

## AGREEMENT

**THIS AGREEMENT** entered into as of August 17, 2011, between **TIP TAP ROOM, INC.**, a Massachusetts corporation with a place of business at 138 Cambridge Street, Boston, MA (the "Operator") as lessee and operator of a portion (more fully described below) of the building at 138 Cambridge Street, Boston, Massachusetts, (the "Building") and the **BEACON HILL CIVIC ASSOCIATION, INC.**, a Massachusetts non-profit corporation (the "BHCA") whose address is 74 Joy Street, Boston, MA 02114.

**WHEREAS**, the Operator has applied to the City of Boston Licensing Board for the transfer from the current operator of the Premises of the existing 7-Day All Alcoholic Beverages License with 2:00 a.m. closing (the "Liquor License") and the existing Common Victualer's License in connection with its proposed use for restaurant purposes of the ground floor (and lower level for additional restrooms and stock) of the Building (said portion of the Building is sometimes referred to below as the "Premises", and said Liquor and CV Licenses, together with an Entertainment License to allow use of 4 television sets and a background music system, are sometimes referred to collectively as the "Licenses");

**WHEREAS**, the BHCA, which with its predecessor has acted on behalf of the Beacon Hill neighborhood in such matters for over eighty (80) years, generally opposes, in the absence of unusual circumstances, the establishment or maintenance of All Alcoholic Beverage Licenses in and adjacent to the residential neighborhood;

**WHEREAS**, the BHCA also generally opposes the granting of an alcoholic beverages license to any restaurateur who has not established a record of satisfactory operation as a common victualer in the Beacon Hill neighborhood for a period of at least two years;

**WHEREAS**, the BHCA is cognizant of the concern expressed by residents of the adjacent residential area about the potentially detrimental impact (noise, odor, traffic congestion and parking problems and litter problems) on the adjacent residential neighborhood of certain aspects of the restaurant's operation;

**WHEREAS**, the BHCA also recognizes that the existing use has been conducted at the Premises for many years, at times without substantial detriment to the neighborhood, and further recognizes that the Operator and his key personnel have a commendable record of operating similar establishments in similar neighborhoods including the Back Bay;

**WHEREAS**, the Operator intends to operate the Premises as a 'chef-oriented' dining establishment and in a manner consistent with its location in a Local Business District and directly abutting a residential district and so as to serve the Beacon Hill population, including families during appropriate hours;

**WHEREAS**, the Operator desires the support of the neighborhood, including, in particular the BHCA, for the application mentioned above;

**WHEREAS**, after due notice and a public meeting, the BHCA has determined that, if operated in compliance with the conditions set forth below, the proposed use will adequately comply with the requirements of the BHCA Zoning and Licensing policies and will reasonably satisfy the concerns of the neighbors;

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration and in further consideration of the mutual agreements herein contained, the parties hereto do

hereby covenant and agree as follows:

1. The BHCA agrees that it shall not oppose before the Boston Licensing Board (or other governmental agency having jurisdiction of one or more of them) the pending applications by the Operator for transfer (or, as to the Entertainment License, granting) of the Licenses;
2. The Operator agrees to abide by, perform and observe each and every condition listed in **Exhibit A** attached hereto.
3. The agreements, covenants and conditions herein contained shall be binding upon the Operator and upon its successors and assigns (subject to the provisions of Condition #16 below), and shall inure to the benefit of the BHCA, its successors and assigns for a period of thirty (30) years from the date hereof, subject to extension for a period of twenty (20) years by the BHCA by action of its Board of Directors and written notice thereof to the Operator within the final year of the initial thirty (30) year period. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be severable.
4. It is mutually agreed that in the event of any controversy arising out of or relating to this Agreement or breach thereof, the parties shall use their best efforts to settle the dispute by direct negotiations between individuals with full settlement authority. If the dispute is not settled promptly through negotiation, the BHCA or the Operator may submit the dispute to mediation under the applicable Mediation Rules of the American Arbitration Association. Thereafter, any unresolved controversy or claim arising out of this Agreement, or breach thereof, shall be decided by binding arbitration in accordance with the commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall determine the existence of any controversy or breach, make such findings as are reasonable and necessary and enter an award of injunctive relief and costs that are consistent with said findings. Judgment upon the award entered by the arbitrator may be enforced as hereinafter set forth, filed with any licensing or administrative board, or entered in any court of competent jurisdiction.
5. It is further agreed that in the event the Operator or its successors or assigns shall have been found to be in material violation of any of the provisions of this Agreement by either an arbitrator acting pursuant to paragraph 4 above, or a court of competent jurisdiction the damage to the BHCA and the Beacon Hill neighborhood resulting therefrom may be actual, substantial and irreparable, but that it will not be possible to ascertain even approximately the monetary amount of such damage. Accordingly, the parties agree that the BHCA may be entitled to an injunction and all other appropriate equitable relief as it shall request from any judicial tribunal having appropriate jurisdiction to compel the Operator to comply with any and all provisions of this Agreement and to enforce the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal as of the date first set forth above.

