

REVOCABLE LICENSE AGREEMENT
FOR
SIDEWALK USE – SIDEWALK CAFE

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 is the owner or operator of a food establishment, as that term is defined in Section 46-2 of the City's Code of Ordinances (the "City Code"), at _____ ("Premises"), which is located within the Sidewalk Use Zone in McKinney, Collin County, Texas, in compliance with Section 90-361 of the City Code, and as more particularly described in **Exhibit "A"** attached hereto and incorporated by reference herein;

WHEREAS, the City is the owner of public right-of-way which is used as a sidewalk (the "Sidewalk") for pedestrian usage which is adjacent to the _____ boundary of the Premises;

WHEREAS, Licensee has requested permission to install certain temporary improvements ("Improvements") onto a portion of the Sidewalk located adjacent to the front entrance of the Premises to allow for restaurant seating and food and alcohol sales (the "Services") (collectively referred to as "Licensee's Use") on a portion of the Sidewalk in compliance with Sections 90-380 and 14-21 of the City's Code of Ordinances; and

WHEREAS, this License Agreement allows Licensee the right to use a portion of the Sidewalk ("License Area") for the purpose of erecting such Improvements as necessary to comply with Section 90-380 for the provision of the Services; and

WHEREAS, the City agrees to thereafter allow Licensee to use the License Area and such License Area shall be 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 Sidewalk 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 Sidewalk and/or License Area and to maintain and keep the Sidewalk and/or License Area in good repair.

NOW, THEREFORE, for and in consideration of the amounts provided herein and 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 Improvements as necessary to comply with Section 90-380 of the City's Code and maintain such Improvement at Licensee 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 all Improvements to be located within the License Area as shown on **Exhibit "B."** The minimum standards for any such Improvements within the License are set forth in **Exhibit "C."** In no event shall any Improvements extend on the Sidewalk beyond the 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 License may be renewed for additional two (2) year terms upon written request by Licensee and acceptance by the City. Any request for renewal must be received no later than sixty (60) days prior to termination of this License, or any renewal term. In no event shall this License be renewed if Licensee has violated any provision of this License or Chapter 90 of the City Code. The License is non-transferable. It is the express intention of the City that this License 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 90-380 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 One Dollar per square foot (\$1.00/sq. ft.) of licensed area, not to exceed Six Hundred Dollars (\$600.00), as rent for 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 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 McKinney Code of Ordinances for any person to consume alcoholic beverages in City-owned structured parking garages, city-owned parks save and except Mitchell Park and Central Park, and City-owned park facilities, 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 for and shall ensure that all applicable TABC permits and City permits are secured and all City Codes, specifically including, but not limited to Sections 14-21 and 90-380 of the City Code of Ordinances, are complied with.

C. Licensee shall provide a signed copy of an approval letter from the City of McKinney Historic Preservation Officer indicating issuance of a Letter of Suitability and/or Certificate of Appropriateness, respectively, for all proposed Improvements specifically including, but not limited to the installation of a physical barrier required in Section 90-380 of the City Code. The approval letter shall be attached to this Agreement as **Exhibit "D."**

Section 3. Fee. Licensee agrees to pay the City a one-time sidewalk cafe application fee in the amount of \$100 for the duration of this Agreement.

Section 4. City 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 of Ordinances and Licensee shall obtain all such permits as may be required to place the Improvements in the License area of the Sidewalk.

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 Sidewalk and/or License Area, if the City determines, in its sole discretion, that Licensee's Use will unreasonably obstruct any necessary use of the Sidewalk, and (b) any damage to the Sidewalk. The City will provide Licensee ten (10) days written notice of the need to modify Licensee's Use of the Sidewalk, 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 Sidewalk and/or License Area in order to allow unimpeded use of the Sidewalk.

Section 6. Maintenance and Repair of the Sidewalk. Licensee understands that the Sidewalk 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 Sidewalk 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 Sidewalk. Licensee shall have five (5) days from the date it is provided such written notice to clean, maintain, repair or replace the Sidewalk.

