

ADDRESS: _____
ASSESSOR'S PARCEL NUMBER (APN): _____
BUSINESS NAME: _____

OUTDOOR DINING LICENSE AGREEMENT

This License Agreement (“License Agreement”) is made and entered into as of the ____ day of _____, 20____ (“Effective Date”), by and between the City of Sonora, a Common Law City (“City”) and _____.

("Licensee").

City and Licensee may individually be referred to herein as "Party" or collectively as "Parties." There are no other parties to this License Agreement.

RECITALS

- A. Licensee owns or leases real property in the City of Sonora, County of Tuolumne County, State of California, located at _____ (“Licensee Property”), in which Licensee operates a business.
- B. Licensee Property is adjacent to the City public sidewalk, public parking, street or right of way area(s).
- C. Licensee wishes to operate on the City public sidewalk, public parking, street or right of way area(s) adjacent to Licensee Property (“License Area”).
- C. City agrees to allow Licensee to use the City public sidewalk, public parking, street or right of way area(s) immediately adjacent to the Licensee Property .
- D. City and Licensee desire to enter into this License Agreement to provide a license for Licensee to use the License Area, on the terms and conditions hereinafter set forth in this License Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee do hereby agree as follows:

AGREEMENT

1. Recitals. The recitals set forth above (“Recitals”) are incorporated herein by reference and made part of this License Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 18 of this License Agreement, Section 1 through 18 will prevail.
2. License. On the terms and subject to the conditions of this License Agreement, City hereby grants to Licensee and its employees, agents, consultants, contractors, and subcontractors (collectively, “Licensee’s Agents”), a revocable, non-exclusive license

("License") to enter onto, occupy, and use that portion of the City's public sidewalk or parking space area immediately adjacent to the City sidewalk and Licensee's food services establishment for outdoor dining purposes (the "License Area"), and to place certain approved personal property and removable improvements thereon, in accordance with the Plan attached hereto as **Exhibit A**. This License is granted subject to Licensee's compliance with the standards set forth in City of Sonora Municipal Code section 12.16, the City of Sonora Outdoor Use Encroachment Permit Development Standards and Design Guidelines attached as **Exhibit B**, , and compliance with such regulations heretofore or hereafter deemed necessary by the Community Development Director to protect the public health, safety and welfare, and approved by the City Council by Resolution. In the case of the use of parking spaces immediately adjacent to Licensee's food services establishment, this License is also granted subject to Licensee's compliance with any City rules or regulation adopted and conditioned. Any obligation or restriction, if any, imposed by this License Agreement on City shall be limited to City's capacity as a licensor and shall not relate to or otherwise affect any activity of City in its governmental capacity, including but not limited to enacting laws, inspecting structures, reviewing and issuing permits, or all other legislative, administrative, or enforcement functions of City pursuant to federal, state, or local law. Nothing in this License shall be construed as abrogating or limiting any immunity or exemption to which City is entitled under law. This License authorizes Licensee to use the property under a license only and does not confer any rights of possession to the License Area to Licensee.

3. Acceptance of License Area. Licensee shall take License Area in its "as-is, where-is, with-all-faults" condition as of the Effective Date of this License Agreement. Licensee acknowledges that City has not made, directly or indirectly, any express or implied representation regarding the License Area, including without limitation the condition or suitability of the License Area for any use. Licensee represents that Licensee relies solely on its own knowledge and independent investigation of the License Area in entering into this License. Licensee acknowledges that City has afforded Licensee a full opportunity to conduct such investigation of the License Area as Licensee deemed necessary to satisfy itself as to the condition and suitability of the License Area.
4. Termination. This License Agreement shall commence on the Effective Date and terminate _____. The City may terminate this License Agreement before the termination date with or without cause, and such termination shall become effective immediately upon City giving notice to Licensee.

In no event shall City be liable to Licensee for any costs, liabilities, or loss of revenues related to or arising from City's termination of this License hereunder.

5. License Personal. The license herein granted is person to Licensee and no right hereunder may be assigned, sublet or otherwise transferred in whole or in part.
6. Sidewalk Maintenance. Licensee, at its own expense, shall keep the License Area in a clean and sanitary condition and upon expiration of this License, or upon earlier termination of this License Agreement, shall return the License Area to the City in substantially the same condition as the License Area was at the time of the issuance of the License Agreement.

