

RETAIL SALES AGENT AGREEMENT

This Retail Sales Agent Agreement ("Agreement") is made this ____ day of _____, _____, between the State of Oregon by and through its Oregon Liquor Control Commission ("Commission") and _____ ("Agent").

DEFINITIONS

- "Administrator" means the Administrator or Director of the Commission appointed pursuant to ORS 471.720.
- "Commissioners" means the individuals appointed to the Commission pursuant to ORS 471.705 and meeting pursuant to ORS 471.715.
- "Commission" means the Oregon Liquor Control Commission including any employee of the Commission acting within the course and scope of the duties delegated to that employee by the duly appointed Commissioners.
- "Retail Sales Agent" or "Agent" means an individual person or legal entity appointed by the Commission pursuant to ORS 471.750 and which enters into an Agent Agreement as an independent contractor to sell packaged distilled spirits on behalf of the Commission in a Retail Liquor Store.
- "Retail Liquor Store" or "Store" is a premises or a specific area in a premises the Commission approves for the sale of packaged distilled spirits for off-premises consumption.
- "Agent Agreement" or "Agreement" is a written contract between the Commission and a Retail Sales Agent that specifies the terms, conditions, and obligations between the parties.
- "Retail Operations Manual" or "Manual" means the manual including all revisions adopted by the Commission that governs the operations of a Retail Liquor Store.
- "Proposal" means a new Agent's operational plan which is presented during the application process, and the Proposal as accepted by the Commission is by this reference incorporated into this Agreement.
- "New Appointment Period" means the first 12 months of this Agreement, but does not apply in the case of a reappointment of Agent or in the case of an Agent appointed pursuant to ORS 471.752(2).
- "Agent's Representative" means an individual who represents a legal entity in the operations of the store, and can either be a regional, district or area manager, managing member, member or a premises manager.

AGREEMENT

1. **AGREEMENT APPOINTS AGENT AS A RETAIL SALES AGENT.** Pursuant to its authority under ORS 471.750, the Commission hereby appoints Agent as a Retail Sales Agent for the purpose of selling liquor at the Retail Liquor Store location set forth below.
2. **DURATION OF AGREEMENT.** Unless extended or terminated earlier in accordance with its terms, the term of this Agreement is from ____ to _____. This Agreement becomes effective on the date it has been fully executed by each party and, when required, approved by the Oregon Department of Justice.
3. **TYPE OF RETAIL LIQUOR STORE.** Agent is appointed to operate a Retail Liquor Store for the Commission, to be known as Store No. _____. This store will be classified as: _____ Exclusive Liquor Store or _____ Non-exclusive Liquor Store or _____ Non-Exclusive Satellite Liquor Store. If this appointment is to operate a non-exclusive Retail Liquor Store, the nature of the adjunct business is: _____. A non-exclusive Agent shall not change the nature of the adjunct business without prior written approval of the Commission.
4. **LOCATION OF STORE.** The location of the store shall be _____ in the City of _____, County of _____, State of Oregon, consisting of about _____ square feet in area; or at such different location as may be subsequently approved by the Commission.
5. **STORE OPERATIONS.** Agent and/or Agent's Representative shall properly manage in accord with good business practices and operate the Store and perform all services required by the Commission in a courteous and competent manner and in accord with this Agreement including the Retail Operations Manual and applicable laws, rules and regulations.
6. **BEST EFFORTS.** Agent shall devote the agent's best efforts and skills to the operation and success of the Agent's store, including the proper training and management of Agent's employees, compliance with all applicable laws and regulations, and the taking of all reasonable measures to ensure the success and viability of the Store. Agent shall not engage in any other activities which would represent a material conflict with Agent's obligations hereunder. Agent may make and manage any other personal business investments/operations of Agent's choice, provided such activities and services do not substantially interfere or conflict with the performance of obligations hereunder, or create a conflict of interest with such obligations.
7. **CONDITION AND APPEARANCE OF STORE.** Agent shall, at Agent's expense, maintain the condition and appearance of the store and premises in accordance with the written standards of the Commission, consistent with the image of the store as a clean, sanitary, attractive, safe and efficiently operated store offering sufficient liquor inventory and providing courteous and helpful service.
8. **RETAIL OPERATIONS MANUAL.** The Commission has created and continues to improve, the Retail Operations Manual, which is (Revised 10/13)

incorporated by reference and made part of this Agreement. Agent understands and agrees the Retail Operations Manual is continually being modified and improved and that such modifications and improvements require changes from time to time in the operation of the subject Retail Liquor Store. Agent agrees to operate Agent's Retail Liquor Store in strict full and complete conformance with any future modifications in or amendments to the Retail Operations Manual provided that such changes are reasonable or designated to promote business or the interests of the Commission. Any revision of the Commission's rules or policies or procedures contained in the Retail Operations Manual and any directive or interpretation of the Commission based thereon, shall be deemed effective and enforceable under this Agreement fourteen (14) days from the effective date of notice to the Agent at the store location unless a specified time is otherwise stated in the notice. Agent shall keep informed of and in a timely manner instruct the Agent's employees on all applicable laws, policies and procedures including the provisions of the Retail Operations Manual.

