



TOWN OF KITTERY, MAINE

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

July 02, 2018

Kittery Town Council

Council Chambers

Requested by Four Members of the Council

Gary Beers, Jeff Thomson, Jeff Pelletier & Matt Brock

Special Meeting Agenda

5:00 p.m.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Discussion
 - a. Discussion by members of the public (only pertaining to item #6 below and three minutes per person)
 - b. Response to public comment directed to a particular Councilor
 - c. Chairperson's response to public comments
6. NEW BUSINESS
 - a. (070118-1) Kittery Town Council moves to approve a request from The View at Pepperrell Cove LLC for an Extension of License on Premise for The View, 88 Pepperrell Rd.
7. ADJOURNMENT

Posted: June 28, 2018

Division of Liquor Licensing & Enforcement
8 State House Station, Augusta, ME 04333-0008
Telephone (207) 624-7220 Fax: (207) 287-3434
Email inquiries: MaineLiquor@maine.gov

DIVISION USE ONLY	
License No:	
Diagram:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Town Approval:	<input type="checkbox"/> Yes <input type="checkbox"/> No

REQUEST FOR EXTENSION OF LICENSE ON PREMISE

Legal Name: The View at Pepperrell Cove LLC License Number: CAR-2018-10905

Physical Address: 88 Pepperrell Rd. City Kittery Point.


State ME Zip 03905 Phone: 207 703 2028

Email address: info@pepperrellcove.com Please Print

Mailing address: PO BOX 67 Kittery Point ME 03905
Street / PO Box City State Zip

Name, address, telephone number of Property Owner (if property is rented or leased, need copy of rental agreement / lease):

Chatham St LLC Saugus Mass 781 233 2163


Signature of Owner

Al Damico

Printed Name of Owner

Temporary ☐ Permanent ☒ Inside ☐ Outside ☒ Live Entertainment: Yes ☒ No ☐

Start Date: 05/1/2018 End Date (if applicable): 10/30/2018

Reason for this request: Frisbee's Wharf, at the suggestion of the State Liquor Division, will become an extension of The View at Pepperrell Cove LLC's Liquor License.

This request for an extension of service area for on premise license location MUST have Town / City approval and MUST have a diagram submitted with this form.

Outdoor Restrictions:

There must be a stanchion or fence completely enclosing the area. Signs must be posted, stating "no alcohol beyond this point". There must be sufficient employees at the extension of premise, which would be able to control and monitor the area.

TO STATE OF MAINE MUNICIPAL OFFICERS & COUNTY COMMISSIONERS:

Hereby certify that we have complied with Section 653 of Title 28-A Maine Revised Statutes and hereby approve said application.

Dated at: _____, Maine
EXTENSION of premise ON 6/2017

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TO STATE OF MAINE MUNICIPAL OFFICERS & COUNTY COMMISSIONERS:

Hereby certify that we have complied with Section 653 of Title 28-A Maine Revised Statutes and hereby approve said application.

