

## **LICENSE AGREEMENT LOS ALTOS GRILL**

This Parking License Agreement (“License”) is entered into as of this \_\_\_ day of August, 2023 (“Effective Date”), by and between the CITY OF LOS ALTOS, a municipal corporation, One North San Antonio Road, Los Altos California, (“City”) and HILLSTONE RESTAURANT GROUP, INC., a Delaware corporation, dba the LOS ALTOS GRILL, hereinafter referred to as “Licensee,” occupies the property located at 233 Third Street, Los Altos California (“Owner”). City and Licensee may be referred to individually as a “Party” or collectively as the “Parties.” This License Agreement rescinds and replaces the Parking License Agreement dated May 2004.

### Recitals

A. City is the owner of that certain real property, commonly referred to as parking plaza number 3, located in the City of Los Altos, County of Santa Clara, State of California, (the “Property”). The Property as depicted in the map attached hereto as Exhibit “A” and incorporated by this reference.

B. The Property contains a parking lot or parking area, consisting of approximately 211 surface parking stalls, which are situated on the Property (the “Parking Area”). Such Parking Area services the City and is available for parking by the general public.

C. Licensee leases that certain real property, together with an approximately 6,722 square foot restaurant building situated thereon, which is leased to Hillstone Restaurant Group, Inc., doing business as the Los Altos Grill (“Los Altos Grill”) located at 233 Third Street, in the City of Los Altos, County of Santa Clara, State of California, APN 167-38-5 (the “Los Altos Grill Property”). The Los Altos Grill Property is more particularly described in Exhibit “B” attached hereto and incorporated by this reference.

D. Licensee currently operates the Los Altos Grill pursuant to the terms and conditions of Condition Use Permit 95-UP-1 (“CUP 95-UP-1”). Licensee has a pre-existing written parking agreement referred to here as the Memorandum of Understanding (“MOU”) dated October 1996. Said MOU governed the off-site parking requirements for CUP 95-UP-1, which authorized Licensee to operate the Los Altos Grill during evening hours every day from 5:00 p.m. to 11:00 p.m. (Los Altos Grill not opening before 4:00 p.m.).

E. Licensee now desires to operate the Los Altos Grill pursuant to the terms and conditions of Conditional Use Permit 03-UP-10 (“CUP 03-UP-10”) with expanded hours of operation. This License is necessary for Licensee to meet its off-site parking requirements for CUP 03-UP-10, specifically for the expanded hours of 11:00 a.m. to 4 :00 p.m. use by the Los Altos Grill.

F. To satisfy the off-site parking conditions in CUP 95-UP-1 and CUP 03-UP-10, Licensee desires the right to use thirty-five (35) parking stalls located within the Parking Area referred to above (the “Licensed Parking Stalls”). The Parties intend that such Licensed Parking Stalls be available for use by Licensee and its guests and invitees who occupy or use the Los Altos Grill referred to above during the License Term referred to below.

G. City is willing to grant to Licensee a terminable, non-exclusive license to use such Licensed Parking Stalls on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. License Supplements Existing MOU. This License in addition to the MOU and shall govern the off-site parking requirements for CUP 95-UP-1 and CUP 03-UP-10 as set forth below:

This License shall supplement the existing MOU governing the off-site parking requirements and authorize the operation of the Los Altos Grill during evening hours from 4:00 p.m. until 11:00 p.m. weekdays and all day on weekends, pursuant to CUP 95-UP-1.

This Licensee shall govern the off-site parking requirements and authorize the operation of the Los Altos Grill during the hours between 11:00 a.m. to 2:00 p.m. weekdays and all day on weekends, pursuant to CUP 03-UP-10.

2. License. City hereby grants to Licensee the terminable, non-exclusive right to use the Licensed Parking Stalls for the purpose of allowing Licensee and its guests and invitees who occupy or use the Los Altos Grill to park motor vehicles in said Licensed Parking Stalls. City grants to Licensee the right of ingress and egress over the Property to the extent necessary to gain access to and from such Licensed Parking Stalls and the Parking Area and the public street(s) adjacent to the Parking Area, which right of ingress and egress shall be in effect at all times during the term of this License. Nothing in this License shall be construed to grant or confer to Licensee any property interest or vested right in the Property.

3. Modifications to Parking Area. City shall have the right to make modifications to the Parking Area without notice to, and without obtaining the consent of, Licensee so long as such modifications do not materially interfere with Licensee's non-exclusive right to park in the Licensed Parking Stalls. City may also close the Parking Area, or portions thereof, for the purpose of maintaining, repairing, or replacing the same or to prevent prescriptive easements or rights from being created.

4. Term. City grants this License for a term of the lesser of (i) six (6) months from the Effective Date, or (ii) until such date as the Los Altos City Council shall establish a new standard value/rate for parking stalls in the Parking Area (as defined above), provided however, that if the condition of subsection (ii) is not satisfied within six( 6) months, this License shall continue on a month-to-month basis it being the intent of the parties that at such time as a new standard parking value is adopted by the City Council, this License shall be amended to incorporate such new value/rate. Upon the expiration or termination of this License, or the revocation of CUP 03-UP-10, the terms of the MOU shall govern the off-site parking requirements for CUP 95-UP-1, which authorizes Licensee to operate the Los Altos Grill during evening hours every day from 4:00 p.m. to 11:00 p.m. (Los Altos Grill not opening before 4:00 p.m.).