9. **COMPLIANCE WITH STATUTES AND RULES.** Agent shall comply with and be subject to all statutes of the United States, statutes and applicable rules of the State of Oregon and all applicable rules and policies and procedures of the Commission including, but not limited to the current edition of the Retail Operations Manual and any future revisions thereof, which Manual is by this reference incorporated herein. The Commission's performance under this Agreement is conditioned upon Agent's compliance with the clauses required in every public contract as set forth in ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are hereby incorporated by reference. Agent shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)). Agent, Agent's subcontractors, if any, and all employers providing work, labor or materials under this Agreement that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Agent shall ensure that each Agent's subcontractors, if any, comply with these requirements.
10. **SCOPE OF AGENCY.** Agent shall have no authority to act for or represent the Commission except in the retail sale of the Commission's liquor.
11. **INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES AND WITHHOLDINGS.** The services to be rendered by Agent under this Agreement are those of an independent contractor. Agent is not an officer or employee of the State. Agent shall be responsible for all federal or state taxes applicable to compensation or payments paid to Agent under this Agreement and, unless Agent is subject to back-up withholding, the Commission will not withhold from such compensation or payments any amount(s) to cover Agent's federal or state tax obligations. Agent is not a contributing member of the Public Employees' Retirement System and is responsible for any federal or state taxes applicable to payment under this Agreement. Agent will not be eligible for any federal social security, unemployment insurance, workers' compensation or Public Employees' Retirement System benefits from these Agreement payments, except as a self-employed individual. Agent understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.
12. **NO PARTNERSHIP.** Nothing in this Agreement shall be construed to make Agent and the Commission partners or joint venture participants.
13. **AGENT'S STATUS.** It is the Commission's intent that the performance of Agent's services under the terms and conditions of this Agreement are that the Agent should be seen as an agent of the Commission for purposes of applying coverage under the OREGON TORT CLAIMS ACT (ORS § 30.260 et seq.). Notwithstanding the preceding sentence, State or Commission does not represent or warrant that Agent is in fact an agent of the State or the Commission or the Agent would be found to be an agent of State or the Commission by a court of competent jurisdiction. Agent agrees that both State and the Commission shall not be liable for any damages under this Agreement or for any other claims arising out of or related to a determination that Agent is not an agent of the State or the Commission. As a condition to the application of this section, Agent shall: (i) promptly report in writing any claim or occurrence that could give rise to a claim to Risk Management Division, 155 College Street N.E., Salem, Ore. (or any subsequent address of such division); and (ii) cooperate fully in the investigation and defense of any claim covered by the OREGON TORT CLAIMS ACT and otherwise comply in all respects with the OREGON TORT CLAIMS ACT. Agent acknowledges and agrees that this subsection shall have no effect with respect to acts, errors, or omissions arising out of or related to malfeasance, willful or wanton neglect of duty, acts outside the scope of work of this Agreement, or punitive damages.
14. **INDEMNITY.**
 - (a) **GENERAL INDEMNITY.** AGENT SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON, THE COMMISSION, AND THEIR OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, MEMBERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT; PROVIDED HOWEVER, THAT THE FOREGOING INDEMNITY PROVISION SHALL HAVE NO EFFECT WITH RESPECT TO SUCH CLAIMS TO THE EXTENT THEY REGARD TORTS WHICH ARISE OUT OF OR RELATE TO SERVICES PERFORMED BY AGENT UNDER THIS AGREEMENT AS A LAWFUL AGENT OF COMMISSION UNDER THE OREGON TORT CLAIMS ACT AND ARE OTHERWISE COVERED BY SUCH ACT.
 - (b) **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 14(A), AGENT EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE COMMISSION, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEY FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO THE COMMISSION BY AGENT THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR

FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE COMMISSION'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE AGENT WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

