

**VULCAN HERITAGE PARK
PATIO PREMISES LEASE AGREEMENT**

City of Appleton –and– J Restaurant, LLC, d/b/a Fratellos Riverfront Restaurant

THIS LEASE AGREEMENT (“Lease”) is made and entered into by and between the City of Appleton, Wisconsin, a municipal corporation, having a mailing address of 100 North Appleton Street, Appleton, WI 54911, (“Landlord”) and J Restaurant, LLC, d/b/a Fratellos Riverfront Restaurant, having a mailing address of 1621 Congress Avenue, Oshkosh, WI 54901 (“Tenant”). The Landlord and Tenant shall be referred to herein as “The Parties”.

The Landlord is the owner of land and improvements officially known as Vulcan Heritage Park, located at the west end of Water Street in Appleton, Wisconsin (“the Park”), with an address of 535 Water Street, Appleton, WI 54911. The City makes available for lease a portion of the Park currently designated as the Leased Patio Premises immediately west of the Tenant’s property located at 501 West Water Street, Appleton, WI, as identified on the attached diagram marked as Exhibit A and incorporated herein by reference (“Leased Patio Area”). The Landlord desires to continue to lease the Leased Patio Premises to Tenant, and Tenant desires to continue to lease the Leased Patio Premises from the City for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, it is agreed:

1. **Lease Term.**

The Landlord hereby leases the Leased Patio Premises to Tenant, and Tenant hereby leases the same from the Landlord, for use during the entirety of the term beginning with the proper and full execution of this agreement ending the last Sunday of October during the year 2030 (“Lease Term”).

2. **Consideration.**

For the good and valuable consideration of this Lease, and prior to commencement of each annual rental period, Tenant shall pay annual rent to the Landlord as follows:

Year 2026 - \$3,375 (Three Thousand Three Hundred Seventy-five Dollars)
Year 2027 & 2028 - \$3,425 (Three Thousand Four Hundred Twenty-five Dollars)
Year 2029 & 2030 - \$3,475 (Three Thousand Four Hundred Seventy-five Dollars)

3. **Use.**

- A. Tenant may use the Leased Patio Premises for the sole purpose of providing food and beverage service to its customers of Fratellos Riverfront Restaurant.
- B. Food and beverage service shall be limited to the Leased Patio Premises during the hours between 10:00 a.m. to 11:00 p.m. These hours may be extended for special events upon written permission from the Parks and Recreation Department Director, with a minimum of forty-eight (48) hours notice to the Director.
- C. Tenant shall provide food and beverage service on the Leased Patio Premises in compliance with all applicable City and State licenses and permits.
- D. Tenant shall provide trained serving staff on the Leased Patio Premises during all food and beverage service hours.
- E. Tenant shall permit the general public to use the Leased Patio Premises during regular service hours provided such use does not conflict with Tenant's food and beverage licensing.

4. **Furniture Improvements.**

- A. Tenant will purchase and provide all furniture necessary for the Leased Patio Premises. The furniture theme shall be consistent with the current amenities found in the Park.
- B. Tenant shall be solely responsible for all furniture placed within the Leased Patio Premises and shall be responsible for the care and upkeep of said furniture. All furniture must be of sufficient quality and weight to withstand reasonably expected wind and weather conditions.

5. **Inspection.**

- A. On a day and time mutually agreed upon by the Parties, to occur annually, Landlord shall inspect the Leased Patio Premises and note any existing damage or defect therein on an inspection report ("Inspection Report"). Landlord shall provide Tenant with a copy of the Report within forty-eight (48) hours of the inspection, and shall have one week to review the Report. Should Tenant disagree with any of the findings in the Report, Tenant must notify Landlord prior to the end of the week review or Tenant shall waive its right to contest the findings therein.

- B. On a day and time mutually agreed upon by the Parties, to occur annually within one week of the last Sunday in October, Landlord shall re-inspect the Leased Patio Premises and note any change in its condition from the Inspection Report on a new report (“Re-Inspection Report”). Landlord shall provide Tenant a copy of the Re-Inspection Report within forty-eight (48) hours of the re-inspection. Tenant shall have one week to review the Re-inspection Report. Should Tenant disagree with any of the findings in the Re-inspection Report, Tenant must notify Landlord prior to the end of the one week review or Tenant shall waive its right to contest the findings therein.
 - i. Should there be a change in conditions beyond the usual wear and tear associated with the careful usage of the Leased Patio Premises, Landlord will provide Tenant a written estimate of the cost to return the Leased Patio Premises to its original condition. Should Tenant wish to contest the estimate Tenant may do so within forty-eight (48) hours receipt of said estimate. Tenant shall be responsible for paying to Landlord the full cost of the estimate within fourteen (14) business days receipt of said estimate.

6. **Property Maintenance.**

- A. During the Lease Term, and in consideration of the opportunity to lease the space, Tenant shall maintain and clean on a daily basis the Leased Patio Premises and the immediate surrounding area to the same conditions as presented in the Report.
 - i. The immediate surrounding areas shall include, but is not limited to, the parking lot, walkways, planters and turf areas.
 - ii. All cleaning and maintenance shall be consistent with standards for operation of a restaurant. Such maintenance shall include, but not be limited to, waste and litter disposal, walkway cleaning, general site inspection, and daily plant care.
- B. Upon the conclusion of this Lease, the Leased Patio Premises shall be left in a good and clean condition just as said premises was delivered to the Tenant at the start of this Lease, excepting for standard wear and tear resulting from careful use of the Leased Patio Premises.
- C. Should Tenant or any agent or employee of the Tenant, or any third-party doing business with Tenant, become aware of any damage or change in condition to the Leased Patio Premises including, but not limited to, structural damage, from any source or cause, including damage caused by the Tenant, Tenant shall immediately notify Landlord of said damage.

- D. Tenant and Tenant's employees shall be mindful in observing the areas externally surrounding the Leased Patio Premises and shall notify the Landlord of any change in condition that may or may not affect the Leased Patio Premises or any other area.

7. **Insurance and Indemnification.**

- A. The Parties shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities at the Leased Patio Premises with the premiums thereon fully paid on or before due date, with coverage starting prior to the Lease Term, issued by and binding upon some insurance company approved by Landlord, with such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. The Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide the Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of its insurers to notify the Landlord if a policy is due to expire at least (10) days prior to such expiration.
- B. The Landlord shall not be required to maintain insurance against theft or damage to Tenants' property within the Leased Patio Premises.
- C. **THE TENANT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE LANDLORD AND ITS OFFICERS, OFFICIALS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSES, COSTS (INCLUDING ATTORNEY'S FEES) ARISING OUT OF THIS LEASE, CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE TENANT, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TENANT OR ANYONE WHOSE ACTS THE TENANT MAY BE LIABLE FOR, EXCEPT WHERE CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LANDLORD.**
- D. **THE UNDERSIGNED TENANT HAS READ AND THOROUGHLY CONSIDERED THE ABOVE LANGUAGE, UNDERSTANDING THAT CERTAIN RIGHTS MAY BE FORFEITED AS A RESULT OF THIS LANGUAGE.**

8. **Signs.**

- A. Upon Landlord's written consent, Tenant shall have the right to place on the Leased Patio Premises, at locations mutually selected, signs or advertisement, including third-party signs or advertisements, which are of a theme or design consistent with the current amenities found in the Park and are permitted by applicable zoning ordinances and private restrictions.

- i. Sign placement shall include, but is not limited to, signs placed on tables, chairs, fences, barriers, or umbrellas which may be in the view of the public from outside the Leased Patio Premises.
- B. Tenant agrees that no sign or third-party sign placed on the Leased Patio Premises will promote alcohol, tobacco or drug use or contain morally questionable or overly suggestive themes.
- C. The Landlord may refuse approval of any sign deemed too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Patio Premises.

9. **Notices.**

- A. Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when (a) hand delivered to the party to whom the notice is addressed; (b) deposited in the United States mail by certified mail, postage prepaid return receipt requested; or (c) delivered by overnight courier delivery service (i.e., Federal Express, UPS, etc.), and addressed to the party at the address shown below:

To the City:

City of Appleton
Parks and Recreation Department
Attn: Dean Gazza, Director
1819 East Witzke Boulevard
Appleton, WI 54911

With a copy to:

City of Appleton
City Attorney's Office
Attn: Christopher Behrens, City Attorney
100 North Appleton Street
Appleton, WI 54911

To the Tenant:

Mr. Jay P. Supple
J Restaurant, LLC
1621 Congress Avenue
Oshkosh, WI 54901

With a copy to:

Attorney Heidi B. Supple
Supple Restaurant Group
1621 Congress Avenue
Oshkosh, WI 54901

- B. Any Party may change the address to which notices shall be sent by notice given in accordance with the terms of this paragraph.

10. **Waiver.**

No waiver of any default of the Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by the Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

11. **Compliance with Law.**

- A. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Patio Premises.
- B. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Patio Premises.

12. **Violations of Agreement.**

If either party violates any term of this Agreement, written notification of the violation shall be given to the other as provided here in. If, after fifteen (15) days, the violation has not been corrected, the Party providing notice shall have the right, at its option, to terminate the Lease without the termination being considered a breach.

13. **Governing Law.**

This Lease shall be governed, construed and interpreted by, through and under the Laws of the State of Wisconsin.

14. **Electronic Signatures and Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A copy of this Agreement, including an email in portable document format (PDF), or other electronic means, shall be deemed to have the same legal effect as an original executed copy. The parties agree that electronic signatures (including those executed through DocuSign or similar platforms) shall be deemed valid and binding to the same extent as original signatures.

15. **Attorney Review.**

The Parties agree that they have had time to review this Lease with their respective legal counsel of their choosing and have freely and without coercion agreed to enter into this Lease based upon the terms contained herein.

16. **Final Agreement.**

This Lease terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Lease may be modified only by a further writing that is duly executed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease on the date first above written.

**LANDLORD
CITY OF APPLETON, WISCONSIN**

By: _____
Jacob A. Woodford, Mayor

Countersigned pursuant to Section
62.09(10), Wis. Stats.

By: _____
Amy Molitor, City Clerk

By: _____
Jeri A. Ohman, Director of Finance

Approved as to form:

By: _____
Christopher R. Behrens, City Attorney
City Law A17-1017

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

TENANT
J RESTAURANT, LLC
dba FRATELLOS RIVERFRONT RESTAURANT

By: _____
Jay P. Supple, Member

By: _____
John F. Supple, III, Member

STATE OF WISCONSIN)
 : ss.
WINNEBAGO COUNTY)

Personally came before me this _____ day of _____, 2025, the above-named Jay P. Supple and John F. Supple, III to me known to be the persons who executed the foregoing document and acknowledged the same.

_____, Notary Public
State of Wisconsin, Winnebago County
My commission is/expires _____

EXHIBIT A

Description of Property:

Vulcan Heritage Park – Patio Area

