

## **AGREEMENT**

This **AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between **TRESTLE BEER COMPANY LLC** a Pennsylvania limited liability company, and the **BOROUGH OF WEST CHESTER**, a Pennsylvania Home Rule municipality, organized and existing under and pursuant to the laws of the Commonwealth of Pennsylvania.

## **BACKGROUND**

**WHEREAS**, Trestle Beer Company LLC, doing business as Wrong Crowd Brewing Company, (“Trestle Beer” or “Applicant”) has submitted an application (the “Application”) to the Pennsylvania Liquor Control Board (“PLCB”) requesting a transfer of a brewery license (the “Brewery License”) to a premises located at 342 Hannum Avenue, West Chester, Pennsylvania 19382 (the “Premises”); and

**WHEREAS**, the Applicant intends to manufacture and sell malt and brewed beverages and its products at the Premises; and sell other alcoholic beverages permitted for sale by the Brewery License, along with food and non-alcoholic beverages, at the Premises; and

**WHEREAS**, the Applicant and the Borough wish to enter into this Agreement setting forth certain conditions of operation of the Premises.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and lawful sufficiency of which is hereby acknowledged, the Applicant and Borough agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth in the Background section of this Agreement are incorporated herein as part of this Agreement.
  
2. **Conditions of Operation**. Applicant shall operate and maintain the Premises in compliance with the following contractual conditions (the “Conditions of Operation”). Each and every instance of Applicant’s failure to adhere to the following Conditions of Operation shall constitute a breach of the contractual terms of this Agreement (sometimes hereinafter referred to

as an “Event of Default”) if, in accordance with Section 4 herein below, a Notice of Breach (as hereinafter defined) is issued which is not timely cured.

a. At all times Trestle Beer manufactures malt or brewed beverages, offers for sale or sells alcoholic beverages on the Premises, Trestle Beer shall operate a restaurant (as defined by the Borough Zoning Ordinance) on the Premises with at least 30 seats for customers for service and on-premises consumption of food and beverages (the food establishment and brewery licensed by the PLCB shall be hereinafter referred to as the “Brewery/Restaurant”). The kitchen shall remain open and operational for the preparation of food during all times the Brewery/Restaurant is open for business.

b. The Premises and Brewery/Restaurant shall not be used as a nightclub, dance and/or entertainment venue or for appearances of celebrities, musical or dramatic performers, disc-jockeys or for liquor promotions.

c. Trestle Beer’s sales of alcoholic beverages shall comply with Section 4-446 of the Liquor Code; provided, however, Trestle Beer’s sales for on-premises consumption shall be limited to sales of malt or brewed beverages in containers not exceeding 64 ounces; sales of wines in glasses not exceeding 6 ounces; and sales of liquor in portions not exceeding 1.5 ounces. Provided further that Trestle Beer’s sales of malt or brewed beverages for off-premises consumption shall not exceed a total of 144 ounces in a single sale.

d. Without limiting the requirements of paragraph 2.c hereinabove, Trestle Beer shall strictly adhere to the requirement that the combined sales of wines, malted or brewed beverages produced by a manufacturer other than Trestle Beer and liquor may not, on a yearly basis, exceed 50% of the on-premises sales of Trestle Beer’s malt or brewed beverages for the preceding calendar year.

e. All sales of alcoholic beverages for on-premises consumption at the Brewery/Restaurant on Monday through Saturday shall terminate at 12:00 AM (midnight). If Applicant obtains a Sunday sales permit from the PLCB, all sales of alcoholic beverages for on-premises consumption at the Brewery/Restaurant shall terminate at 9:00 PM on Sundays.

f. All alcoholic beverages consumed at the Brewery/Restaurant shall occur inside the building. Trestle Beer shall use reasonable efforts to prevent customers from taking or consuming open containers of alcoholic beverages outside the interior part of the Brewery/Restaurant.

- g. Trestle Beer and the Brewery/Restaurant shall comply with PLCB Advisory Notice No. 16 (Revised September 2017) and any successor notice on drink price discounts, “happy hours”, drink specials, free drinks and mug clubs.
- h. Trestle Beer and the Brewery/Restaurant shall not offer or conduct live music or entertainment with amplified sound on the Premises. No loudspeaker or amplification device may be used on the Premises. Provided, however, the Brewery/Restaurant may offer and conduct live entertainment from musicians, such as an acoustic guitarist or piano player, with limited amplification, and operate a juke box.
- i. All owners and managers of the Brewery/Restaurant and all individuals who sell or serve alcoholic beverages at the Brewery/Restaurant shall successfully complete the PLCB Responsible Alcohol Management Program ("RAMP"). Proof of completion of RAMP shall be provided to the Borough upon request.
- j. Video cameras with at least 24 hours of digital or videotape back-up shall be installed and continuously maintained and operated at locations outside the front of the building on the Premises along the public sidewalk and at any location of a public entrance. A maximum of twelve (12) cameras shall be installed in locations as directed by the Borough Chief of Police or his designee.
- k. Trestle Beer shall provide to the Borough the name and contact telephone number of a management individual or individuals for the purpose of handling and resolving complaints and problems.

3. Effectiveness; no preemption. This Agreement shall remain in effect as long as the Brewery License, if issued, is used at the Premises and shall remain in full force and effect notwithstanding any change in or amendment to the Liquor Code or the regulations and policies of the PLCB applicable to brewery licenses. Applicant and Borough agree that the Borough has legal authority to impose the Conditions of Operation and enter into this Agreement, that the Conditions of Operation and terms of this Agreement are not preempted by the Liquor Code or any other statute or regulation, and that, if the Brewery License is issued by the PLCB, the Conditions of Operation and terms of this Agreement are a binding agreement between the Borough and Applicant which is enforceable by the Borough by any available legal remedy.