- (c) **CONTROL OF DEFENSE AND SETTLEMENT.** AGENT SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 14(A) OR (B); HOWEVER, NEITHER AGENT NOR ANY ATTORNEY ENGAGED BY AGENT SHALL DEFEND THE CLAIM IN THE NAME OF THE COMMISSION, THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL AGENT SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT AGENT IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE, AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.
15. **INSURANCE.** At all times during the term of this Agreement including any extensions and for any period of Agent liability continuing after the expiration or termination of this Agreement, Agent shall maintain at Agent's own expense all of the insurance set forth below:
- (a) **Commercial General Liability.** Agent shall maintain insurance covering bodily injury and property damage in a form and with coverage limits that are satisfactory to the State. This insurance shall include liquor liability, personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Agreement. Agent shall procure this coverage on an occurrence basis. Combined single limit per occurrence may not be less than \$1,000,000 (one million dollars) for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000 (two million dollars).
- (b) **Workers' Compensation.** All employers, including Agent, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Agent shall ensure that each of its subcontractors complies with these requirements.
- (c) **Automobile Liability.** Insurance covering all owned, non-owned, or hired vehicles used in connection with operation of Agent's liquor store. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits of coverage). Combined single limit per occurrence shall be not less than \$1,000,000 (one million dollars).
16. **ADDITIONAL INSURANCE REQUIREMENTS.**
- (a) **Certificate(s) of Insurance.** As evidence of the insurance coverage required by this Agreement, the Agent shall furnish Certificate(s) of Insurance to the Commission prior to Agent's commencement of work under this Agreement. The Certificate(s) must specify all of the parties endorsed on the policy as Additional Insureds (or Loss Payees). All insurance required under this Agreement shall be obtained from insurance companies authorized to do business in the State of Oregon. The agent shall pay for all deductibles, self-insured retention, and/or self-insurance included hereunder.
- (b) **Notice of Cancellation or Change.** Agent shall not cancel, materially change, or potentially exhaust the aggregate limits of insurance coverage(s) without thirty (30) days' written notice from the Agent or its insurer(s) to the Commission. Any failure to comply with the reporting provisions of this section shall constitute a material breach of this Agreement and shall be grounds for immediate termination of the Agreement by the Commission.
- (c) **Additional Insureds.** With the exception of workers' compensation coverage, the insurance coverages required for performance of this Agreement shall include the State of Oregon, the Commission, and their subdivisions, officers, and employees, as Additional Insureds, but only with respect to the Agent's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
17. **SURETY BOND.** An Agent which is a corporation, limited liability company, limited partnership, general partnership or limited liability partnership, shall file with the Commission at the time of appointment, and maintain in full force and effect during the term of this Agreement or any extension thereto, a bond for the value of the inventory or revenue entrusted to the Agent and any other indebtedness owed to the Commission as stated herein. The bond shall be executed to the State of Oregon and the surety shall notify the Commission if the bond is canceled for any reason. The surety shall continue to be liable under the bond until the Commission receives the notice required or until the cancellation date specified in the notice, whichever is later.
18. **EQUIPMENT.** Agent shall, at Agent's expense, furnish and install suitable shelving, display counters, cash registers, and other equipment necessary to operate the store. No significant alteration of equipment at the store location shall be made without prior approval of the Commission. The Commission will approve alterations, which maintain or enhance efficiency or public convenience in operation of the store. Should termination occur under section 31, or Agent not be reappointed under section 45, the unencumbered liquor store equipment that the Agent chooses to sell will be purchased as follows.
- (a) Should an Agent appointed prior to 5/1/88 terminate this Agreement under sections 31, or not be reappointed under section 45 and a successor Agent is appointed, the Commission will require the successor Agent to purchase from Agent

for the value set as the arithmetic mean between replacement cost new and fair market value, any of Agent's shelving, display counters, cash registers, and other equipment for the retail sale of liquor which are in use and reasonably required for the continued operation of the store.

- (b) Should termination occur during the New Appointment Period pursuant to section 38, Agent will be repaid the full purchase price initially specified by the Commission which was paid by Agent for shelving, display counters, cash registers, and other equipment for the retail sale of liquor in use by Agent at the time notice of termination is given. However, that Agent will receive only the fair market value of such equipment which has suffered more than reasonable wear and tear in Agent's possession. Agent will be paid the fair market value of any additional shelving, display counters, cash registers, and other equipment in use and reasonably required for the continued operation of the liquor store which were purchased by the Agent during the New Appointment Period. The Commission will purchase or require the successor Agent to purchase the above mentioned equipment.
- (c) Should an Agent who was appointed after 5/1/88 terminate this Agreement under section 31, or not be reappointed under section 45 and a successor Agent is appointed, the Commission will require the successor Agent to purchase from Agent for its fair market value, any of Agent's shelving, display counters, cash registers, and other equipment for the retail sale of liquor which are in use and reasonably required for the continued operation of the store.