Dated at: _____, Maine _____
EXTENSION of premise ON 6/2017

City/Town

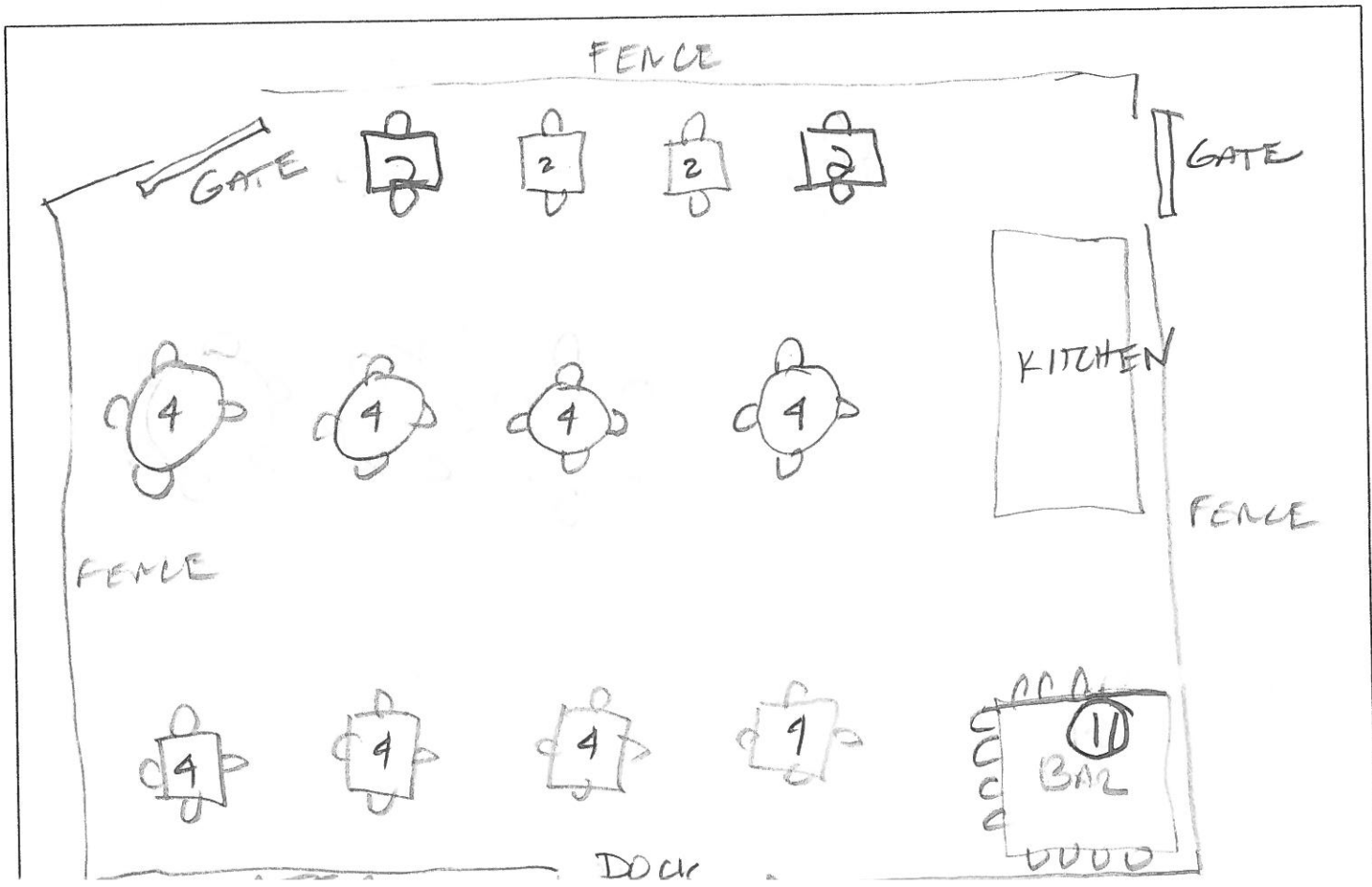
(County)

On: _____
DateThe undersigned being: ☐ Municipal Offices ☐ County Commissioners of the☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: _____, Maine

Signature of Officials	Printed Name and Title

EXTENSION AREA PREMISE DIAGRAM

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary / permanent license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including methods of monitoring and containment of certain area which you are requesting approval from the Division for liquor consumption.



COMMERCIAL LEASE
(NET LEASE)

1. PARTIES

Chatham Street, L.L.C. with a mailing address of 5 Milano Drive, Saugus, MA 01906 ("LANDLORD"), hereby leases to 1828 Pepperrell Cove LLC, or its assigns, with a mailing address of PO Box 67, Kittery Point, ME 03905 ("TENANT") and the TENANT hereby leases from LANDLORD the following described premises:

2. PREMISES

The leased premises are located at 87 Pepperrell Road, Kittery, Maine, 88 Pepperrell Road, Kittery, Maine, and 2 Bellamy Lane, Kittery, Maine, together with all appurtenant improvements, easements, and land use rights, together herein called the "Premises" or "leased premises". The Premises are also shown on EXHIBIT B attached hereto. The leased premises are accepted in "as is" condition except if specifically set forth to the contrary in this lease. Notwithstanding the foregoing, the "leased premises" shall not include the undeveloped land owned by LANDLORD and Allister and Tedeschi as tenants in common and shown as Map 27, Lot 48A on the Kittery tax maps. The leased premises shall include all of LANDLORD's rights in and to the docks attached or connected to the leased premises.