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 Sidewalk that forms the basis of this License specifically including but not limited to the construction, maintenance and use of the Improvements in or on the Sidewalk as well as the maintenance, repair and use of the Sidewalk in conjunction with the Services. 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: _____

Attention: _____
Email: _____

To the City: City Manager
222 N. Tennessee St.
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 90-380 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 "E."**

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 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 "F."** 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.

B. With reference to the foregoing required insurance, the Licensee agrees to the following:

1. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability and any required Liquor Liability policy.
2. Policies of insurance shall not be cancelled, non-renewed, terminated, or materially changed unless and until thirty (30) days notice has been given to City of McKinney.

C. Insurance limits can be met with a combination of primary and excess/umbrella coverage.

D. All insurance shall be purchased from insurance companies that meet a financial rating of A-VI or better as assigned by A.M. Best Company or equivalent.

Section 10. 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 11. 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 12. 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 13. 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 14. 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: _____

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"
Minimum Standards

I. Minimum Design Standards

- (a) A physical barrier to delineate the space to be used by the permit holder shall be installed subject to the following requirements:
 - (1) Barriers in the form of a fence, balustrade or other similar fencing material shall be installed at a height of no less than 36 inches and no taller than 42 inches.
 - (2) Barriers in the form of planters and benches shall reach a minimum of 20 inches in height but shall not exceed a total height of 60 inches inclusive of any plants and/or decorative materials.
 - (3) Living plant screens shall not be an acceptable barrier material.
 - (4) Plants and planters must be situated to retain adequate visibility into the licensed sidewalk use area and the adjacent businesses.
- (b) The sidewalk cafe area shall be monitored by an employee at all times to ensure that no alcoholic beverages are removed from the sidewalk use permit area.
- (c) Signage must be posted in the area indicating:
 - (1) The Permit Type and restrictions of the Sidewalk Use Area. Signage must indicate that alcoholic beverages may not be removed from the sidewalk café area
 - (2) A sketch of the permitted area and exits.

II. Clearance and Accessibility

- (a) Unless otherwise approved by the Director of Planning, all Sidewalk Use Areas shall maintain a minimum free and clear pedestrian path between the proposed sidewalk use area and the back of curb, pursuant to the distances identified in Table 1 below.

Table 1 – Clear Pedestrian Path Requirements for Sidewalk Use Areas

Sidewalk Width	Minimum Clear Pedestrian Path Required
< 8'	sidewalk use area not permitted
8' to 14'	5 feet

15' to 19'	8 feet
20 to 24'	10 feet
25' and greater	13 feet
Corner Clips	as determined by the Director of Planning

NOTE: Distances shall be measured from the closest point of the proposed barrier(s) to the back of curb or permanent obstruction. Measurements shall be rounded to the nearest whole number.

- (b) In instances where the sidewalk includes a permanent obstruction such as a ramp, stairs, or city-owned planter, a clear pedestrian path between the sidewalk use area and the permanent obstruction must be maintained pursuant to the distance requirements in table 1. Public egress and access to the building's entrances must also be maintained.
- (c) Seating, tables, chairs, plants and other appurtenances may not encroach onto any adjacent property, or the minimum clear path.
- (d) It shall be the responsibility of the business owner to ensure that the sidewalk use area 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.

III. Prohibited Items

The following is prohibited within all Sidewalk Use Areas:

- (1) Tents, or screen enclosures above 48 inches as measured from the walking surface of the sidewalk
- (2) Portable generators
- (3) Signage other than that required by this section.
- (4) Outdoor music without a special events permit.
- (5) Extension cords from inside the premises to the permitted area
- (6) Trash cans

Exhibit "D"
Copy of Approved Certificate of Appropriateness and/or Letter of Suitability
(to be provided by Licensee)

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

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