



Refrigerated Trailer Rental Agreement – Retail On Premise Licensee

DECRESCENTE DISTRIBUTING COMPANY, INC. REFRIGERATED TRAILER RENTAL AGREEMENT RETAIL ON PREMISE LICENSEE

Recitals

- A. DeCrescente Distributing Company, Inc. (“DeCrescente”), having its business office in Saratoga County at 211 North Main Street, Mechanicville, New York, 12118, and on the terms and conditions set forth in this Refrigerated Trailer Rental Agreement (the “Agreement,”) does hereby rent its property to “Lessee” as hereinafter identified; and
- B. DeCrescente will rent a DeCrescente owned refrigerated dispensing “Trailer” and “Equipment” (as hereinafter defined) to be used and possessed only by Lessee beginning at the “Lease Start Time” and ending at the “Lease End Time”, each as specified in Schedule A attached hereto and together constituting the “Term”; and
- C. The Trailer rental under this Agreement is only for the specific “Event” to be held at the designated “Location”, both as identified in Schedule A; and
- D. The rental fees and deposits are included in the “Fee and Deposit Checklist” set forth in Schedule B attached hereto and are acknowledged to be priced at fair market value; and
- E. DeCrescente and Lessee mutually desire to set forth their understanding in this written Agreement and have agreed on terms and upon covenants, conditions and provisions herein set forth.

Terms and Conditions

In consideration of the mutual covenants and obligations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DeCrescente and Lessee agree as follows:

Article 1. Required Lessee Documentation. Lessee, at its sole cost and expense, must obtain and submit to DeCrescente, **at least seven (7) days prior to delivery of the Trailer:** (a) a signed copy of this Agreement; (b) a valid On Premise License (“License”) and One-Day Alcohol Event Permit (“Permit”) (if applicable) from the New York State Liquor Authority (“SLA”), for the sale and/or consumption of alcoholic beverages (the “Beverages”) covering the Event and Location, together with any other licenses and/or permits required for that purpose; (c) a Certificate of Insurance satisfactory to DeCrescente as provided in Article 5, naming DeCrescente as an “Additional Insured;” (d) a binding Purchase Order for the Beverages, and for any optional supplies, pursuant to DeCrescente’s normal terms of use or sale (the timely submittal to DeCrescente of the foregoing documentation is a condition precedent to the delivery of the Trailer, Beverages and Equipment (defined to include trailer locks, tap knobs, air tanks, kiosks, cold plates and other accessories provided by DeCrescente); and (e) a valid New York State driver’s license showing proof that Lessee is over the age of twenty one (21). Lessee agrees that securing the necessary License and Permit from the SLA is the sole responsibility of Lessee and that DeCrescente has no obligation or responsibility to facilitate or assist Lessee in securing or complying with such License or Permit, or any other required licenses or permits. DeCrescente shall not be responsible for any fines or penalties Lessee may incur for violation of any law, rule or regulation.

Article 2. Delivery; Possession; Use. Subject to Lessee having complied fully with Article 1 above, DeCrescente will deliver the Trailer, Beverages and Equipment to the Location at or about the Lease Start Time, when Lessee and a DeCrescente Representative (as hereinafter defined) shall jointly inspect and cause to be signed a “**Delivered Condition Inspection Report**” (a template is attached as Schedule C hereto) which shall be made a part of this Agreement for all purposes upon its execution. The Lease Term shall commence at the Lease Start Time, and Lessee shall be deemed to have accepted possession of the Trailer, Beverages and Equipment, all in “AS IS” condition for the Lease Term. Upon commencement of the Term, any obligations of DeCrescente regarding the Trailer and the dispensing of Beverages shall cease, and Lessee shall accept and assume full responsibility for the management,