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OPERATOR: (  
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Tip Tap Room, Inc.

BY: [Signature]  
Gordon F. Wilcox, President & Treasurer

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BHCA (  
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Beacon Hill Civic Association, Inc.

By: [Signature]  
Stephen S. Young, President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this 24<sup>th</sup> day of August, 2011, before me, the undersigned notary public, personally appeared **Gordon F. Wilcox, President and Treasurer of Tip Tap Room, Inc.** as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge / Massachusetts Driver's License # 574499042, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

[Signature]

My commission expires: **CATHERINE A. MACCARTAIN**  
**Notary Public**  
**NOTARY PUBLIC**  
**MY COMM. EXP. 08-01-14**

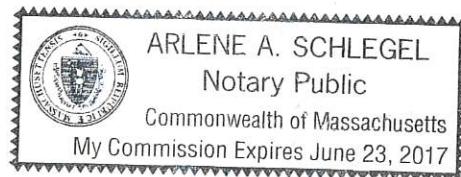
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this 31<sup>st</sup> day of October August, 2011, before me, the undersigned notary public, personally appeared, **Stephen S. Young, President of the Beacon Hill Civic Association**, proved to me through satisfactory evidence of identification, which was personal knowledge/ ~~Massachusetts Driver's~~ License # \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

[Signature]  
Notary Public

My commission expires:



**GENERAL CONDITIONS:**

1. The maximum number of persons within the premises will be 200 persons, comprising no more than 180 patrons (with 20 employees). There shall be at least 124 dining seats (at tables or booths, with no more than 16 bar stools and standing patrons, substantially as shown on the floor plan attached hereto and incorporated herein (**the "Floor Plan"**)).

2. The Operator states that the manager will be Gordon Wilcox and the executive chef will be Brian Poe and agrees to inform the BHCA in writing of any substitute manager and/or executive chef by stating their name or names and telephone number(s). The Operator shall designate a person with full authority to act for the Operator with respect to operational matters who will be immediately available at the Premises during all operating hours to correct problems and respond to concerns. The manager or the executive chef will be present at the Premises on a daily basis.

3. No pinball machines, electronic games or other amusement or gaming devices or machines and no soft drink, cigarette or other vending machines shall be located at the Premises. No music or other audio presentation shall be so amplified within the restaurant as to be (a) audible at residences on Ridgeway Lane and Temple Street, or (b) reasonably objectionable to passersby, except that the Operator may have a CD music system for back ground music and television sets within the premises that conform with and do not exceed the noise levels set forth above. Television sets shall be located so as to minimize visibility from outside the Building.

4. Sidewalks and gutters abutting the Building on all sides, including on Ridgeway Lane and Temple St., will be kept free of refuse and litter at all times; and such sidewalks will be kept clear of ice and snow and sanded if slippery. The Operator's staff shall sweep the sidewalks abutting the Building at least twice daily.

