

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**LICENSE AGREEMENT BY AND
BETWEEN CITY OF COPPELL
AND KALUKE, LLC**

This License Agreement (“Agreement”) is entered into by and between the City of Coppel, Texas, a Texas municipality (the “Licensor”) and Kaluke, LLC, a Texas Limited Liability Company (“Licensee”) by and through their authorized representatives.

WHEREAS, Licensor owns land located at West Main Street Parking Lot, Coppel, Texas; and,

WHEREAS, the Licensor desires to allow Licensee to utilize such land for the purpose of mobile food and beverage sale, between the hours of 7:00 am and 5:00 pm Monday through Friday; and,

WHEREAS, the Licensor desires to allow Licensee to use the land for the purposes stated above under the terms and conditions described herein.

NOW, THEREFORE, in consideration of the payments stated herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Article I
Licensor’s Premises**

1.1 **The Premises.** Licensor owns the land and the improvements thereon located in the City of Coppel, located at West Main Street Parking Lot, Coppel Texas as depicted on Exhibit A which is attached hereto (hereinafter collectively referred to as “the Licensed Premises”).

1.2 **Grant of License.** Licensor hereby grants Licensee a non-exclusive license in gross to use a portion of the Licensed Premises for the purposes operating a mobile food and beverage trailer or vehicle on a 20x15 area of said premises as depicted on Exhibit A.

1.3 **Term.** The Term of this Agreement for a sixty (60) calendar days; provided, however, this Agreement may be terminated as provided herein.

1.4 **License Fee and Deposit.** Licensee is required to pay a license fee in the amount of Ten Dollars and No Cents (\$10.00).

1.5 **Early Termination.** This Agreement may be terminated at any time by the Licensor, with or without cause, or upon Licensee’s default under the terms of this Agreement.

1.6 **Use of Licensed Premises.** Licensee shall use and occupy the Licensed Premises only as permitted under the terms and conditions set forth herein:

A. Licensee shall, at its sole cost, be permitted to design, locate and maintain a vending stand or trailer on the Licensed Premises for use as allowed herein.

B. Subject to the terms and conditions of this Agreement, Licensors hereby grants to Licensee, its officers, representatives, agents and employees the right to use the Licensed Premises, for the Term of this Agreement, to perform all use operation and maintenance, at its sole costs, during the term of this License Agreement for access by the general public in accordance with local law.

C. Licensee shall be responsible to the extent permitted by law, for all conditions and use of this License Premises.

1.7 Condition of Licensed Premises.

A. The Licensors shall provide (and Licensee accepts) the Licensed Premises “AS IS” with all defaults and conditions.

B. Following the Licensee’s activities, Licensee shall at Licensee’s sole expense, and to the extent possible, restore the Licensed Premises to the same condition which existed at the time Licensee entered the Premises, reasonable wear and tear and removal of any improvement.

C. The License parcel, the LICENSEE, and LICENSEE Patrons shall have the joint, nonexclusive use of the Parking Lot as depicted as joint use for vehicular parking and LICENSEE facility located immediately to the south of the Parking Lot, respectively. Use of parking spaces shall be on a “first come, first serve” basis, and overnight parking or storage of vehicles or other equipment or items shall be prohibited. The LICENSEE’s use and enjoyment of the Parking Lot shall be in consideration of its maintenance thereof.

D. A travel portion of the existing West Main Street is for public use and entrance that provides access from the Main Street and Old Town Pavilion Parcel located on the License Parcel as shown on Exhibit “A” which is attached hereto and made a part hereof for all purposes (the “City-Owned Portion of the Driveway”). The City, as the fee owner of the License Parcel, hereby grants and conveys to the LICENSEE, for the benefit of the LICENSEE and all present and future LICENSEE Parties, a non-exclusive license for Portion of the Parking Lot between the Old Town Pavilion and West Main Street. The City agrees not to construct or place any improvement or other obstruction on the City-Owned Portion of the public access or to otherwise interfere with the LICENSEE’s use of the City-Owned Portion of the public portion for the purposes contemplated herein. The LICENSEE’s use and enjoyment of the licensed premise of the public portion shall be without cost except as provided herein to the LICENSEE.

1.8 Alterations and Improvements.

A. The Licensors shall have no obligation to make any alterations or improvements to the Licensed Premises for Licensee's use or occupancy thereof.

B. Except as recited herein, Licensee shall not make any material alterations or modification to the Licensed Premises, except as may be permitted in writing.

