

# ADMINISTRATIVE HEARINGS DIVISION

October 17, 2024

## STIPULATED SETTLEMENT AGREEMENTS FOR LIQUOR LICENSING CASES

1. 19 Acres Cider Company, Inc.  
Kimberly McLennan,  
Pres/Sec/Dir/Stkhldr  
dba **19 ACRES CIDER  
COMPANY (WY)**  
18055 SW Seiffert Rd  
Sherwood, OR 97140

OAR 845-005-0355 states, in pertinent part:

(1) The Commission may restrict a license or service permit when:\*\*\*

(c) The Commission determines that a restriction is in the public interest or convenience. \*\*\*

Note: Licensee was issued a Notice of Proposed License Restriction dated September 11, 2024. Licensee wishes to dispose of this licensing matter by settlement agreement, including the imposition of the listed restriction.

(Appl. for a change to the Winery Licensed Entity)

Licensee shall comply with the following restriction upon signing this Settlement Agreement and at all times when licensed unless or until the restriction are removed or modified by the Commission in writing:

Licensee Kyle McLennan shall not be in the same area or have any contact with minor females on the licensed premises, apart from his own minor child.

**SYNOPSIS:** Licensee applied to add Kyle McLennan to its current Winery License. Kyle McLennan is on probation for a criminal conviction. The proposed license restriction is in the public interest or convenience to align with McLennan's probation conditions.

### **TERMS OF AGREEMENT**

1. This Settlement Agreement resolves only the basis for the restriction identified in the Notice.
2. Licensee admits to the facts described in the Notice and that OLCC has a basis to restrict the Licensee's license as described in the Notice.
3. Licensee shall comply with the following restriction upon signing this Settlement Agreement and at all times when licensed unless or until the restriction are removed or modified by the Commission in writing:  

Licensee Kyle McLennan shall not be in the same area or have any contact with minor females on the licensed premises, apart from his own minor child.
4. Upon execution and final approval of this Settlement Agreement by the Commission, Commission staff will continue to process Licensee's application in accordance with applicable statutes and rules. Any changes to the license issued pursuant to the Application will include the restriction listed in this Settlement Agreement. Nothing in this Settlement Agreement prevents the Commission from considering facts, violations, or qualifications, currently known or unknown, that are not specifically identified in the Notice and resolved by this Settlement Agreement when processing the application, including when determining whether to issue or deny the change to the license or impose additional restrictions.

(continued **19 ACRES CIDER COMPANY (WY)**)

5. Licensee accepts this Settlement Agreement without any conditions or reservations. Licensee is aware of Licensee's right to seek judicial review if this matter was not resolved through this Settlement Agreement. Licensee is aware of Licensee's right to seek judicial review of a final order issued in the matter. Licensee freely and voluntarily waives all such rights to judicial review. In full satisfaction and settlement of this matter, Licensee agrees to the Commission's issuance of a Final Order incorporating this Settlement Agreement as described in paragraph 6.
6. This Settlement Agreement is conditioned upon the final approval by the Commission and will be reviewed by the Commissioners at a commission meeting. If the Commission does not accept and approve this agreement in its entirety, it is deemed null and void, and Licensee's hearing rights, if any, will be restored. If the Commission accepts and approves this agreement in its entirety, Licensee withdraws any request for hearing.
7. If the Licensee fails to comply with the restriction in this Settlement Agreement at any time after signing this Settlement Agreement or at any time after a change to the license has been issued, unless the restriction has been removed or modified by the Commission in writing, the Commission may do any or a combination of the following: deny the application, impose civil penalties, suspend, or revoke the license issued to Licensee under this Settlement Agreement. If OLCC notifies Licensee that Licensee has violated this Settlement Agreement, Licensee will be given the opportunity to contest whether or not Licensee violated the Settlement Agreement in a contested case proceeding. Licensee may not contest the facts or the basis for the restriction contained in the Notice or the appropriateness of OLCC's decision to deny, suspend, or revoke the license or to impose civil penalties.
8. The parties agree that this Settlement Agreement constitutes the sole, entire, and complete agreement between the parties to resolve the administrative proceeding commenced by the Notice and that no promises, inducements, or agreement not herein expressed have been made and that all terms of this Settlement Agreement are contractual and not a mere recital.
9. Licensee releases and waives any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents arising out of the matters set forth in the Notice or this Settlement Agreement, including but not limited to any claim under federal or state law for damages, declaratory or equitable relief, under 42 USC § 1983 et seq, and for attorney's fees or costs.
10. Licensee is an Oregon corporation. Kimberly McLennan is the President, Secretary, Director and Stockholder of Licensee. Licensee represents and warrants that Kimberly McLennan, individually has the authority to enter into this Settlement Agreement and bind Licensee on its behalf.
11. The parties agree that this Settlement Agreement and Final Order may be executed in one or more multiple counterparts, including facsimile, scanned, and electronically transmitted counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
12. The Settlement Agreement must be signed and received by the Commission by November 11, 2024, or this settlement offer is deemed withdrawn.

