

DEPOSIT AGREEMENT

This Deposit Agreement ("**Agreement**") is made and entered into as of June 14, 2024 ("**Effective Date**"), by and between the City of Manhattan Beach, a California municipal corporation ("**City**"), and LiveOak Tavern, LLC, a California limited liability company ("**LiveOak**"). The City and LiveOak each may be referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, LiveOak has renovated a restaurant property located at 124 Manhattan Beach Blvd., Manhattan Beach, California, 90266, as a new restaurant to be known as Brewco Social, which the City discovered was done without the required permits, and that the construction did not meet the requirements of Manhattan Beach Municipal Code ("**MBMC**") Section 5.24.030(c)(2) related to the obligation to have an enclosed trash receptacle.

WHEREAS, subsequently, Michael and David Zislis, on behalf of LiveOak, submitted plans to the City which reflect the as-is construction of the restaurant.

WHEREAS, on June 11, 2024, the City issued Permits for such plans with a note that the trash receptacle enclosure does not meet MBMC requirements and needs to be remedied with a revised set of plans.

WHEREAS, on June 11, 2024, LiveOak submitted a revised set of plans in an attempt to demonstrate compliance with the MBMC, including the required trash receptacle enclosure ("Revised Plans"). The City will conduct a review of the Revised Plans and issue corrections or approval.

WHEREAS, on June 11, 2024, LiveOak provided a check in the amount of \$100,000 ("**Deposit**") to the City guaranteeing that LiveOak will construct the MBMC compliant improvements, including a proper trash receptacle enclosure, in accordance with City approved Revised Plans, by December 31, 2024.

WHEREAS, after satisfactory inspections by the City of the Brewco Social restaurant, and availability of funds to the City from the \$100,000 check, the City intends to issue a Temporary Certificate of Occupancy ("TCO") upon payment by LiveOak of related fees, which will expire on its own terms by December 31, 2024, allowing Brewco Social to temporarily open and commence operations until a final Certificate of Occupancy is obtained, or the TCO expires, whichever comes first.

WHEREAS, if LiveOak fails to obtain approval of the Revised Plans or fails to construct the corresponding MBMC compliant improvements, including the trash receptacle enclosure, by December 31, 2024, the TCO will expire on its own terms on December 31, 2024, no individual can occupy the Brewco Social restaurant, and LiveOak will forfeit the entire \$100,000 Deposit allowing the City to use the moneys for any lawful purposes.

WHEREAS, the Parties wish to enter into this Agreement to provide a mechanism through which, to the mutual benefit of the Parties, the construction of the MBMC code compliant improvements, including the trash receptacle enclosure, can be addressed, while commencing operations of the Brewco Social restaurant.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, the Parties hereby agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Deposit Guaranteeing Code Compliance of the Brewco Social Restaurant.
 - a. Deposit Amount. In consideration of the City agreeing to provide a TCO upon satisfaction of certain conditions as described in the Recitals, on June 11, 2024, LiveOak provided, and the City deposited, a check in the amount of One Hundred Thousand Dollars (\$100,000), in order to ensure LiveOak's construction of the MBMC compliant improvements, including the trash receptacle enclosure, by December 31, 2024.
 - b. Use of the Deposit. The City shall, at all times while the Deposit is in the City's possession, hold such funds in a separate account. If LiveOak does not construct the MBMC compliant improvements, including the trash receptacle enclosure, by December 31, 2024 in accordance with the Revised Plans, then the Deposit shall become the property of the City and the City may use the Deposit for any lawful purposes, without any obligation to return the Deposit to the LiveOak.
 - c. Return of Deposit. If LiveOak obtains approval of the Revised Plans and constructs the MBMC compliant improvements, including the trash receptacle enclosure, in accordance with the Revised Plans by December 31, 2024, the City shall promptly thereafter return the Deposit to LiveOak without interest.
3. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (a) certified or registered mail, postage pre-paid, (b) personal delivery, (c) electronic mail, or (d) a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows:

If to LiveOak: Michael Zislis
321 12th Street, Suite 200
Manhattan Beach 90266
(310) 704-8507
mz@zislisgroup.com

If to City: City of Manhattan Beach
Attention: Community Development Director
1400 Highland Avenue,
Manhattan Beach, CA 90266
Telephone: 310-802-5503
E-mail: tmirzakhania@manhattanbeach.gov

4. Assignment. LiveOak shall not assign its interests and obligations in this Agreement without the prior written consent of the City Manager, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

5. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent permitted by law.

6. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein.

7. Amendments. This Agreement may be amended or modified only by written instrument signed by LiveOak and the City Manager on behalf of the City.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

9. Governing Law; Attorney's Fees. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. In any action or proceeding between the Parties arising out of any of the terms and provisions of this Agreement, the prevailing party in such action or proceeding shall be awarded, in addition to damages, injunctive or other relief (to the extent permitted under this Agreement), its costs and expenses, including, without limitation, attorneys' fees.

10. No Third Party Beneficiaries. Except for permitted successors and assigns, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and LiveOak, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

11. Termination. This Agreement shall remain in effect until the Parties have fulfilled their respective obligations set forth herein, unless earlier terminated upon mutual written consent of the Parties.

12. Authority to Enter into Agreement. The Parties warrant that each has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement has the legal power, right, and authority to make this Agreement and bind the respective Parties they represent. The Parties agree that this Agreement is legally valid and binding on the Parties and is authorized by law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**LIVEOAK TAVERN, LLC,
a California limited liability company**

DocuSigned by:
Michael Zislis
By: CACBE12A60E54C6
Michael Zislis,
its Manager

CITY OF MANHATTAN BEACH

DocuSigned by:
Erick Lee, Acting City Manager
6FDAAFB234CA492...
Erick Lee
Acting City Manager