3. TERM

The Term of this lease shall be for five (5) years and two (2) months unless sooner terminated as herein provided, commencing as of April 1, 2017, and ending May 31, 2022, subject to extension per the renewal option discussed below.

4. RENT

TENANT shall pay to LANDLORD the following base rent commencing as of April 1, 2017 for the first year, and on the same day of each year thereafter during the initial term of this Lease, all such rent being due and payable in one (1) payment on April 1 of each year unless otherwise specified herein:

<u>Lease Year(s)</u>	<u>Annual Base Rent</u>
<u>1</u>	<u>\$ 40,000.00*see below</u>
<u>2</u>	<u>\$247,200</u>
<u>3</u>	<u>\$254,616</u>
<u>4</u>	<u>\$262,254</u>
<u>5</u>	<u>\$270,122</u>

All payments are to be made to LANDLORD or to such agent and at such place as LANDLORD shall from time to time in writing designate, the following being now so designated: 5 Milano Drive, Saugus, MA 01906. If TENANT does not pay base rent, supplemental and additional rents, or other fees and charges when due pursuant to the terms of this Lease, then LANDLORD, in its sole discretion, may charge, in addition to any other remedies it may have, a late charge for each month or part thereof that TENANT fails to pay the amount due after the due date. The late charge shall be equal to one percent (1.00%) of the amount due LANDLORD in addition to the rent then due.

* Upon signing this lease, TENANT will tender directly to LANDLORD the sum of FORTY THOUSAND and 00/100 Dollars (US\$40,000.00) of the rent for Lease Year 1 consistent with provision 7 below, RENT ADJUSTMENT. TENANT shall also pay at the same time to LANDLORD's designated agent the sum of SIXTY THOUSAND and 00/100 Dollars (US\$60,000.00) to repair fire damage to the existing store and apartment building (hereinafter the "store building"), and any other improvements to the store building that are approved by LANDLORD. Such sum shall be held by LANDLORD'S agent in a non-interest bearing escrow account and the terms for release of such funds shall be set forth in a separate escrow account agreement to be signed by LANDLORD and TENANT. TENANT shall submit detailed plans in writing for all repairs and improvements to the store building to LANDLORD for approval, which approval shall not be unreasonably withheld, along with

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related to TENANT's use of the leased premises, (iii) all costs for common area cleaning and janitorial services; (iv) all costs of maintaining the building including the operation and repair of heating and air conditioning equipment and any other building equipment, non-capital roof repairs and all other repairs, improvements and replacements required by law or necessary to keep the buildings thereon in a well maintained condition, (v) all costs of snow and ice removal, landscaping and grounds care; (vi) all other costs of the management of the leased premises; and (vii) all other reasonable costs relating directly to the ownership, operation, maintenance and management of the buildings and leased premises. TENANT'S share of operating expenses shall be prorated should this Lease be in effect with respect to only a portion of any calendar year.

8. UTILITIES

TENANT shall pay, as they become due, all bills for electricity and other utilities (whether they are used for furnishing heat or other purposes) that are furnished to the leased premises and presently separately metered, all bills for fuel furnished to a separate tank servicing the leased premises exclusively and all charges for telephone and other communication systems used at, and supplied to, the leased premises.

LANDLORD shall have no obligation to provide utilities or equipment other than the utilities and equipment within the leased premises as of the commencement date of this lease which equipment LANDLORD consents to allow TENANT to use during the term of this Lease; provided, however, that all such equipment, and any replacements thereof, shall be and remain the personal property of LANDLORD at the termination of this Lease. In the event TENANT requires additional utilities or equipment, the installation and maintenance thereof shall be the TENANT'S sole obligation and expense.

9. USE OF LEASED PREMISES

TENANT shall use the leased premises only for purposes of a restaurant, grocery store and other similar and related uses, and such other uses as permitted in the zoning district where the leased premises is located per the Kittery Zoning Code.

10. COMPLIANCE WITH LAWS

TENANT agrees to conform to the following provisions during the entire term of this lease: (i) TENANT shall not injure or deface the leased premises or building (but TENANT is permitted to restore and improve the leased premises for the uses described above with written approval of LANDLORD); (ii) No auction sale, inflammable fluids, chemicals, nuisance, objectionable noise or odor shall be permitted on the leased premises; and (iii) TENANT shall not permit the use of the leased premises for any purpose other than set forth herein or any use thereof which is improper, offensive, contrary to law or ordinance, or liable to invalidate or increase the premiums for any insurance on the building or its contents. TENANT agrees to keep the leased premises equipped with all safety appliances and make all accessibility alterations, improvements or installations to the building, and/or accommodations in TENANT'S use thereof required by law or any public authority as a result of TENANT'S improvement, use or occupancy of the leased premises or TENANT'S alterations or additions thereto.

11. MAINTENANCE

A. TENANT'S OBLIGATIONS

TENANT acknowledges by entry thereupon that the leased premises are in good and satisfactory order, repair and condition (fire damage excepted), and covenants during said term and further time as the TENANT holds any part of said premises to keep the leased premises in as good order, repair and condition as the same are in at the commencement of said term, or may be put in thereafter, damage by fire or unavoidable casualty and reasonable use and wear only excepted. Notwithstanding anything to the contrary herein, if TENANT has leased ground floor space, TENANT covenants to keep all plate glass windows in good repair and condition and to carry adequate insurance to provide for the replacement of any such plate glass which is damaged or destroyed.

form or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures; and to damage caused to fixtures, furniture, equipment and the like situated at the leased premises, whether owned by the TENANT or others.

17. TENANT'S LIABILITY
INSURANCE

TENANT shall (i) insure TENANT and LANDLORD, as their interests appear, with general public liability coverage on the leased premises, in such amounts and with such companies and against such risks as the LANDLORD shall reasonably require and approve and naming LANDLORD as an insured, and (ii) insure LANDLORD and TENANT, as their interests appear, against loss of the contents and improvements of the leased premises under standard Maine form policies, against fire and standard extended coverage risks, in such amounts and with such companies as the LANDLORD shall reasonably require and approve, with waiver of subrogation if such waiver can be obtained without charge. TENANT shall deposit with LANDLORD certificates for such insurance at or prior to the commencement of the term, and thereafter within thirty (30) days prior to the expiration of any such policies. All such insurance certificates shall provide that such policies shall not be canceled without at least thirty (30) days prior written notice to each assured named therein.

18. FIRE CASUALTY -
EMINENT DOMAIN

Should a substantial portion of the leased premises, or of the property of which they are a part, be damaged by fire or other casualty, or be taken by eminent domain, the TENANT may elect to terminate this Lease. For the purpose of the preceding sentence, a "substantial portion" shall be damage in excess of thirty percent (30.00%) of the occupation or use of the buildings and/or leased premises. When such fire, casualty, or taking renders the leased premises unfit for use and occupation, a just and proportionate abatement of rent shall be made until the leased premises, or in the case of a partial taking what may remain thereof, shall have been put in proper condition for use and occupation. In the event that a substantial portion of the leased premises is damaged by fire or other casualty or is subject to eminent domain and TENANT elects to terminate this lease, TENANT shall give LANDLORD notice of its decision to terminate within forty-five (45) days after any occurrence of substantial damage by fire or other casualty, or by eminent domain giving rise to TENANT'S right to so terminate this Lease. Notwithstanding anything to the contrary, LANDLORD'S obligation to put the leased premises or the building in proper condition for use and occupation shall be limited to the amount of the proceeds from any insurance policy or policies or of damages which accrue by reason of any taking by a public or other authority, which are available to LANDLORD for such use.