5. The Operator shall provide, maintain and empty, as needed, one or more appropriate receptacles on Cambridge St. for patrons to discard cigarettes and other trash. The Operator shall prohibit its employees from smoking on Ridgeway Lane and/or Temple Street and use reasonable efforts to discourage customers from doing so. In addition, the Operator shall keep the doors (a) on Ridgeway Lane closed except as needed for service access to and from the Building, and (b) on Temple Street closed except in case of emergencies.

**SIGNAGE AND EXTERIOR CHANGES:**

6. All exterior changes, including, without limitation, signage and ventilating equipment, shall be reviewed in advance by the BHCA based on reasonably detailed plans provided by the Operator or his contractors, the Operator hereby agreeing to consider in good faith any modifications suggested by the BHCA. The Operator agrees not to install any satellite dishes or other telecommunications equipment on the Building exterior, including, without limitation, on the roof.

7. The only sign advertising this establishment and/or its products or services affixed to the exterior of the Building shall be a single sign substantially equivalent (in terms of size and illumination) to the existing sign, and no neon, fluorescent or other illuminated signs or works will be placed in any window of the premises, or, unless specifically approved by the BHCA elsewhere within the Building in locations that make them readily visible from Temple Street or Ridgeway Lane.

8. No free-standing signs or sandwich board signs shall be placed outside the Building, and no advertising posters or displays or other signs, permanent or temporary, shall be affixed to the interior or exterior of windows at the Premises (or windows elsewhere in the Building if advertising the restaurant), provided however, that a menu may be posted near the front door. However, the Operator may post temporary signage announcing the opening of business for a period not to exceed sixty (60) days.

9. The Operator agrees to install and maintain exterior lights to illuminate the portion of Ridgeway Lane adjacent to the Building. The lights shall be shielded and directed downward to minimize the impact on the residents of Ridgeway Lane.

10. The Operator shall comply with all Massachusetts and City of Boston laws and regulations regarding the construction and re-modeling of the Premises. The Operator agrees that construction shall only occur at the Premises between 7 AM and 5 PM and that activities or placement of materials or equipment on Ridgeway Lane and/or Temple Street shall be strictly minimized. The Operator shall inform the BHCA forty-eight (48) hours in advance if it plans to request a deviation from this schedule from the City of Boston.

#### **TRAFFIC, PARKING, DELIVERIES AND TRASH:**

11. Trash, garbage and refuse ("Trash") from the Premises shall be stored indoors until daily pick-up on Cambridge Street by a commercial removal firm. Such pick-up shall occur between the hours of 7:00 am and 12:00 noon, and the Operator shall inform the BHCA in writing of the trash pick-up schedule. Trash shall be placed only in sturdy, covered containers, and Trash and Trash containers shall be left outdoors only during the period from one hour before until one hour after scheduled pick-up time (2-hour window). The Operator shall use diligent efforts on a continuing basis to prevent infestations of rats or other animals at, or release of Trash, seepage or obnoxious odors from, the Trash storage and pick-up areas.

12. No request shall be made to convert any un-metered or any metered parking space to a loading zone or to a valet parking zone. No valet parking will be offered by the Operator, or otherwise, in connection with the use of the Premises unless the Operator first obtains approval from the BHCA.

13. Deliveries to or from the Premises shall be made only via Ridgeway Lane with handcarts, and delivery and service vehicles shall only be permitted to park on Cambridge Street and shall not be permitted to park on Ridgeway Lane.

14. The Operator acknowledges that double-parking is illegal and potentially hazardous and disruptive to the neighborhood, and covenants not to allow double-parking by patrons of the Premises on Cambridge or Temple Streets. Furthermore, the Operator recognizes that Ridgeway Lane and Temple Street are public ways and covenants not to allow parking or standing in or in front of the entrance to Ridgeway Lane or Temple Street at any time by patrons or employees of the Premises.