"Fair market value" and "replacement cost new" under subsections (a) or (b) or (c) shall be defined and determined by a licensed and certified independent appraiser who has professional standing with a nationally recognized association of appraisers, agreeable to both parties, who is familiar with the values of such property and whose decision will be binding. "Fair market value" and "replacement cost new" are values of equipment as established by the appraiser as of the time of appraisal. Under subsections (a) or (b) or (c) Agent shall be responsible to pay one-half the cost of appraisal.

- 19. **PREMISES.** Agent shall, at Agent's expense, provide the premises which contains sufficient selling area and storage space for store operations. In any new or renegotiated lease of a liquor store premises by an exclusive Agent, Agent shall use Agent's best efforts to obtain an agreement with the lessor that the lease may be assigned on termination of this Agreement or suspension of Agent upon the same terms and conditions to any successor Agent designated by the Commission or to the Commission. Commission must approve language regarding assignability. The Agent must furnish a copy of any lease and any amendments to the Commission. In addition to all other remedies in this Agreement, upon termination or suspension, the Agent, upon request of the Commission, shall assign to the Commission or successor Agent, the Agent's interest in the lease. Upon request of the Commission the Agent shall execute all reasonably necessary documents including assignment documents and financing statements to protect and perfect the Commission's interest in the Agent's lease.
- 20. **UTILITIES.** Agent shall supply, at Agent's expense, necessary heat, light, phone, and other utilities and services for store operations.
- 21. **OTHER EXPENSES.** In addition to the cost of the premises and utilities, Agent is responsible for all other expenses of store operations.
- 22. **STORE PERSONNEL.** Agent shall, at Agent's expense, employ a sufficient number of personnel to operate the store efficiently and without unreasonable inconvenience to the public and in compliance with this Agreement. Agent is responsible for the acts or omissions of such personnel within the course and scope of Agent's duties in violation of this Agreement whether willful or negligent. Agent shall train all personnel prior to their assumption of duties and shall specifically train all personnel with regard to liquor statutes of the State of Oregon and Commission rules, policies procedures and directives as are applicable to their respective duties. The Commission may provide scheduled training classes for Agent and Agent's employees on liquor laws, Commission rules, policies and procedures and general information relating to the retail sale of packaged liquor.
- 23. **SALE OF LIQUOR.** Agent acknowledges that title to the liquor in Agent's custody remains in the Commission until sold by the Agent to the purchaser. Agent further acknowledges that the proceeds from the sale of liquor belong to the State of Oregon. Agent agrees to execute documentation reasonably requested by the Commission to evidence of its ownership interest in the liquor and proceeds there from. Agent shall not sell any liquor or other merchandise furnished by the Commission except upon the terms and conditions and for the amounts prescribed by the Commission, and shall not store for a purchaser any such merchandise other than at the store location, and shall sell liquor only at the times permitted or required by the Commission.
- 24. **OTHER RESPONSIBILITIES OF AGENT.** Agent shall maintain inventory and records, and shall transmit within the required time all inventory reports and records as required by the Commission. Agent shall be responsible for and account to the Commission for all liquor furnished Agent by the Commission and for all proceeds received from the sale of the Commission's liquor. Agent shall deposit to the Commission's bank account or transmit to the Commission all proceeds received from the sale of the Commission's liquor within the time required by the Commission. Agent shall prepare and transmit to the Commission within the time required all sales reports and any other report or record required by the Commission. The Commission will supply Agent forms for reports or record keeping required by the Commission or State Treasurer and will reimburse or otherwise compensate Agent for postage costs incurred in mailing such report or record to the Commission or State Treasurer.
- 25. **RESPONSIBILITY FOR SHORTAGES.** If the Commission determines, through audit or otherwise, that a shortage in inventory or proceeds from liquor sales occurred in operation of the store, the Commission shall give notice of such shortage to the Agent by personal delivery or certified mail, return receipt requested. The notice of shortage shall show the Commission's calculation of the shortage and contain language advising the Agent of the right to a hearing.
 - (a) **Repayment by Agent.** Agent shall pay the amount of the shortage to the Commission within 30 days after the effective date of the notice of shortage.
 - (b) **Good Cause.** If the Agent contends that the shortage resulted from a cause that could not have been prevented or avoided in the exercise of reasonable care, the burden is upon Agent to prove such a cause.