19. DEFAULT AND
BANKRUPTCY

In the event that:

(a) The TENANT shall default in the payment of any installment of rent or other sum herein specified when due which default is not corrected within seven (7) days after written notice thereof; or

(b) The TENANT shall default in the observance or performance of any other of the TENANT'S covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof; or

(c) The leasehold hereby created shall be taken on execution, or by other process of law:

(d) Any assignment shall be made of TENANT'S property for the benefit of creditors, or a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of TENANT'S property, or petition is filed by TENANT under any bankruptcy, insolvency or other debtor relief law, then and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), LANDLORD shall be entitled to all remedies available to LANDLORD at law and equity, including without limitation, the remedy of forcible entry and detainer, and LANDLORD lawfully may, immediately or at any time thereafter, and without demand or notice, mail a notice of termination to the TENANT, or, if permitted by law, enter into and upon the leased premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel TENANT and those claiming through or under it and remove it or their effects without being deemed guilty of any manner or trespass, and without prejudice

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compliance with the terms of this paragraph and will further provide upon five (5) days notice from LANDLORD copies of all records which TENANT may be obligated by federal, state or local law to obtain and keep: (iv) that upon termination of this Lease, TENANT will, at its expense, remove all Hazardous Materials from the leased premises which came to exist on, in or under the leased premises during the terms of this Lease or any extensions thereof and comply with applicable state, local and federal laws as the same may be amended from time to time; and (v) TENANT further agrees to deliver the leased premises to LANDLORD at the termination of this Lease free of all Hazardous Materials which came to exist on, in or under the Leased premises during the term of this Lease or any extension thereof. The terms used in this paragraph shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local. Notwithstanding any provision herein to the contrary, the buildings on the leased premises do contain asbestos, the removal of which, if required for TENANT's use and enjoyment of the leased premises or for rehabilitation and improvement of the leased premises, or if removal is required by any government agency or by law, TENANT shall be solely responsible for the costs thereof.

23. **LIMITATION OF LIABILITY** TENANT agrees to look solely to LANDLORD'S interest in the building for recovery of any judgment from LANDLORD resulting from a LANDLORD default as set forth in Section 24 below.
24. **LANDLORD DEFAULT** LANDLORD shall only be in default of this Lease if it fails to pay its share of real property taxes imposed upon the leased premises by the Town of Kittery or its share of fire and standard extended coverage insurance on the leased premises. If the holder of any mortgage on the building of which the leased premises are a part notifies TENANT that such holder has taken over LANDLORD'S rights under this lease, TENANT shall not assert any right to deduct the cost of repairs or any monetary claim against LANDLORD from rent thereafter due and accruing, but shall look solely to the LANDLORD for satisfaction of such claim. LANDLORD shall also pay TENANT'S expenses, including reasonable attorneys' fees, incurred by TENANT in successfully enforcing any default by LANDLORD of this Lease.
25. **WAIVER OF RIGHTS** No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other, shall be construed as a consent or waiver to or of any other breach of the same or other covenant, condition or duty.
26. **SUCCESSORS AND ASSIGNS** The covenants and agreements of LANDLORD and TENANT shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successor and assigns, but no covenant or agreement of LANDLORD, express or implied shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any fiduciary, any shareholder or any beneficiary under any trust.
27. **HOLDOVER** If TENANT fails to vacate the leased premises at the termination of this Lease after LANDLORD'S written notice to quit is delivered to TENANT, then the terms of this Lease shall be applicable during said holdover period, except for base rent, which shall be increased to two (2) times the then current base rent for the period just preceding such termination; but this provision shall not be interpreted as consent or permission by the LANDLORD or TENANT to holdover at the termination of this Lease and terms of this holdover provision shall not preclude LANDLORD from recovering any other damages which it incurs as a result of TENANT'S failure to vacate the leased premises at the termination of this Lease.
28. **MISCELLANEOUS** If TENANT is more than one person or party, TENANT'S obligations shall be joint and several. Unless repugnant to the context, "LANDLORD" and "TENANT" mean the person or persons, natural or corporate, named above as LANDLORD and TENANT respectively, and their respective heirs, executors, administrators, successor and assigns. LANDLORD

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3rd IN WITNESS WHEREOF, the said parties have caused this Lease to be executed by their duly authorized officers this day of May, 2017.

TENANT:
1828 Pepperrell Cove LLC
By:

Eides Ares
Eides Ares, Manager

[Signature]
Witness to Tenant
Donald Livingston

LANDLORD:
Chatham Street, L.L.C.
By:

[Signature]
Alphonse A.J. D'Amico, Manager

[Signature]
Witness to Landlord