operations and conditions of the Trailer, Beverages and Equipment. Until such time that DeCrescente retakes possession of the Trailer and Equipment, Lessee shall be solely responsible for the management, operation and condition of the Trailer and Equipment, including the dispensing of Beverages, all to be in accordance with: (a) all applicable laws, rules, regulations, ordinances, including without limitation, the NYS Alcoholic Beverage Control Law (collectively, the “**Laws**”); and (b) this Agreement, including the “**DeCrescente Procedures**” enclosed with the Trailer, which are incorporated into and constitute a part of this Agreement. DeCrescente will pick up the Trailer and Equipment at the Location at the Lease End Time. At or about the Lease End Time, and prior to DeCrescente retaking possession of the Trailer and Equipment, Lessee and a DeCrescente Representative shall inspect the Trailer and Equipment and shall execute the “**Returned Condition Inspection Report**” (a template is attached as Schedule C hereto), which shall be made a part of this Agreement for all purposes upon its execution. Upon pick up by DeCrescente personnel, DeCrescente will be deemed to have retaken possession of the Trailer and Equipment. Consistent with applicable law, any unused Beverages (regardless of whether such beverages have been opened) shall remain with the Lessee and are not subject to be return, pick up or refund by DeCrescente.

Article 3. Enforceable Covenants. Lessee acknowledges and agrees to the following:

- A. At no time shall Lessee claim any ownership or other rights to the Trailer or the Equipment. It is understood and agreed that the use of the Trailer or Equipment by Lessee shall not alter or be construed to change the character of said Trailer or Equipment to be other than property wholly owned by DeCrescente.
- B. The Trailer and Equipment may not be moved from the spot at the Location as placed by DeCrescente. Only qualified DeCrescente Representatives are permitted to move the Trailer and/or service the Trailer and the Equipment.
- C. No Beverages or other items may be dispensed from the Trailer other than Beverages purchased from DeCrescente.
- D. No food or other items may be stored in the Trailer.
- E. DeCrescente Representatives are not permitted to dispense any Beverages at any time except to test or repair the Trailer or Equipment; any Beverages dispensed during testing or repair may not be consumed and must be discarded.
- F. Lessee and others are not permitted to adjust any CO2, Beer Gas, cooperage, keys, handles, temperature gauges, or other items owned by DeCrescente.
- G. Lessee may not use any extension or other electrical cords except as provided by DeCrescente.
- H. Lessee may not attach any signage or other materials to the Trailer by any means other than by painters’ tape. **The use of adhesive or tape may cause serious damage to the exterior of the Trailer, and thus any damage to the Trailer as a result of Lessee’s use of any adhesive or tape will be the sole responsibility of Lessee.**
- I. Lessee covenants and agrees that only persons over twenty-one (21) years of age, and instructed by a DeCrescente Representative, shall be permitted to operate the Trailer and to dispense Beverages, all in full compliance with the Laws.
- J. Lessee covenants and agrees that the Trailer and Equipment will be used to dispense alcoholic beverages only to persons over the age of twenty-one (21) and who are legally qualified to consume alcoholic beverages at the Event and Location.
- K. DeCrescente shall have no responsibility for any weather-related issues that impact the Event, and any such weather-related issues shall not excuse or modify any obligation of Lessee as set forth in this Agreement.
- L. Any authorized representatives of DeCrescente (a “**DeCrescente Representative**”) present at the Location during the Event are for the sole and limited purpose of drop off, pick up, testing and maintenance of the Trailer and Equipment and may not assume any other tasks, whether the serving of Beverages or other products, the policing of the Event or Location premises, the cleaning of the Equipment, or otherwise.
- M. DeCrescente shall, in its sole discretion, have the right to take immediate repossession of the Trailer and Equipment from the Lessee at any time and for any reason, including but not limited to 1) any breach of a term of this Agreement by Lessee; 2) any misuse of, or damage to, the Trailer or the



Equipment; or 3) in the event of a violation of any law, rule or regulation, or loss of the License or Permit or other required license or permit by Lessee associated in any manner with the rental of the Trailer or Equipment. Such retaking of possession by DeCrescente shall not affect its rights under this Agreement, and the Lessee agrees to cooperate fully with DeCrescente in retaking possession of the Trailer and/or Equipment.

Article 4. Risk of Loss and Final Payment. The Lessee shall exercise all reasonable care so as to prevent damage to the Trailer and Equipment. Any damage to the Trailer or Equipment while in possession of Lessee, or due to Lessee's (or Lessee's guests) negligence, misuse or breach of this Agreement, shall be repaired fully and exclusively at Lessee's sole expense as set forth herein and may result in the forfeiture of any deposits made by Lessee. Lessee assumes the entire risk of loss of and/or damage to the Trailer and Equipment, and for the lack of cleanliness of the Trailer and Equipment while in Lessee's possession, and Lessee shall promptly advise DeCrescente, orally and in writing, in the event of any loss or damage to the above. Lessee shall pay to DeCrescente a "**Replacement/Damage Fee**" pursuant to DeCrescente's standard terms for all damaged, unclean and missing Equipment as noted on the signed Returned Condition Inspection Report, which Replacement/Damage Fee shall be added to DeCrescente's final invoice. The final invoice is payable within seven (7) days after presentment to Lessee.

- A. **Important Note:** No credit will be given to Lessee for any unused Beverages or kegs, whether or not in unopened packaging.
- B. **Important Note:** Payment must be made by Lessee. Lessee's name must match the name on the License and Permit from the New York State Liquor Authority and certificate of insurance.
- C. **Important Note:** All fees and deposits in this Agreement are priced at fair market value.

Article 5. Lessee Insurance Obligations. Lessee agrees at its own expense to procure and to maintain general liability insurance from a highly rated insurance company sufficient to protect DeCrescente and Lessee from and against all loss and liability for property damage, bodily injury or death arising out of the use of the Trailer or Equipment, with a limit of at least \$1,000,000 per occurrence. Such insurance shall include coverage for claims arising out of the sale or provision of alcoholic Beverages and for claims arising out of the use or operation of any vehicle. The insurance required under this Agreement shall name DeCrescente as an "**Additional Insured**," on a primary and non-contributory basis. Lessee shall furnish proof of such insurance satisfactory to DeCrescente and shall be responsible for the payment of all premiums, deductibles, retention amounts and uninsured losses. The documents reflecting the insurance coverage must be submitted to DeCrescente as provided in Article 1 of this Agreement.

Article 6. Indemnification; No Representations. Lessee further covenants and agrees to indemnify, defend and hold DeCrescente, its owners, officers, directors, affiliates, employees, representatives, attorneys and agents (each an "**Indemnified Party**") harmless from or against any and all claims, demands, damages, actions or causes of action, together with any and all losses, costs, or expenses, including, but not limited to attorney fees and court costs in connection therewith and related thereto, asserted by any person or persons for (i) property damage, bodily injuries, loss or death received or sustained by any person or persons in any manner caused by, arising from, incident to, connected with, or growing out of the Event or use of the Trailer or Equipment, or both, or the dispensing and/or serving of any Beverages or in any other manner in connection with this Agreement; (ii) any violation of law, rule or regulation by Lessee, including without limitation, any fines assessed against DeCrescente by the SLA or other governmental entity based on Lessee's violation of the Laws; (iii) any breach of the terms of this Agreement by Lessee; or (iv) any negligence or willful omission by Lessee. Neither DeCrescente, nor any other Indemnified Party makes any express or implied representation or warranty as to any matters, including without limitation, the quality, condition, merchantability, design, capacity, workmanship or performance of the Trailer or Equipment, or any items to be dispensed from the Trailer, or their fitness for any particular purpose; provided, however, that DeCrescente will accept back for full credit any Beverages determined by DeCrescente to have been defective on delivery by DeCrescente. No defect or unsuitability of the Trailer or Equipment, or delay in delivery thereof, shall relieve Lessee of its obligations under this Agreement to pay for the Beverages, or for any other payment to DeCrescente including, but not limited to, any Replacement /Damages Fee or any final invoice.



Article 7. LIMITED LIABILITY. DECRESCENTE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSS OF PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATING TO THE RENTAL OR USE OF THE TRAILER, EQUIPMENT OR BEVERAGES, WHETHER SUCH CLAIM IS BASED OF WARRANTY, CONTRACT, TORT, OR OTHER LEGAL THEORY AND REGARDLESS OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS.

Article 8. MAXIMUM LIABILITY FOR DAMAGES. IN NO EVENT SHALL DECRESCENTE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE FEES PAID TO DECRESCENTE UNDER THIS AGREEMENT.

Article 9. Lessee Representative. If Lessee is not a single individual, Lessee shall designate one (1) person over the age of twenty-one (21) years, to be Lessee's Representative with the full power and authority to bind Lessee and to exercise the duties and obligations of Lessee as set forth in this Agreement. Notice by DeCrescente to Lessee's Representative shall be deemed notice to Lessee. Any reference to Lessee in this Agreement shall be deemed to also include Lessee's Representative.

Article 10. Complete Information. The Lessee hereby certifies that all information and documentation provided to DeCrescente is complete, accurate and truthful. The persons signing below certify, represent, and warrant that they have the full authority to sign this Agreement on behalf of Lessee, and thus fully bind Lessee for which they represent to all the terms and conditions hereof.

Article 11. Independent Parties. Lessee's status hereunder shall at all times be that of an independent party. Nothing in this Agreement is intended, nor shall it be construed, to (i) make DeCrescente and Lessee partners or joint venturers nor grant a right in or to any business activity or investments of or to the income or proceeds disbursed therefrom, or (ii) create a relationship between DeCrescente and Lessee of principal and agent, employer and employee or franchisor and franchisee. Licensee shall not at any time have the authority to bind DeCrescente.

Article 12. No Assignment. This Agreement shall not be assignable by Lessee without the prior written consent of DeCrescente.

Article 13. Severability. The Parties have drafted this Agreement with the express desire to comply with all applicable laws. If for any reason any provision of this Agreement shall be deemed by a court of competent jurisdiction to be legally invalid or unenforceable in any jurisdiction to which it applies, the validity of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and, in its modified form, such provision shall then be enforceable and enforced.

Article 14. No Waiver. The failure of either party in any one or more instances to insist upon full performance of any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such provisions. All waivers in order to be valid must be in writing and signed by an authorized officer of the party granting the waiver.

Article 15. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State (excluding the laws applicable to conflicts or choice of law), including without limitation, relevant provisions of the New York Alcoholic Beverage Control Law (ABCL) and SLA. Each of the parties hereby irrevocably and unconditionally (i) consents to submit to the exclusive jurisdiction of the United States District Court or the applicable state court located in the State of New York, County of Saratoga, for any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection to the laying of venue of any such action or proceeding in such courts, and (iii) waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been



brought in an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The prevailing party to any action shall be entitled to attorneys' fees.

Article 16. Force Majeure. Fires, floods, wars, acts of war, strikes, lockouts, labor disputes, pandemics, accidents to machinery, delays or defaults of common carriers, orders, decrees or judgments of any court, or any other contingency beyond the control of DeCrescente, whether related or unrelated, or similar or dissimilar to any of the foregoing (each a "Force Majeure Event"), will be sufficient excuse for any resulting delay or failure in the performance by DeCrescente of its obligations under the Agreement, but such performance will be excused only as long as the Force Majeure Event continues.

Article 17. Miscellaneous. The section headings contained in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement. All words in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter), as the context of this Agreement may require. Each of the Parties irrevocably waives the right to trial by jury. Unless otherwise indicated herein, any reference in this Agreement to a Section, Article or Schedule shall mean the applicable section, article or schedule of or to this Agreement. As used herein, the words "include", "includes" or "including" shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but rather shall be deemed to refer to all other items and matters that could reasonably fall within the broadest possible scope of such statement, term or matter. As used in this Agreement, the words "herein", "hereof" and other similar words shall refer to this Agreement taken as a whole and not to a particular Article. Any terms and conditions of this Agreement that by their nature can survive the Lease Term shall remain in force after the Lease Term. Lessee shall pay all sales, use and any other applicable taxes or costs based on performance under this Agreement, use of the Trailer and the dispensing of Beverages. Multi-Party Lessees are jointly and severally responsible as the Lessee under this Agreement. Third parties have no rights hereunder. This Agreement may be executed in two or more counterparts. All counterparts shall be construed together and constitute one and the same document, but if making proof hereof, only one document is necessary. Electronically delivered signatures of the Parties shall be deemed to constitute original signatures.

Article 18. Entire Agreement. No representation, promise, inducement, or statement of intention other than those set forth in this Agreement, its Recitals, Attachments or Schedules, have been made by DeCrescente or Licensee, and neither party shall be bound by or liable for any other alleged representation, promise, inducement, or statement of intention. This Agreement, including all Recitals, Attachments and Schedules and terms referenced in or contemplated by it, which are incorporated by reference and made a part hereof, constitutes the entire agreement between the parties. There are no other agreements or understandings, either written or oral, between the parties regarding its subject matter. This Agreement cancels and supersedes any previous agreements between DeCrescente and Lessee regarding the subject matter. No change, modification or alteration to this Agreement, or to the relationship evidenced thereby, will be effective unless set forth in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date stated below:

[Signature Page Follows]

Refrigerated Trailer Rental Agreement – Retail On Premise Licensee



DeCrescente Distributing Company, Inc.

Carmine J. DeCrescente III, Vice President

Date

Lessee (or Lessee's Representative)

Authorized Representative

Date

Printed Name

Title (if applicable)

Contact Phone Number

SLA License Number

Name of Licensed Account

SLA Permit Number (if applicable)



SCHEDULE A

LESSEE INFORMATION

- Lessee Name:
- Lessee's Licensed Account:
- Lessee Representative (if applicable):
- Lessee Address:
- Lessee Email:
- Lessee Phone Number:

LEASE TERM

- Lease Start Time:
- Lease End Time:

EVENT INFORMATION

- Event Name:
- Event Location:



SCHEDULE B

FEE AND DEPOSIT CHECKLIST

Set up and Delivery Fee. Will be charged on a “per vehicle” basis and included on the Beverage invoice pursuant to the rates set forth below.

- a) \$500.00 fee will be charged if Lessee orders \$0 - \$1,499.00 in Beverages, CO2 and cups, excluding deposit.
- b) \$250.00 fee will be charged if Lessee orders \$1,500 - \$2,499.00 in Beverages, CO2 and cups, excluding deposit.
- c) \$0 fee will be charged if Lessee orders \$2,500.00 in Beverages, CO2, and cups, excluding deposit.

Additional Weekend Delivery Fee. There will be an additional \$200.00 delivery fee for deliveries on Saturday or Sunday. This fee will not be waived.

Equipment Rental Fees and Deposits. The following Equipment may be rented pursuant to the fees and deposits set forth below:

- a) \$25.00 Trailer Lock deposit refundable upon return.
- b) \$30.00 Tap Knob deposit (per knob) refundable upon return.
- c) Air Tanks fees are charged for 8 kegs at the rate of \$37.50 for each CO2 tank, including a \$100.00 deposit that is refundable upon return of the tanks with Trailer.
- d) Kiosk deposits are \$2,000.00 refundable upon return.
- e) Cold Plate fee charged at the rate of \$49.50 for 60/40 beer gas, including a \$400.00 deposit that is refundable upon return to DeCrescente.

****The refund of any Equipment deposit shall be subject to Article 4 hereof.**

Lessee Initial Acknowledging Equipment Fees and Deposits _____



SCHEDULE C

INSPECTION REPORTS

**To be executed separately upon drop off and pick up of the Trailer and Equipment by the DeCrescente Representative and subsequently made a part of the Agreement for all purposes.

Delivered Condition Inspection Report

Condition at time of Delivery by DeCrescente:

1A. Preexisting Damage to Trailer.

1B. Cleanliness of Trailer.

2. Beverages delivered with Trailer

3. Condition of DeCrescente equipment.

4. Condition of optional items

Returned Condition Inspection Report

Condition at time of Return to DeCrescente:

1A. Additional Damage to Trailer.

1B. Cleanliness of Trailer.

2. DeCrescente Equipment damaged/missing.

3. Optional items damaged/missing

DELIVERY CONFIRMATION

RETURN CONFIRMATION

DeCrescente Representative

DeCrescente Representative

Lessee or Lessee's Representative

Lessee or Lessee's Representative

Date and Time

Date and Time