- (c) Right to a Hearing. If the Agent disputes the responsibility for a shortage or disputes the amount of the shortage, the Agent may request a hearing before the Commission under Oregon statutes and rules. Such a request shall be made within 14 days after the effective date of the notice of shortage.
- (d) Payment Pending Hearing. Payment shall be made to the Commission within the 30-day period described above regardless of the request for a hearing. Payment shall be refunded to the Agent in whole or in part if the Commission determines after hearing that good cause exists and that Agent is not responsible for all or part of the shortage as provided in section 25(b). If the Commissioners, acting on the hearings record, find that the Agent is not responsible for all or part of the shortage amount, the Commission will refund to the Agent the overpaid portion together with the legal interest rate commencing at the date that the money was paid to the Commission.
- (e) Nonpayment. Should payment of a shortage not be made by Agent within 30 days as provided herein, the Commission shall deduct such amount from the payment of compensation owed to the Agent and apply the deduction towards payment of the shortage.
26. **AUDIT.** Agent shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Agent shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Agent's performance. The Commission, the Oregon Secretary of State's office and their duly authorized representatives shall have access to and the right to remove all liquor sales book, documents, papers and records which are pertinent to the store operations and in the case of a non-exclusive Retail Liquor Store the right to inspect, the books, documents, papers and records which are also pertinent to the adjunct business, for the purpose of making audits, examinations and reproductions. The Commission will safeguard and promptly return the books, documents, papers and records to the store. The Commission will use reasonable care to avoid interference with the Agent's service to the public and business operation while carrying out such audit or inspection. Agent shall cooperate in such audit or examination. Agent shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
27. **OPERATING COSTS.** Agent shall prepare and transmit within the time frame required by the Commission reports and documents which accurately reflect the true costs of operating the liquor store.
28. **COMPENSATION.** As compensation for all services under this Agreement, the Commission will pay Agent the monthly sum provided in the agents compensation rate formula established periodically by the Commissioners. Agent understands that this formula may change during the Agreement period in accordance with budgetary provisions enacted by the Legislature and any other requirements of law. Within 10 business days of notice of the change in the compensation formula, Agent may elect to continue this Agreement under the new compensation formula or terminate this Agreement pursuant to section 31(a). During the minimum 120 days notice period required by section 31(a), Agent's compensation rate will be based on the formula then in effect.
29. **CHANGE OF STORE TYPE OR LOCATION.**
- (a) Change by Agent. The Agent shall not change the store location, nor alter or reduce its sales area or storage space without prior written approval of the Commission. The approval will constitute a modification to section 4 of this Agreement.
- (b) Change by the Commission. The Commission, after notice and an opportunity to be heard, may change a non-exclusive Retail Liquor Store to an exclusive Retail Liquor Store, and vice versa, in accordance with standards set forth in its rules and the Retail Operations Manual. The Commission, after notice and an opportunity to be heard, may also require a store to be relocated in order to serve the public's convenience. In any such change of type or location, Agent will have the right to continue as such after the change unless good cause exists for termination of this Agreement as hereinafter provided.
- The Commission will reimburse Agent for reasonable out-of-pocket expenses incurred in moving the liquor store from one location to another at the written order of the Commission. Upon assignment of the Agent's lease obligation to the Commission, the Commission will assume the remaining lease liability at the former liquor store location. The Commission shall attempt to coordinate the effective date of a change of location with the expiration of the Agent's lease at the original location.
30. **CHANGE OF LEGAL ENTITY.** Agents must notify the Commission and submit required documentation for any change of entity as used in ORS 63.470 to 63.497 and 60.470 to 60.501 and as filed with the Secretary of State. Agent must notify the Commission and submit required documentation when a change occurs in premises manager, regional, district, or area manager, managing members, member share changes of 10% or greater, or corporate officers.
31. **TERMINATION.**
- (a) By Agent. Agent may voluntarily terminate this Agreement with not less than 120 days notice in writing to the Commission specifying a date of termination which is the last day of a calendar month.
- (b) By Mutual Consent. This Agreement may be terminated by the mutual consent of the parties in writing.
- (c) By Death. This Agreement is terminated automatically by death of Agent. A surviving spouse or child may apply for appointment as Agent pursuant to ORS 471.752 (2).
- (d) By The Commission "for cause". The Commission may terminate this Agreement for good cause including defaults of Agent set forth in section 31(iii)-(xi). Good cause includes, but is not limited to the following.

- (i) The Commission may, in its reasonable discretion, terminate this Agreement immediately in the event the legislature does not continue funding at levels sufficient to allow the Commission to continue to fulfill its obligations under this Agreement.
- (ii) The Commission may, in its reasonable discretion, terminate this Agreement immediately in the event that a statute, ordinance or regulation is enacted, changed or interpreted in such a way that the services called for under this Agreement are prohibited or no longer allowable or appropriate for purchase or are no longer eligible for the funding contemplated for payments authorized by this Agreement.
- (iii) The Commission may terminate this Agreement in the event of voluntary, administrative or judicial dissolution of the Agent, Agent becomes insolvent, unable or unwilling to pay Retail Liquor Store debts, is adjudged bankrupt, applies for or consents to the appointment of a receiver or trustee or makes a general assignment for the benefit of creditors.
- (iv) The Commission may terminate this Agreement in the event that Agent and/or Agent's Representative commits a substantial and deliberate violation of any term of this Agreement including the Agent's Proposal, or any applicable statute or rule or any policy or procedure of the Commission.
- (v) The Commission may terminate this Agreement in the event that Agent and/or Agent's Representative commits a violation of any term of this Agreement, or any applicable Oregon statute, or applicable rule, or any policy or procedure, after having received two written Notices of Violation from the Commission within a 36-month period. Notices of Violation will be sent as provided in section 34.
- (vi) The Commission may terminate this Agreement in the event that Agent and/or Agent's Representative fails to adhere to the standards set forth by any policy or procedure of the Commission in the areas of customer services, or store appearance, or inventory management, or cash handling, or record keeping, or professional courtesy, after having received two written notices of violation from the Commission within a 36-month period. Notices of violation will be sent as provided in section 34.
- (vii) The Commission may terminate this Agreement in the event that Agent and/or Agent's Representative misappropriates or participates in misappropriation of money or other property of the Commission, or intentionally or negligently violates any policy or procedure of the Commission with regard to liquor sale proceeds or inventory which causes or is likely to cause a financial loss to the Commission, including, but not limited to, losses covered in whole or in part by insurance or bond.
- (viii) The Commission may terminate this Agreement in the event that Agent and/or Agent's company principle commits any felony, or commits a misdemeanor which is related to the Agent's fitness to operate a Retail Liquor Store including, but not limited to a violation of ORS 471.410.
- (ix) The Commission may terminate this Agreement in the event that Agent and/or Agent's Representative becomes physically or mentally impaired rendering Agent unable to properly perform Agent's duties either permanently or for an indefinite period which will extend in excess of one year.
- (x) The Commission may terminate this Agreement if it determines that Agent, Agent's company principles and/or Agent's Representative is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.
- (xi) The Commission may terminate this Agreement if Agent operating as a legal entity fails to maintain on file a current surety bond in an amount as determined by the Commission.

32. REMEDIES.

- (a) Agent's Remedies. In the event of termination of this Agreement pursuant to sections 31(d)(i) and (ii), Agent's sole remedy shall be a claim for compensation due to Agent through the date of termination. In the event that it is determined for any reason that Agent was not in default under section 31(d)(iii)-(xi) the rights and obligations of the parties shall be the same as if the Agreement was terminated pursuant to section 31(d)(i), although Agent shall retain, in such event, the option of seeking reinstatement.
- (b) Commission's Remedies. In the event of termination of this Agreement pursuant to sections 31(d)(iii) - (xi), the Commission shall have any remedy available to it in law or equity including, but not limited to, temporary restraining orders and preliminary injunctions, the appointment of a receiver, provisional process, attachment, claim and delivery and set-off. The Commission shall be entitled to the appointment of a receiver as a matter of right. Employment by the Commission shall not disqualify a person from serving as receiver. Agent consents to the appointment of a receiver at the Commission's option and waives any and all defenses to such an appointment. In the event of a material breach of this Agreement which results in termination or suspension, the Commission shall at its option have an immediate right to enter and take possession of the premises in order to maintain continuous operation of the Retail Liquor Store and to provide for orderly change of operations.

- (c) **Effect of Termination.** In the event of a termination of this Agreement, emergency suspension or a suspension in lieu of termination of Agent for any reason, the Commission is entitled to receive all of its property that is in the possession and under the control of the Agent. Commission is entitled to seek all remedies.

33. **LIMITATION OF LIABILITIES.** Except for liability arising under section 14(a), neither party to this Agreement shall be liable for (i) any direct, indirect, incidental, special or consequential damages including, but not limited to, lost profits, under the Agreement or (ii) any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.
34. **NOTICE OF VIOLATION.** If the Commission determines that Agent has committed one or more of the violations described in section 31(d)(v) or (vi), the Commission may send a Notice of Violation by certified mail, return receipt requested or personal delivery. The decision not to send a Notice of Violation does not constitute a waiver by the Commission. Any waiver by the Commission of any default or breach does not excuse any subsequent default or breach, and shall not be considered a change to the terms of this Agreement. If the Agent disputes the Notice of Violation, the Agent may request a hearing before the Commission under Oregon statutes and rules. Such a request shall be made within 14 days of the effective date of the Notice of Violation.
35. **FINE OR SUSPENSION IN LIEU OF TERMINATION.** Upon a finding of good cause pursuant to section 31(d) herein which would otherwise justify termination, the Commission may elect, in its sole discretion, to suspend the Agent's appointment, impose a fine, or both, in lieu of termination. In the event of suspension under this section, the Commission may appoint a temporary Agent to operate the store or may order the store temporarily closed. If the Commission appoints a temporary Agent, the suspended Agent shall permit store operations to continue at the same location and shall permit the temporary Agent to have access to all inventory, books and records of the liquor store. The Commission may assume the expenses of the liquor store during the period of suspension.
36. **PROCEDURE FOR TERMINATION OR SUSPENSION IN LIEU OF TERMINATION BY COMMISSION.** In the event that the Commission desires to terminate the Agreement for good cause under section 31(d), impose a fine or suspend the Agent under section 35, the Commission shall notify the Agent in writing by certified mail return receipt requested or by personal delivery, specifying the grounds of the proposed action and the effective date of the proposed termination or suspension. If Agent wishes to dispute the proposed termination or the suspension in lieu of termination, the Agent may request in writing a hearing before the Commission under Oregon statutes and rules. Such a request shall be made within 14 days of the effective date of the notice of termination, fine or suspension in lieu of termination provided in section 43. During the term of such suspension, Agent shall cease all retail operations at the store, unless otherwise directed by the Commission. Nothing in this Agreement shall preclude the parties from pursuing settlement of any alleged violation of the Agreement.
37. **EMERGENCY SUSPENSION; APPOINTMENT OF TEMPORARY AGENT.** In the event of a termination proposed under section 31(d)(iii)-(iv) and (vii)-(xi), the Administrator may suspend the Agent's appointment under this Agreement pending final determination of the proposed termination under section 36. During such suspension period, the Commission may appoint a temporary agent to operate the store as provided in the Retail Operations Manual and shall notify the Agent of the effective date of the appointment of a temporary agent. The Commission may assume the expenses of the liquor store during the period of suspension. If the Agent disputes the Emergency Suspension, the Agent may request a hearing before the Commission under Oregon statutes and rules. Such a request shall be made within 14 days of the effective date of the notice of termination.
38. **NEW APPOINTMENT ASSISTANCE AND REVIEW.** A newly appointed Agent will be evaluated during the New Appointment Period by the Commission to ensure their ability to successfully operate the store as set forth below. The Commission will evaluate the Agent's performance under the terms of this Agreement including section 38(b). Notwithstanding any other provision of this Agreement, the Agreement may be terminated by the Commission during the New Appointment Period upon written notice provided to Agent by certified mail, return receipt requested or personal delivery. This section shall not apply in the case of a reappointment of Agent or in the case of an Agent appointed pursuant to ORS 471.752(2).
- (a) At any time during the New Appointment Period, the Commission may terminate this Agreement if, in the opinion of the Commission, the Agent's performance during the New Appointment Period indicates that Agent and/or Agent's Representative is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the Agent and/or Agent's Representative do not merit continuance.
- (b) The Commission's evaluation of whether to continue this Agreement beyond the New Appointment period will consider how well the Agent complied with: the terms of this Agreement; the applicable laws of the State or Oregon; the directives of the Commission; and the applicable policies, procedures and rules of the Commission contained in the Retail Operations Manual on customer service, store appearance, cash handling, inventory management, merchandising, record keeping and professional courtesy.

Approximately three months after the appointment the Commission will perform an operational review to determine how well the Agent's store operation met the conditions set forth in section 38(b). The Commission will advise the Agent and/or Agent's Representative in writing of the operational areas needing improvement. The Commission will provide the Agent and/or Agent's Representative with a status report three months thereafter specifying any areas that continue to require improvement.

The Commission will inform the Agent at least 90 days prior to the end of the New Appointment Period of its intention whether or not to continue the Agreement beyond the New Appointment Period. If the exclusive Agent who is not continued chooses to assign the store lease and the lease contains an agreement with the lessor that the lease may be assigned upon the same terms and conditions and meets any requirements in the Retail Operations Manual, the Commission will require the new Agent to assume the lease to the extent the Agent's lease may be assigned and assumed by the new Agent.

39. **NONWAIVER.** The failure of the Commission to enforce any provision of this Agreement shall not constitute a waiver by the Commission of that or any other provision.