#### **LIQUOR LICENSE AND RESTAURANT CONDITIONS:**

15. As a condition precedent to initial and continued operation of the Premises, state-of-the-art HVAC (for the Premises) and kitchen exhaust/ventilation systems shall be installed and maintained so as to (a) minimize the emanation of cooking odors from the Premises, and (b) cause no noise and/or vibration which might reasonably be found to disturb residential neighbors or materially increase ambient levels at street level on the surrounding streets and at all times be in compliance with applicable Boston noise ordinances. Any exterior exhaust vents shall be

located as close to Cambridge Street as is practicable, shall have housing to direct any possible noise or odors towards Cambridge Street and away from the residences on Ridgeway Lane and Temple Street, and shall be screened so as to minimize any detrimental impact, whether visible or audible, on nearby residences. The Operator shall change the filters for the kitchen exhaust/ventilation system of the Premises daily. Any changes to said exterior systems shall be subject to Condition #6

16. The Operator shall not transfer ownership of or the possessory interest in the liquor and/or common victualer's license unless the transferee agrees to meet with the BHCA to discuss a substitute contract signed at least fifteen days before the transfer hearing before the Licensing Board (or, if no hearing is required, fifteen days before the effective date of the transfer).

17. The Operator acknowledges that its agreement to construct and maintain the interior configuration of the Premises as indicated on the attached floor plan and operate as a quality restaurant (as opposed to a bar or nightclub) has been major factor in obtaining the neighborhood's support and accordingly agrees not to apply within its first two years as licensee for any (a) license for live entertainment, (b) expansion of the licensed premises, or (c) any other material change (including, without limitation the modification or elimination of any condition) to any one or more of the Licenses. After two years of operation, the Operator agrees to give at least 30 days written notice to the BHCA and, upon request, appear before the Zoning and Licensing Committee before submitting an application for any of items (a), (b) or (c) above.

18. There shall be no outside seating, sales activities or displays of merchandise, and the Premises shall be operated as a sit-down restaurant and bar, maintaining its current configuration as shown on the attached plan, and there shall be no take-out service except such as is entirely incidental to such operation.

19. The Operator agrees to use all reasonable management procedures to prevent patrons of the Premises from being rowdy on the premises and disruptive to the quiet enjoyment of the neighborhood and surrounding streets, queuing on the sidewalk and/or double-parking on neighborhood streets, including, without limitation, utilizing an employee/attendant to keep patrons/vehicles moving quickly so as to prevent noise and congestion problems. And further agrees that if problems of the above nature persist he will agree to discuss hiring a security patrol to be on premises in his absence.

20. To limit queuing of patrons in front of the Building and to prevent noise and congestion problems, the applicant will (a) accept reservations for groups of six or greater, (b) appoint an employee to monitor any line of persons to control noise and employee congestion problems, and to ensure that access to the building is not impaired. The employee referenced in (c) shall be posted at the front entrance to the Premises from 7 PM until closing daily.

21. The Operator agrees to have last call no later than 1:30 a.m. and to provide food service from a full dining menu until last call. The Operator agrees to open for patrons no earlier than 11 AM.

22. The Operator shall offer a menu to all patrons. In addition, the operator shall require that patrons sitting at tables be required to order food in order to order drink service.

23. The Operator shall not offer "drinking clubs" promotions in which patrons can accumulate free or discounted drinks for ordering a number of drinks.

24. The Operator will use tables that comply with Massachusetts and Boston laws and regulations and will place the tables with appropriate spacing to also comply with such laws. In

addition, the Operator will only use tables with table-top dimensions of 22 by 22 inches or larger.

25. The Operator may install windows along the Cambridge Street façade which open to the outdoors, provided that such windows shall be closed nightly no later than midnight.

26. Ground level restrooms shall be available for use by patrons, and signage at the entrance to such restrooms shall clearly notify patrons of the availability and location of additional restrooms on the lower level.

27. Upon request of the BHCA, the Operator agrees to meet with the BHCA and neighbors to discuss any problems and neighborhood concerns. The Operator will notify the BHCA in writing of the date of its annual review by the Licensing Board for renewal of its liquor license, such notice to be given at least 30 days prior to the Board's action date.

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