2. Western Pacific Depot Corporation  
Trelawny Bruce, Pres/Sec/Dir/Stkhldr  
dba **BADLANDS**  
110 NW Broadway  
Portland, OR 97209

(Application for a Full On-Premises  
Sales license )

OAR 845-005-0326 states, in pertinent part:

ORS 471.313(1) allows the Commission to deny a license that public interest or convenience does not demand. The following are some of the public interest or convenience reasons for which the Commission may deny a license unless intervening circumstances exist to overcome the criteria:

\*\*\* (2) Problem Areas:

(a) The licensed premises will be located in an area that, within 500 feet of the premises and in the past 12 months, has at least 50 documented incidents of public drunkenness, fights, altercations, harassment, unlawful drug sales, alcohol-related litter, trespassing on private property, or public urination. These problems need not be alcohol-related;

(b) Some of the intervening circumstances the Commission considers in determining whether the refusal basis is supported or overcome are:

(A) The applicant's control plan showing that alcoholic beverage sale or service at the premises will not contribute to the problems, and

(B) The applicant's control plan addressing its willingness and ability to control the proposed premises and patrons' behavior in the immediate vicinity of the premises.

(c) This criterion does not apply to renewal applications or to changes of ownership with no change in license privileges or operation.

OAR 845-005-0355 states, in pertinent part:

(1) The Commission may restrict a license or service permit when:

\*\*\* (d) The Commission has a basis to refuse the license and the applicant or licensee has submitted a qualifying control or operating plan as good cause to overcome the refusal basis. In these circumstances the Commission shall impose as restrictions those elements of the control or operating plan that the Commission determines are essential to overcoming the refusal basis.

Note: Licensee was issued a Notice of Proposed License Restrictions dated September 10, 2024. Licensee wishes to dispose of this licensing matter by settlement agreement, including the imposition of the listed restrictions.

**SYNOPSIS:** Applicant applied for a full on-premises license at a location identified as a problem area due to 92 relevant recorded incidents that occurred within 500 feet of the proposed premises in the preceding 12-month period. . The Portland Police Bureau provided an unfavorable recommendation for the application under OLCC rules. . Commission staff determined the proposed premises is located in a "problem area" under OAR 845-005-0326 and therefore had a basis to refuse the application. Applicant submitted a control plan to the Commission to show that alcoholic beverage sale or service at the premises will not contribute to the problems in the area and that Applicant has a willingness and ability to control the premises and patrons' behavior in the immediate vicinity of the premises. Commission staff identified elements of Applicant's control plan that are essential to overcoming the refusal basis, and the Applicant is willing to accept license restrictions memorializing those essential elements of the control plan.