4. Remedies; Borough Enforcement.

If the Borough believes a breach of a Condition of Operation has occurred or is occurring, the Borough shall, prior to commencing any legal action against Trestle Beer, issue to Trestle Beer a notice of breach (each, a “Notice of Breach”) pursuant to which the Borough shall identify the facts or circumstances giving rise to the alleged breach. Applicant shall have a period of thirty (30) days following receipt of a Notice of Breach to cure the breach by resolving the facts or circumstances giving rise to the alleged breach set forth in the Notice of Breach and shall, within such thirty (30) day period, issue and send to the Borough a written notice pursuant to which Applicant shall identify the steps taken to cure the Notice of Breach. If the breach is uncured and/or Applicant fails to send the written notice within the foregoing 30-day time period, such uncured breach shall constitute an Event of Default and the Borough may pursue any available remedy at law or equity to enforce the terms and conditions of this Agreement.

5. Remedies Not Exclusive; No Waiver. The rights, powers and remedies of the Borough provided in this Agreement are cumulative and not exclusive of any right, power or remedy provided by law or equity (including, without limitation, an action in equity to restrain the occurrence of events which might (but not necessarily would) result in the occurrence of an Event of Default), and no failure or delay on the part of the Borough in the exercise of any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

6. Compliance with Applicable Law. Nothing set forth in this Agreement shall be construed to allow or permit Applicant to violate or not comply with any law, rule, regulation or order of court applicable to the Premises, the Brewery/Restaurant, and/or Applicant.

7. Attorneys’ Fees; Court Costs. In any dispute between the Borough and Applicant under or pursuant to this Agreement which results in filing a complaint in any court, the non-prevailing party shall be responsible for and pay the prevailing party’s actual and reasonable attorney’s fees and court and other costs associated with such court proceeding.

8. Authority; Each Party Represented by Counsel. Each individual executing this Agreement represents and warrants that such individual has all necessary power and authority to do so and to thereby bind its party pursuant to this Agreement. Each of the parties hereto acknowledges that it was or chose not to be represented by independent counsel during the

negotiation and execution of this Agreement and further acknowledges that it may be giving up certain legal rights (or assuming certain legally binding obligations) which it may not, under applicable law, be otherwise required to give up or assume.

9. Governing Law; Severability. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws. The provisions of this Agreement are severable. In the event that any one or more provisions of this Agreement is or are held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect.

10. Jurisdiction; Venue. Each of the parties to this Agreement consents to the exclusive *in personam* jurisdiction of the Commonwealth of Pennsylvania for any and all disputes arising out of or in any manner or form related to this Agreement. Venue with regard to any such dispute shall be in the Court of Common Pleas of Chester County, Pennsylvania.

11. Authorization by Borough Council Necessary. Notwithstanding anything to the contrary set forth in this Agreement or elsewhere (including, without limitation, any applicable law, regulation, rule or order of the court), no individual or entity is or shall be (or shall be deemed to be) authorized to act on behalf of or bind the Borough under or with regard to this Agreement without the express prior authorization of Borough Council issued in accordance with applicable law. Notwithstanding the foregoing, Borough Council may delegate its authority to the Borough Manager or other Borough employee to make administrative decisions necessary to carry out the provisions of this Agreement.

12. Notices. Every notice and communication under this Agreement shall be in writing and shall be given by hand-delivery, first class mail (postage prepaid), or reliable overnight commercial courier (charges prepaid), to the following addresses:

If to Applicant:

Daniel R. Shaw  
Owner/Brewer  
Trestle Beer Company LLC dba Wrong Crowd Beer Company  
342 Hannum Avenue  
West Chester, PA 19382

If to the Borough:

Borough of West Chester  
401 East Gay Street  
West Chester, Pennsylvania 19380  
Attn: Borough Manager

Notice by overnight courier shall be deemed to have been given and received on the Business Day (as hereinafter defined) scheduled for delivery if sent by nationally recognized courier guaranteeing next Business Day delivery with package tracking. Notice by mail shall be deemed to have been given and received three (3) Business Days after the date first deposited in the United States Mail properly addressed and postage prepaid. Notice by hand delivery shall be deemed to have been given and received upon delivery. A party may change its address by giving written notice to the other party as specified herein. When used in this Agreement, the term "Business Day" does and shall be construed to mean any day that is not a Saturday, Sunday or legal holiday in the Commonwealth of Pennsylvania.

13. Entire Agreement; Amendment. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. This Agreement may be amended only in a writing executed by each of the parties hereto.

14. Binding Effect. This Agreement is and shall be binding upon and inure to the benefit of the Borough, Applicant, the individual or entity issued the Brewery License for the Premises, and the individual or entity owning and/or operating the Brewery/Restaurant.

Signature page follows.

**IN WITNESS WHEREOF**, the parties hereto caused this Agreement to be executed on the date appearing next to their respective signatures herein below

**ATTEST:**

**BOROUGH OF WEST CHESTER,**  
a Pennsylvania Home Rule Municipality

\_\_\_\_\_  
Michael A. Perrone, Manager

By: **BOROUGH COUNCIL**  
its duly elected governing body

\_\_\_\_\_  
Date of Signature

By \_\_\_\_\_  
Michael Galey, Council President

**WITNESS:**

**TRESTLE BEER COMPANY LLC**  
a Pennsylvania limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Print name and title: