

REVOCABLE LICENSE AGREEMENT
FOR
PARKING SPACE USE FOR PARKLET

THIS LICENSE AGREEMENT (this "Agreement"), is made as of the ____ day of _____, 20__, by and between the **CITY OF MCKINNEY, TEXAS** (the "City") and _____, a _____ ("Licensee"), witnesseth that:

WHEREAS, Licensee owns and/or operates a business ("Premises") located within an approved Parklet Designated Area within the Central Business District in McKinney, Collin County, Texas, in compliance with Section 90-361 of the City's Code of Ordinances ("City's Code"), and more particularly described on **Exhibit "A"** attached hereto and incorporated by reference herein;

WHEREAS, the City is the owner of public right-of-way which is used as vehicular parking spaces (the "Parking Space") which is adjacent to the Premises;

WHEREAS, Licensee has requested permission to install a parklet ("Parklet") onto a portion of the Parking Space located adjacent to the front entrance of the Premises to allow for additional outdoor restaurant seating and food and alcohol sales (the "Services") (collectively referred to as "Licensee's Use"), in compliance with Sections 90-370 and 14-21 of the City's Code; and

WHEREAS, this License Agreement allows Licensee the temporary right to use a portion of the Parking Space ("License Area") for the purpose of erecting the Parklet in accordance with Section 90-370 of the City's Code for the provision of the Services; and

WHEREAS, the City agrees to allow Licensee to temporarily use the License Area and such License Area shall be temporarily considered as a part of Licensee's Premises provided Licensee agrees to hold the City harmless with respect to any damage to, or necessary modification of the Parking Space and/or the License Area and to indemnify the City from and against any and all claims or causes of action arising out of or related to Licensee Use of the Parking Space and/or License Area and to maintain and keep the Parking Space and/or License Area in good repair.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and for other valuable and good consideration in hand paid by Licensee to the City, the sufficiency and receipt of which are hereby expressly acknowledged and confirmed, the parties hereby agree as follows:

Section 1. Installation and Maintenance of Services; Permitted Encroachment.

The City does hereby agree that Licensee may install a Parklet as necessary to comply with Section 90-370 of the City's Code and maintain such Parklet at Licensee's sole cost

and expense, subject to the terms of Section 3 below. In connection with the foregoing, the City specifically consents to the Licensee's Use of the License Area. Such License Area shall be depicted with actual measurements, must be to scale and must show the Parklet to be located within the License Area as shown on **Exhibit "B"**. The minimum standards for any such Parklet located within the License Area are set forth in **Exhibit "C"**. In no event shall any portion of the Parklet extend beyond the permitted License Area.

Section 2. Conditions of License.

A. City grants this non-exclusive license to Licensee for Licensee's use of the License Area effective _____ until _____, for a period not to exceed two (2) years. This Agreement is non-transferable. It is the express intention of the City that this Agreement is not exclusive and does not give any rights to Licensee to exclude the public from any portion of the public right-of-way, except in compliance with Section 90-370 of the City's Code. In consideration of said License, Licensee agrees with City as follows:

1. Licensee shall pay to City the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) as rent for use of the License Area during the initial two-year rental term, payable in advance at the office of the Finance Director.
2. Licensee shall pay (in addition to the above-described rents) all water, electrical, security and other costs associated with the use and maintenance of the License Area during the time for which this License is granted.
3. Licensee has examined and knows the condition of the License Area and has received it in good order and repair, and will keep the License Area in good repair during the term of this License at Licensee's own expense. Upon termination of this License, Licensee will yield up the License Area to the City in good condition and repair.

B. Licensee expressly understands and agrees that it is a violation of the City's Code for any person to consume alcoholic beverages in public streets or alleys in the City, and that the sale of alcohol in McKinney is permitted only by properly licensed permittees of the Texas Alcoholic Beverage Commission ("TABC"). With respect to Licensee's Use of the License Area, Licensee has the responsibility to and shall secure all applicable TABC permits and City permits and shall comply with all provisions of the City's Codes, specifically including, but not limited to Sections 14-21 and 90-370.

Section 3. Fee. Licensee agrees to pay the City a one-time parklet application fee in the amount of \$250 for the duration of this Agreement.