5. Beneficiaries of License. This License is hereby granted in favor of Licensee for the benefit, use and enjoyment of Licensee and its guests and invitees who occupy or use the Los Altos

Grill referred to above. At no time during the term of this License, shall Licensee's employees be eligible for City of Los Altos parking permits. Licensee's employees shall use the existing seventeen (17) parking stalls that currently serve the Los Altos Grill Property.

6. License Fee. In consideration of the granting of this License, Licensee shall pay to City, \$486.00 per parking stall for the thirty-five (35) Licensed Parking Stalls, or \$17,010.00 per year/\$1,417.50 per month ("the "License Fee"), commencing on the Effective Date, on a pro-rated basis, if applicable. This amount was calculated by multiplying the \$3/ sq ft fee by a standard 9' x 18' parking stall. Said License Fee shall be deposited into a City of Los Altos parking fund.

7. Insurance. Licensee shall name City as an additional insured on Licensee's commercial general liability insurance policy covering the Los Altos Grill Property. Such policy shall provide protection against claims for personal injury, death or property damage occurring in, on or about the Parking Area or the Los Altos Grill Property due to the negligent act(s) of Licensee or any of its agents, employees, assignees, subtenants, guests, or invitees. Upon reasonable request made by City to Licensee, Licensee shall furnish City with a copy of its liability insurance policy (or a certificate of such liability insurance policy) evidencing the insurance coverage required to be maintained by Licensee as described above.

8. Indemnification. Licensee agrees to indemnify and hold City, its officers and employees **harmless** from and against any liability, damages, costs, losses, claims and expenses, including reasonable attorneys' fees, arising out of the negligent acts, errors, or omissions of Licensee or Licensee's assistants, employees, or agents, in the performance of this License.

9. Attorney's Fees. In the event any Party hereto shall bring an action, suit, or legal proceeding to enforce, protect or interpret the terms of this License, the prevailing party shall be entitled to recover, as a part of such action, suit or legal proceeding, reasonable attorney's fees and court costs, including, attorney's fees and costs for appeal, as may be fixed by the trier of fact.

10. Rights of Parties. The provisions of this License shall be non-exclusive, and the access rights granted in this License are personal and limited solely to Licensee for the stated purpose set forth in this License. Licensee agrees not to commit waste or to construct, allow or maintain any use, construction or operate any equipment which constitutes a nuisance on the Property, or which may in any way interfere with the use, enjoyment, or possession of the Property by City. The Property shall not be used by any person or entity, including the Licensee or its employees, for any purpose other than stated in this License. Neither this License, nor the rights granted to Licensee within it, shall be assignable or otherwise transferable without the prior written consent of City. Unless specifically stated to the contrary in any written consent to an assignment, no assignment or other transfer will release or discharge the Licensee from any duty, responsibility, or liability under this License. City reserves the right to use Parking Area in any manner, provided that such use does not materially interfere with the rights granted to the Licensee in this License.

11. Termination. This License may be terminated with or without cause by Licensee upon providing thirty (30) days' written notice of said termination to City, or its representative. Licensee will pay a pro-rata share of annual payments in the event that the License is terminated during a year. The City may terminate this License upon providing thirty (30) day's notice to Licensee and if Licensee is in violation of CUP 95-UP-1 and/or CUP 03-UP-10, or that Licensee is in violation of any state or federal law, or any local ordinances.

12. Notices. If any notice given pursuant to the License is not personally delivered to Licensee, said notice shall be deemed to be delivered five (5) days after deposit of said notice in a sealed envelope, postage fully prepaid, in a mailing facility regularly maintained by the United States Post Office Department, addressed as follows:

To Licensee:

Hillstone Restaurant Group, Inc.  
Attention: General Counsel  
27102425 Camelback Road, Suite 200  
Phoenix, AZ 85016

Email: HRG.LicenseAndPermits@hillstone.com

With a copy to:           Attention: Manager  
Los Altos Grill  
233 Third Street  
Los Altos, California 94022

To City (City of Los Altos) at:

City of Los Altos - Attention: Gabriel Engeland, City Manager  
One North San Antonio Road  
Los Altos, CA 94022

13. Authority To Grant License. City warrants that it is the owner of the Property and that it has the full rights and authority to grant the rights to the Licensee which are contained in this License.

14. Counterparts. This License may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this License as of the date and year written above.

**CITY: The City of Los Altos**

By: \_\_\_\_\_  
Mr. Gabriel Engeland, City Manager

Approved as to form:

By: \_\_\_\_\_  
Jolie Houston, City Attorney

Attest:

By: \_\_\_\_\_  
Melissa Turman City Clerk

**LICENSEE: Hillstone Restaurant Group, Inc., a Delaware corporation d/b/a/ Los Altos Grill**

By: \_\_\_\_\_  
W. Glenn Viers  
Vice President & General Counsel