

EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY OF HELENA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 316 North Park Avenue, Helena, Montana 59623, hereinafter referred to as "City," and **THE GEORGE AND BOBBIE CLEWOW FAMILY TRUST**, 749 East Dillon Street, Dillon, Montana 59725, hereinafter referred to as "User."

The City, for and in consideration of the conditions and covenants to be performed by User as set forth herein, does hereby permit and allow User to use that certain right-of-way situated in the City of Helena, County of Lewis and Clark, State of Montana, described as follows:

The portion of the Grand Street right-of-way adjacent to Lot 39, and Lots 93-94 in Block 37 of the Original Helena Townsite, as shown on Exhibit "A" attached hereto and by this reference made a part hereof ("Property").

1. **Purpose of Agreement:** User desires to maintain an open air patio seating area adjacent to and as part of User's licensed premises located at 101 North Last Chance Gulch, commonly known as The Sapphire Lounge.

2. **Use:** User may use and occupy the Property for the purpose of operating an open air patio seating area attendant to the User's licensed business premises located adjacent to the Property. The open air patio seating area will only be operated during those times when the primary premises are open for business. The open

air patio seating area may not be operated as a separate, stand-alone business. User agrees to use and occupy the Property in accordance with the following conditions:

a. User must use the Property in a careful and prudent manner and may not commit any waste thereon. User agrees to maintain the Property and all User's personal property situated on the Property in a neat and attractive condition at all times. User will not permit debris, junk, or other unsightly matter to accumulate upon the Property. User will provide a landscaping plan for review and approval by the City for any landscaping proposed to be done on the Property.

b. User may not use or occupy the property for any unlawful purpose, and User shall conform to and obey all present and future laws, ordinances, rules, and regulations of all governmental authorities or agencies, respecting the use of and occupation of the property.

c. The occupancy per square foot for the open air patio seating area may not exceed the occupancy limits established for interior licensed premises use under the City's adopted building code.

d. Exterior lighting may be used to illuminate the open air patio seating area, but it may not be placed so as to constitute a trespass on neighboring property, which is prohibited by the Helena City Code.

f. User must control waste generated by the use of the Property and not allow litter to accumulate.

g. Use of the property may not inhibit or interfere with the peaceable, safe use of, or access to adjacent properties.

3. **Consideration for Use:** User will pay \$0.40 per square foot per year as the fee for use of the Property being used for the open air patio seating area which is approximately 400 square feet.

4. **Liability:** The City is not responsible for the open air patio seating area or other permitted improvements on the Property, or for any damage to or maintenance of or replacement of User's improvements or personal property located upon the Property.

5. **Improvements:** User agrees that no fixture, building, structure, or other permanent installation will be constructed or placed upon the Property except as herein provided or otherwise authorized by the City. The City reserves the right to enter upon the Property and remove, after notification, any obstacles or structures that may be hazardous to the public.

6. **Indemnity and Insurance:** User agrees to protect, indemnify, defend, and save harmless the City against and from any and all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them arising in favor of or asserted by any person or entity on account of personal injury, death, or damage to property arising out of, in

connection with, or incidental to the User's use and maintenance of the open air patio seating area, including, but not limited to, any defect in the original installation or design of the open air patio seating area. For this purpose, User shall provide the City with proof of User's liability insurance issued by a reliable company or companies for personal injury and property damage in an amount not less than \$1.0 million for each occurrence. The insurance must be in a form suitable to the City.

8. Assignments: User may not sublease, assign, rent, or permit the use of this Property to or by any other party except for a subsequent purchaser of the adjacent licensed premises, and then only with permission from the City.

9. Existing Utilities: The use of the Property is subordinate to the right of any private or public utility now lawfully occupying the Property to continue to operate and maintain utility facilities thereon, and the City retains all rights to grant additional utility easements on or across said Property. New grants of utility easements will require reclamation by the utility of the Property disturbed by installation of any utility's facilities.

10. Liens: User agrees that it will not permit any lien to attach to or become an obligation against the Property.

11. Hazardous Materials: User may not deposit or discharge any hazardous materials upon the Property, either intentionally or

negligently. User agrees to remove the open air patio seating area and undertake and pay all costs and expenses associated with necessary cleanup of the Property in the event of User's breach of this paragraph.

12. Property Interest: This Agreement does not vest User with any compensable interest in the Property. This Agreement is a personal license for User to use and maintain the open air patio seating area on the Property and does not create any real property right to the benefit of User and is not to be considered a vacation of right-of-way.

13. Binding Effect: This Agreement shall be binding upon the parties hereto, their heirs, successors, administrators, and assigns.

CITY OF HELENA, MONTANA

By Ronald J. Alles
Ronald J. Alles, City Manager

Date

THE GEORGE AND BOBBIE CLEMOW FAMILY TRUST

By George Clemow
George Clemow, Managing Member

9-18-15
Date

APPROVED AS TO FORM:

By Thomas J. Jodoin
Thomas J. Jodoin, City Attorney