C. Licensee is also entitled to run an electric power source from the Old Town Coppell Splash Pad area to Licensed Premises and shall be responsible to secure and provide adequate notice and warning of the existence of the same upon or across any property or premise otherwise owned by Licensor.

1.9 **Provision of Services.** The Licensor shall not be responsible for providing any services to the Licensee, and the Licensee shall not be responsible or obligated to provide any services to the Licensor.

1.10 **Relationship of Parties.** The Licensor shall exercise no supervision over the Licensee's mode and manner of performance and Licensee's employees or agents shall not be deemed to be employees or agents of the Licensor. Licensee shall be solely responsible for the wages, benefits, taxes, insurance, and any other similar obligation, in connection with its employees, agents, or servants.

1.11 **Default.** In the event that Licensee fails to perform any obligation under this Agreement, then Licensee shall be in default, and the Licensor shall have the right to immediately terminate this Agreement and Licensee shall vacate the Licensed Premises immediately upon receipt of such notice.

1.12 **Indemnification.**

A. LICENSOR DOES HEREBY RELEASE, INDEMNIFY AND HOLD HARMLESS THE LICENSEE, ITS OFFICERS, AGENTS, EMPLOYEES, AND THIRD PARTY REPRESENTATIVES (COLLECTIVELY REFERRED TO AS "LICENSEE") FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND LAWSUITS AND JUDGMENTS, INCLUDING COURT COST, EXPENSES AND ATTORNEY'S FEES, AND ALL OTHER EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE LICENSOR'S PERFORMANCE OF THE AGREEMENT.

B. TO THE EXTENT PERMITTED BY LAW, LICENSEE DOES HEREBY RELEASE, INDEMNIFY AND HOLD HARMLESS THE LICENSOR, ITS OFFICERS, AGENTS, EMPLOYEES, AND THIRD PARTY REPRESENTATIVES (COLLECTIVELY REFERRED TO AS "LICENSOR") FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND LAWSUITS AND JUDGMENTS, INCLUDING COURT COST, EXPENSES AND ATTORNEY'S FEES, AND ALL OTHER EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE LICENSEE'S USE OF THE LICENSED PREMISES.

Article II

Miscellaneous

2.1 **Assignment and Sub licensing.** Licensee may not transfer and assign this agreement or all or any of its rights or privileges hereunder.

2.2 **Notices.** Any and all notices, demands and statements or documents of any kind which are desired or required to be given by one party according to the terms of this Agreement, may be served personally, via facsimile or may be served by registered mail and in such case, shall be deemed to have been served on the date of personal service or on the second business day following the date of mailing thereof. Notices shall be sent to the respective addresses set out below:

If to Licensor: City of Coppell
Attn: Mike Land, City
Manager
255 E. Parkway Blvd.
Coppell, TX 75019

If to Licensee: Kaluke, LLC

With a copy to: Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201

With a copy to: _____

2.3 **Severability.** In the event that any one or more of the provisions contained herein shall for any reason be held unenforceable in any respect by any court of law, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

2.4 **Disclaimer of Consequential Damages.** In no event shall the Licensor be liable to Licensee for any consequential damages suffered by it, or any third party claiming on behalf of or through Licensee, in connection with any breach of this Agreement or provision of services or amenities by the Licensor.

2.5 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

2.6 **Audit.** As part of this Agreement, Licensor shall have the right to reasonable inspection during normal business of the books and records of the Licensee to ensure payment of the license fee required herein.

2.7 **Representation.** Both Licensor and Licensee represent that they have full capacity and authority to grant all rights and assume all obligations that they have granted and assumed under this Agreement.

2.8 **Recitals.** The recitals to this Agreement are incorporated herein.

2.9 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Texas. Venue for any action under this Agreement shall be in the state district court of Dallas County, Texas. The parties agree to submit to the subject matter and personal jurisdiction of said court.

2.10 **Amendment.** This Agreement may be amended by the mutual agreement of the parties to it, in writing and attached to and incorporated in this Agreement.

2.11 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

2.12 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

2.13 **Effective Date:** This Agreement will become effective on the date signed by the last of the parties hereto to sign.

2.14 **Exhibits:** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

2.15 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

[Signature page follows]

EXECUTED on this _____ day of _____, 2020

**CITY OF COPPELL, TEXAS
LICENSOR**

By: _____
Mike Land, City Manager

EXECUTED on this _____ day of _____, 2020.

KALUKE, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