- 40. **RETURN OF PROPERTY.** Upon termination of this Agreement, the Commission will be permitted to retake all property owned by it including inventory, sales proceeds, books and records. Any compensation owing to Agent will be paid only after the Commission has determined that there is no shortage in inventory or sales proceeds, or if a shortage exists, only after payment of the shortage has been made or the amount deducted under section 25.
- 41. **NON-ASSIGNMENT.** This Agreement is not assignable.
- 42. **NONDISCRIMINATION.** Agent shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 43. **NOTICE.** Any notice or communication required by this Agreement to the Commission must be in writing and directed to the following address:

OLCC Retail Services
 9079 SE McLoughlin Blvd.
 P.O. Box 22297
 Portland, OR 97269-2297
 Email: OLCC.RetailServices@oregon.gov

The Commission shall send all communications and notices provided for in this Agreement to the Agent (or Agent's Representative) to the following address:

 Email: _____

Any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Agent or the Commission at the addresses set forth in this Agreement, or to such other addresses as either party may indicate pursuant to Section 43 or by personal delivery. Unless otherwise specified in this Agreement, any communication or notice is deemed in effect five (5) days after delivery. Each party must notify the other when any such address is changed.

- 44. **SEVERABILITY.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- 45. **REAPPOINTMENT.** The Commission will reappoint Agent to an additional term if the Commission determines that reappointment is appropriate based on policy expressed in the Retail Operations Manual. The Commissioners or any employee of the Commission acting within the course and scope of the duties delegated to that employee by the duly appointed Commissioners will reappoint if the Commission finds in its evaluation that the following conditions have been met: (1) The Agent has satisfactorily adhered to the terms of this Agreement, the applicable laws of the State of Oregon, the directives of the Commission, the applicable policies and procedures and rules of the Commission contained in the Retail Operations Manual and; (2) the Agent has satisfactorily met the Commission's performance standards as detailed in the Retail Operations Manual.
 - (a) At least 120 days before the end of the term of this Agreement the Commission shall notify Agent whether in the Commission's determination, Agent has met the reappointment conditions and whether or not the Commission intends to reappoint. If the Commission gives notice of reappointment, the Agent shall sign a new Agreement approved by the Commissioners prior to the expiration of the term of this Agreement. The Commission may place conditions on the reappointment relating to the store location or type. As used in this section, "type" refers to exclusive or non-exclusive or self-service or counter service.
 - (b) If the Commission gives notice of the intention not to reappoint or if an Agent does not sign a new Agreement the Commission shall select an Agent pursuant to the rules and procedures adopted by the Commission for store vacancies. The Agent may apply for reappointment in the Agent selection process. If an exclusive Agent who is not reappointed chooses to assign the store lease and the lease contains an Agreement with the lessor that the lease may be assigned upon the same terms and conditions and meets any requirements in the Retail Operations Manual, the Commission will require the successor Agent to assume the lease.
- 46. **GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Commission (and/or any other agency or department of the State of Oregon) and Agent that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. AGENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SAID COURTS.

47. **NO THIRD PARTY BENEFICIARIES.** The State of Oregon, by and through the Commission, and Agent are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
48. **FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS.** Agent shall not be compensated for work performed under this Agreement by any other agency or department of the State of Oregon. The Commission certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the Commission's current biennial appropriation or limitation. Agent understands and agrees that the Commission's payment of amounts under this Agreement is contingent on the Commission receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow the Commission, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
49. **TERMINATION OF PRIOR AGREEMENT.** This Agreement supersedes and terminates any other Agent Agreement between the parties previously in force. The parties have signed this Agreement which shall become effective on the date this Agreement has been signed by every party to this document and all necessary State approvals have been obtained.
50. **SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in sections 14-19, 23-28, 31-38, 40, 44, 46 and 50.
51. **ENTIRE AGREEMENT.** This Agreement, including the Retail Operations Manual and, when applicable, the Agent's Proposal, herein incorporated by reference, constitutes the entire Agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the Commission to enforce any provision of this Agreement shall not constitute a waiver by the Commission of that or any other provision. Any amendments, supplements or modifications to this Agreement shall comply with section 8 be in writing, signed by the parties, and all necessary State approvals shall be given before becoming effective.
52. **CERTIFICATION OF COMPLIANCE WITH TAX LAWS.** By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Agent and that Agent is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws and shall remain in compliance therewith for the term of this Agreement. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes and Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

AGENT

COMMISSION

Signed: _____
Name: _____
Title: _____
Date: _____

Signed: _____
Name: _____
Title: Administrator,
Oregon Liquor Control Commission
Date: _____