (60) days' Notice to Licensor provided that: (i) the Encroachment has been removed; and (ii) all costs, expense, and fees, if any, owed to Licensor under this Agreement have been paid in full.

14. Removal of Encroachment/Restoration. In the event of revocation or termination as provided herein, or in the event that Licensor determines that removal of all, or a portion, of the Encroachment is necessary in order to provide the public health, safety and welfare, Licensee shall promptly cause the removal of the Encroachment, or portion thereof, in a safe and aesthetically reasonable manner. If Licensee fails to effect such removal within thirty (30) days or Notice, or such other timeframe as is agreed upon in writing by the City Engineer, Licensor shall have the right, but not the obligation to enter upon Licensee's Property to remove the Encroachment. All costs of said removal shall be borne by Licensee and shall be paid to Licensor as provided herein.

15. Right to Lien/Other Remedies. Wherever costs, fees, and/or expenses are provided to be paid to Licensor herein, they shall be promptly paid in full by Licensee within thirty (30) days of issuance of a bill therefor issued by Licensor to Licensee at the address provided for in paragraph 12 above. If Licensee fails to pay Licensor in full within thirty (30) days of issuance of a bill therefor, Licensor may lien Licensee's Property for said costs, plus attorney's fees and costs (in-house or outside counsel), and/or take any other action it deems appropriate at law or in equity. Any lien or liens hereunder shall be recorded with the DuPage County Recorder and shall constitute a lien on Licensee's Property deemed to run with the land. Such lien or liens shall be superior to all subsequent liens and encumbrances. Such lien or liens may be enforced by Licensor by proceedings to foreclose such as in the case of mortgage or mechanic's liens.

## 16. General Provisions

- a. Amendment. No subsequent amendment, modifications, or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.
- b. Choice of Law and Venue. The laws of the State of Illinois shall govern the terms of this Agreement as to both interpretation and performance. Venue for action arising out the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- c. Severability. In the event that one or more of the provisions contained in this Agreement should for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- d. Ambiguity. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- e. Recordation. This Agreement shall be recorded in the Office of the DuPage County Recorder.
- f. No Waiver. Neither Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving Party and, then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to a waiver of any right or remedy as to a subsequent event.
- g. Attorneys' Fees. Licensee shall be responsible to pay Licensor's reasonable attorneys' fees and costs (whether in-house or outside counsel) associated with enforcement of any aspect of this Agreement.
- h. Exhibits Incorporated. Each exhibit referenced herein shall be deemed to be incorporated herein and made part hereof.



- i. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.
- j. Authorization. The undersigned warrant and represent that they are authorized to execute this Agreement.
- k. Survival. All provisions of this Agreement which provide that the City is owed money or is otherwise entitled to reimbursement for any reason and the provisions contained in the following paragraphs shall survive any revocation, termination or novation of this Agreement: 4, 5 6, 9, 14, 15, 16B, 16C through 16l through 16K.

**IN WITNESS WHEREOF**, the parties hereto have executed this Encroachment License Agreement as of the day and year first above written.

/Signatures on following pages/

**LICENSOR, CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**Attest:**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

State of Illinois        )  
                                  ) ss  
County of DuPage     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Douglas A. Krieger**, personally known to me to be the City Manager of the City of Naperville, and **Pam Gallahue**, personally known to me to be the City Clerk for the City of Naperville, appeared before me this day in person and acknowledged that they signed this instrument in their respective capacities as the City Manager and City Clerk of the City of Naperville pursuant to authority granted to them by the City Council of the City of Naperville.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

(seal)

\_\_\_\_\_  
Notary Public

**LICENSEE/JEFFERSON & MAIN, LLC**

By: \_\_\_\_\_

[Print Name] \_\_\_\_\_

[Title] \_\_\_\_\_

State of Illinois        )  
                                  ) ss  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her free and voluntary act for the uses and purposes herein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

(seal)

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

LOT 1 IN R.R. BREITWIESER CORNER, BEING A RESUBDIVISION OF THE WEST 25 FEET OF LOT 15 IN BLOCK 17 IN ASSESSOR'S SUBDIVISION OF BLOCKS 13, 16, AND 17 IN ORIGINAL TOWN (NOW CITY) OF NAPERVILLE, A SUBDIVISION IN THE SOUTH HALF OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AUGUST 30, 2018 AS DOCUMENT R2018-081767, IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-13-423-026

COMMON ADDRESS: 41 W. JEFFERSON AVENUE #109, NAPERVILLE, IL 60540

**EXHIBIT B**