Section 4. City's Ordinances. Licensee expressly acknowledges that by entering into this Agreement, Licensee, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits as waiving any of the

requirements of the City's Zoning Ordinance or Subdivision Ordinance or any other ordinance of the City, as applicable. Licensee shall strictly conform to all provisions of the City's Code and Licensee shall obtain all such permits as may be required to place the Parklet in the License Area of the Parking Space.

Section 5. Hold Harmless; Relocation. Licensee agrees to hold the City harmless from and against (a) any financial responsibility for Licensee's Use of the Parking Space and/or License Area, if the City determines, in its sole discretion, that Licensee's Use will unreasonably obstruct any necessary use of the Parking Space, and (b) any damage to the Parking Space. The City will provide Licensee ten (10) days written notice of the need to modify Licensee's Use of the Parking Space, including the License Area. Licensee shall have five (5) days from the date it is provided such written notice to modify Licensee's Use of the Parking Space and/or License Area in order to allow unimpeded use of the Parking Space.

Section 6. Maintenance and Repair of the Parking Space. Licensee understands that the Parking Space was not designed and constructed for the type of usage that will take place during Licensee's Use of the License Area. Licensee hereby agrees at all times to maintain and keep the License Area clean, in good repair and condition and to replace or repair the Parking Space to its current condition, or better, upon the termination of this Agreement by either party. The City will provide Licensee ten (10) days written notice of the need to clean, maintain, repair or replace the Parking Space. Licensee shall have five (5) days from the date it is provided such written notice to clean, maintain, repair or replace the Parking Space.

Section 7. Indemnification. Licensee hereby assumes all liability and responsibility for and agrees to fully indemnify, hold harmless and defend the City and its officers, agents, servants and employees from and against all claims, suits, judgments, demands, damages, losses and expenses, including but not limited to attorney's fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, Licensee's Use of the License Area and/or the Parking Space that forms the basis of this Agreement specifically including but not limited to the construction, maintenance and use of the Parklet in or on the Parking Space as well as the maintenance, repair and use of the Parking Space in conjunction with the Services and/or any claims that result from a violation of any applicable local, state, or federal accessibility requirements, including those contained in the Americans with Disabilities Act (ADA). Should Licensee rent a constructed Parklet and place it in the License Area, the City at no time shall be responsible for any loss or damage sustained to the Parklet that occurs during or after the term of this Agreement. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Section 8. Notices. All notices or requests required or authorized hereunder shall be in writing and shall be deemed effective upon receipt (or refusal thereof) when (i) delivered in person, (ii) sent by U.S. Postal Service, postage prepaid, as overnight mail or certified

mail, return receipt requested, (iii) delivered by a nationally recognized delivery service for same-day or overnight delivery, or (iv) transmitted by facsimile (with proof of confirmed transmission) to the respective parties hereto as follows:

To Licensee: _____

McKinney, Texas 75069
Attention: _____
Fax No. _____

To the City: City Manager
222 N. Tennessee
P.O. Box 517
McKinney, Texas 75070

Section 9. Termination.

A. Either party (the “Terminating Party”) may terminate this Agreement with or without cause by giving thirty (30) days’ notice. The parties shall retain all rights and remedies available at law, subject to the terms of this Agreement. Should this Agreement terminate prior to the conclusion of the initial two-year term, Licensee shall not be refunded any monies paid as a part of this Agreement, specifically including rent paid under Section 2 herein.

B. In the event Licensee fails to comply with any material provision of this Agreement, including but not limited to, maintaining a TABC permit and a City alcohol permit or compliance with the requirements of Sections 14-21 and 90-370 of the City Codes, as amended, the City may terminate this contract with ten (10) days’ notice. A copy of Licensee’s TABC permit and City alcohol permit are attached hereto as **Exhibit “D”**.

Section 10. Insurance.

A. Licensee shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the City of McKinney. Licensee shall furnish to the City of McKinney Procurement Services Manager certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions upon the execution of this Agreement. A copy of the insurance meeting the foregoing requirements is attached hereto as **Exhibit “E”**. Certificates shall reference the special event and be addressed as follows:

City of McKinney
Attn: Tami Levens
PO Box 517
McKinney, Texas 75070
or email: tlevens@mckinneytexas.org

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
2. Liquor Liability Insurance, either endorsed onto the above policy or written on a “stand alone” basis, if any of the following applies:
 - i. The Licensee is in the business of manufacturing, selling, or distributing alcoholic beverages;
 - ii. The Licensee serves or furnishes alcoholic beverages for a charge, whether or not such activity requires a license or is for the purpose of financial gain or livelihood; or
 - iii. The Licensee serves or furnishes alcoholic beverages without a charge, if a license is required for such activity.
3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.

B. With reference to the foregoing required insurance, the Licensee shall endorse applicable insurance policies as follows:

1. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader; and, the City of McKinney shall be provided a defense to any and all claims and causes of action arising out of or related to this Agreement as may be provided pursuant to Licensee’s general liability insurance policies.

Nothing contained in Section 7 of this Agreement shall be interpreted or applied as limiting, reducing, or eliminating any obligation or duty that Licensee’s insurance carrier may owe to City as an additional insured, pursuant to endorsement CG2026 or broader under the Licensee’s general liability insurance policies required by this Agreement, to provide the City with a defense and/or indemnify the City for any claim or cause of action, whether one or more, regardless of the proportionate responsibility or liability of the Licensee or the City. Neither shall anything contained in this Section 10 be interpreted or applied as providing or otherwise entitling either Licensee, Licensee’s insurance carrier or any other party any right or ability to recover over against City any amounts of money attributable to damages, costs, expenses and/or attorneys’ fees based on or arising out of a finding

of comparative or proportionate responsibility or liability as against the City it being understood and agreed that City in no way intends by this Agreement to waive its sovereign immunity regarding any claim, suit or cause of action.

2. The City of McKinney, its officials, employees and officers shall be named as additional insureds on any required Liquor Liability policy.
3. All insurance policies shall be endorsed to the effect that City of McKinney will receive at least thirty (30) days' notice in advance of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for any reason other than nonpayment of premium.
4. All insurance policies shall be endorsed to the effect that City of McKinney will receive at least ten (10) days' notice in advance of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for nonpayment of premium or by Licensee for any reason.

C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent. Such insurance shall be primary and non-contributory regardless of any other insurance that may be applicable to any loss in question and in a form appropriate to cover Licensee Use of the Parking Space.

D. Licensee shall notify the City in writing at least thirty (30) days prior to Licensee cancelling or making any material change to any coverage(s) provided in, or through, the insurance policies required under this Section 10. Failure by Licensee to provide the City the notice required hereunder may, in the sole discretion of the City, be deemed a material breach of this Agreement.

Section 11. Binding Effect. The benefits and burdens of this Agreement shall benefit and bind Licensee and the City and their respective successors, successors-in-title, legal representatives and assigns as provided herein.

Section 12. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, there and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected hereby, and the other terms and provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law..

Section 13. Waiver. The failure of the City or Licensee to exercise any right given hereunder or to insist upon strict compliance with any term, condition or agreement specified herein, shall not constitute a waiver of either party's right to exercise such right or to demand strict compliance with any such term, condition or agreement under this Agreement.

Section 14. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas. Venue shall be exclusive in Collin County, Texas.

Section 15. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

LICENSEE

By: _____

Name: _____

Title: _____

Email: _____

Date Signed: _____

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

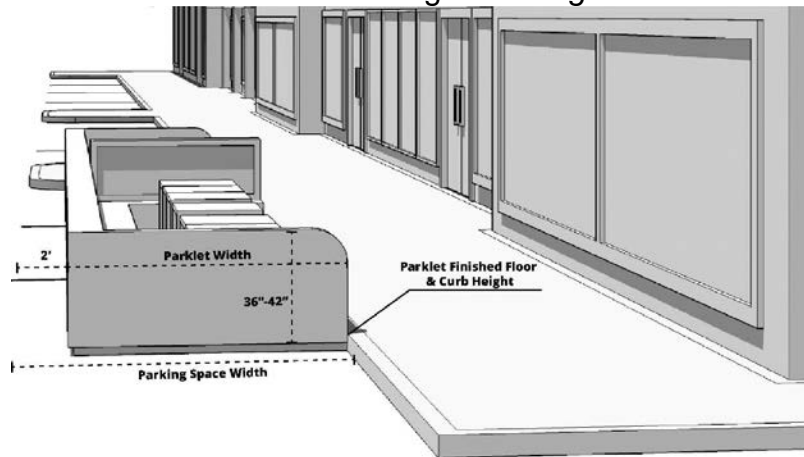
Exhibit "A"
Location Map of Property
(to be provided by Licensee)

Exhibit "B"
Scale Drawing of License Area
(to be provided by Licensee)

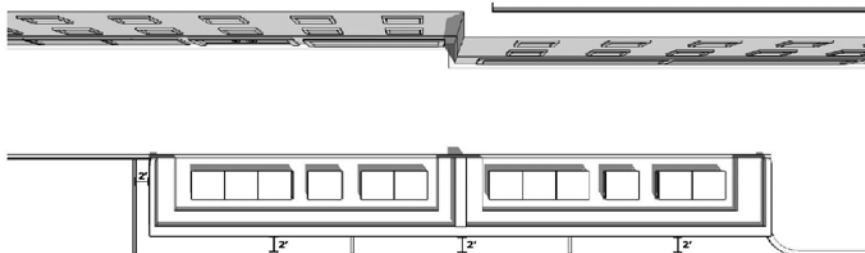
Exhibit "C"
Parklet Minimum Standards

(a) Parklets must conform to the following requirements:

1. No more than two (2) parking spaces per block-face may be converted into a parklet, except as provided for in subsection (a)2, herein;
2. Each parklet shall be no larger than two (2) parking spaces and no smaller than one (1) parking space, unless multiple adjacent businesses apply for a joint parklet, in which case a larger space may be approved by the planning department;
3. Each parklet must be located directly in front of the applicant's business, preferably at the end of any parking lane, such as a corner or bump out;
4. Parklets shall be constructed such that the floor of the parklet is level with the curb and sidewalk;
 - i. Where such parklets are elevated above the parking surface, a commercial alteration permit must be obtained prior to installation.
 - ii. Parklets elevated above the ground must have a fixed guardrail compliant with relevant building codes and accessibility standards and at least 36 inches in height. *See figure below:*



5. Parklets constructed at grade must be surrounded by a decorative barrier element on all sides of between 30 inches to 42 inches in height;
6. Parklets must keep two-feet clear on all sides of the parklet not adjacent to the sidewalk. *See figure below;*



7. Parklets must include an approved traffic barrier on all sides that face a public roadway or adjacent parking space or loading zone;
 8. Parklets must be situated such that a minimum four-foot wide free and clear pedestrian path is maintained on the adjacent sidewalk;
 9. Parklets constructed with a finished floor above the finished grade of the parking surface shall have a minimum design load of 100 pounds per sf;
 10. Parklets may not be located in a parking space directly adjacent to a storm drain;
 11. Parklets may not be located in front of a fire hydrant;
 12. Parklets must have a portable fire extinguisher present during business operating hours;
 13. Parklets may not be located in a handicap accessible parking space or a designated loading zone space;
 14. Applicant must provide the insurance coverage required by City with the City named as an additional insured and a waiver of subrogation in favor of the City; and
 15. Alcohol service in any parklet must conform with those requirements established by the Texas Alcoholic Beverage Commission (TABC) and provide proof of TABC permitting, City permitting, and liquor liability insurance in favor of the City.
- (b) At the business owner's discretion, parklets may also include site furniture, planters, heaters that comply with current city Fire Code requirements (during business operating hours only), overhead lighting (subject to additional review and/or permitting), signage, umbrellas, and lighting, if appropriately placed.
- (c) The following are prohibited at parklets:
1. Tents, canopies, or screen enclosures above 42 inches as measured from the walking surface of the parklet; and
 2. Portable generators;
 3. Heaters and site furniture may not encroach into the sidewalk or adjacent parking spaces.
- (d) It shall be the responsibility of the business owner to ensure that the parklet conforms to all local, state, and federal accessibility requirements, including those contained in the Americans with Disabilities Act (ADA) and shall be at all times solely liable for any such violations.

Exhibit "D"
Copy of TABC permit and City alcohol permit
(to be provided by Licensee)

Exhibit "E"
Copy of Insurance Certificates
(to be provided by Licensee)