(continued **BADLANDS**)

### TERMS OF AGREEMENT

1. This Settlement Agreement resolves only the basis for denial identified in the Notice.
2. Applicant admits to the facts described in the Notice and that OLCC has a basis to deny the Applicant's application as described in the Notice.
3. Applicant shall comply with the following restrictions upon signing this Settlement Agreement and at all times when licensed unless or until the restrictions are removed or modified by the Commission in writing:
  1. A patron may possess no more than two containers of alcoholic beverages at one time and each container of alcoholic beverages will contain no more than 16 ounces of malt beverage, 16 ounces of cider, 6 ounces of wine, or 2 ounces of distilled spirits.
  2. On Thursday, Friday, Saturday, and Sunday, licensee will have at least two DPSST-certified individuals on-duty and on the premises between 10:00 pm and the time of closing the premises to the public. The individuals acting in this role will not be allowed to mix, sell, or serve alcoholic beverages and must wear an outer garment that clearly displays the word "security" in a readable size and font on the individual's chest and back.
  3. The sale and service of alcoholic beverages are prohibited from 2:00 am to 7:00 am every day. Patron possession and consumption of alcoholic beverages are prohibited from 2:30 am to 7:00 am every day.
  4. Licensee will maintain a security video surveillance system with digital video recording capabilities sufficient to capture clear and specific images of all areas controlled by the licensee, including the outdoor areas adjacent to the licensed building. The licensee must keep all recordings for a minimum of 30 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture. Licensee must promptly make unaltered video surveillance footage available, upon request, to any OLCC inspector or law enforcement officer.
4. Upon execution and final approval of this Settlement Agreement by the Commission, Commission staff will continue to process Applicant's application in accordance with applicable statutes and rules. Any license issued pursuant to the Application will include the restrictions listed in this Settlement Agreement. Nothing in this Settlement Agreement prevents the Commission from considering facts, violations, or qualifications, currently known or unknown, that are not specifically identified in the Notice and resolved by this Settlement Agreement when processing the application, including when determining whether to issue or deny the license or impose additional restrictions.
5. Applicant accepts this Settlement Agreement without any conditions or reservations. Applicant is aware of Applicant's right to seek judicial review if this matter was not resolved through this Settlement Agreement. Applicant is aware of Applicant's right to seek judicial review of a final order issued in the matter. Applicant freely and voluntarily waives all such rights to judicial review. In full satisfaction and settlement of this matter, Applicant agrees to the Commission's issuance of a Final Order incorporating this Settlement Agreement as described in paragraph 6.
6. This Settlement Agreement is conditioned upon the final approval by the Commission and will be reviewed by the Commissioners at a commission meeting. If the Commission does not accept and approve this agreement in its entirety, it is deemed null and void, and Applicant's hearing rights, if any, will be restored. If the Commission accepts and approves this agreement in its entirety, Applicant withdraws any request for hearing.

(continued **BADLANDS**)

7. If the Applicant fails to comply with any restrictions in this Settlement Agreement at any time after signing this Settlement Agreement or at any time after a license has been issued, unless the restriction has been removed or modified by the Commission in writing, the Commission may do any or a combination of the following: deny the application, impose civil penalties, suspend, or revoke the license issued to Applicant under this Settlement Agreement. If OLCC notifies Applicant that Applicant has violated this Settlement Agreement, Applicant will be given the opportunity to contest whether or not Applicant violated the Settlement Agreement in a contested case proceeding. Applicant may not contest the facts or the basis for the denial contained in the Notice or the appropriateness of OLCC's decision to deny, suspend, or revoke the license or to impose civil penalties.
8. The parties agree that this Settlement Agreement constitutes the sole, entire, and complete agreement between the parties to resolve the administrative proceeding commenced by the Notice and that no promises, inducements, or agreement not herein expressed have been made and that all terms of this Settlement Agreement are contractual and not a mere recital.
9. Applicant releases and waives any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents arising out of the matters set forth in the Notice or this Settlement Agreement, including but not limited to any claim under federal or state law for damages, declaratory or equitable relief, under 42 USC § 1983 et seq, and for attorney's fees or costs.
10. Applicant is a California corporation. Trelawny Bruce is the President/Secretary/ Director/Stockholder of Applicant. Applicant represents and warrants that Trelawny Bruce individually has the authority to enter into this Settlement Agreement and bind Applicant on its behalf.
11. The parties agree that this Settlement Agreement and Final Order may be executed in one or more multiple counterparts, including facsimile, scanned, and electronically transmitted counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
12. The Settlement Agreement must be signed and received by the Commission by September 27, 2024, or this settlement offer is deemed withdrawn.