7. Sidewalk Deposit. If required by the Community Development Director, prior to issuance of this License Agreement, Licensee shall remit a sidewalk maintenance deposit. Said deposit shall be held by the City, without liability for interest, as security for the faithful performance by Licensee of the terms, covenants and conditions of this License Agreement. The City shall have the right at its option to appropriate and apply the entire sidewalk maintenance deposit or so much thereof as may be necessary to compensate City for any and all repairs to the sidewalk caused by Licensee or due to a violation of this License Agreement. Should the entire deposit or any portion thereof be appropriated and applied by the City hereunder, upon written demand of the City, Licensee shall remit to City sufficient amount in case to restore said maintenance deposit to the original sum deposited. Failure by Licensee to remit said cash within ten (10) business days after receipt of such demand shall constitute a violation of this License Agreement. The rights and remedies granted to City pursuant to this paragraph are in addition to City's other remedies as provided in this License Agreement or by law. After termination of this License Agreement, the deposit will be refunded within thirty (30) days of completion of an inspection of the License Area by City's Community Development Department. This inspection will occur within two (2) weeks of termination of this License Agreement. However, if after thirty (30) days of the termination of this License Agreement, or thirty (30) days after Licensee has ceased use of the License Area for outdoor dining purposes, Licensee has not repaired the sidewalk and removed the furniture/fixtures within said License Area, Licensee shall forfeit the sidewalk maintenance deposit.
8. Surrender and Restoration. Upon termination of this License Agreement, Licensee, at its sole cost and expense, shall remove any improvements placed on the License Area, remove any personal property there from, restore the License Area to its original condition, and cease any further use of the License Area as provided herein. Should Licensee neglect to restore the License Area to a condition satisfactory to City, City may perform such work or have such work performed, and Licensee shall immediately reimburse City for all direct and indirect costs associated with such work upon receipt of a statement therefore.
9. Indemnification. Licensee shall indemnify, release, defend and hold harmless the City, its officers, agents, employees and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of the Licensee's owners officers, agents and employees or from any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorneys fees and administrative costs arising out of, resulting in any way, or connected with, in whole or in part, this License Agreement or Licensee's occupancy, use or misuse of the License Area, including any improvements or personal property located thereon. Upon receiving notice of a claim, Licensee shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter. Neither termination of this License Agreement nor completion of the acts to be performed under this License Agreement

shall release Licensee from its obligations to indemnify the City and City's Agents. Submission of insurance Certificates or other proof of compliance with the insurance requirements in this License Agreement does not relieve Licensee from liability under this indemnification clause. The obligations of this indemnity shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

10. Insurance. Licensee shall maintain in effect during the term of this License Agreement, at no expense to City, insurance in a form approved by the City Attorney, as follows:
 - (a) Worker's Compensation insurance with statutory limits as required by the Labor Code of the State of California. Licensee shall give the City written notice of any cancellation of said insurance immediately after receiving notification of such cancellation by Licensee's insurance company.
 - (b) Comprehensive General Liability Insurance, in the minimum amount of one million dollars (\$1,000,000) per occurrence, three million dollars (\$3,000,000) aggregate, for death, bodily injury, personal injury, and property damage.
 - (c) Said policy shall include a separate endorsement for use of the sidewalk and parking space area immediately adjacent to the City sidewalk and food services establishment, where applicable, with no exclusions to the coverage containing the following specific language or substantially similar language:
 - (1) "The City of Sonora, its officers, employees and volunteers, are named as additional insured's under this policy."
 - (2) "The insurance provided herein is primary coverage to the City of Sonora with respect to any insurance or self-insurance maintained by the City, and shall not call upon City's insurance or coverage for any contribution."
 - (3) "This policy shall not be canceled or materially changed without first giving ten (10) days prior written notice to the City of Sonora, Community Development Director."
 - (d) Licensee shall submit to the City properly executed Certificates of Insurance evidencing all coverage, limits and endorsements as required above, and renewal certificates during the term of this License Agreement. Within thirty (30) days of City's request, Licensee shall submit to City certified copies of the insurance policies and endorsements.
11. Compliance with Laws. Licensee shall observe and comply with all applicable federal, state, City, or other governmental statutes, ordinances, and regulations now in force or which hereafter may be in force, including the regulations of the State Alcoholic Beverage Control and the County of Tuolumne County Department of Environmental Health.
12. Inspection. No more than two business days after completing the installation of any new outdoor dining facilities, the Licensee shall contact the City's Community Development Department for final inspection and approval. A copy of the License Agreement shall be kept at the permitted restaurant at all times and shall be made available for review upon

the request of any City official or enforcement officer. The City reserves the right to inspect the outdoor dining facility with prior notice to the Licensee.

13. Suspension of License. City may temporarily suspend this license, from time to time, upon reasonable advance notice to Licensee in the event that License's use of the public sidewalk or parking space area immediately adjacent to the City sidewalk and Licensee's food services establishment will interfere with any special public event, or if City, any utility or any other easement holder requires access to the public sidewalk area or adjacent parking space area covered by the License for construction or maintenance work.
14. Notices. Any notice required or permitted to be given under this License Agreement shall be in writing. Delivery of such written notice shall be deemed sufficiently given forty-eight (48) hours after deposit in the United States mail, registered or certified, return receipt requested, with postage thereon fully prepaid, or upon personal delivery, addressed as follows:

If to City: Community Development Director
 Community Development Department
 City of Sonora
 94 N. Washington Street
 Sonora, CA 95370

Copy to: White Brenner LLP
 1608 T Street
 Sacramento, CA 95811
 Attn: Douglas White

If to Licensee: _____

Either party may at any time change its address for notices by giving written notice of such change in the manner provided above.

15. Possessory Interest; Taxes. Licensee expressly recognizes and understands that this License Agreement may create a possessory interest subject to property taxes, and that Licensee may be subject to the payment of property taxes levied upon such interest. Licensee hereby acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.

16. Risk of Loss. Licensee shall assume all risk of loss, damage, or injury to Licensee, or its property, arising out of or connected to its use or occupation of the License Area pursuant to this License Agreement.
17. License Fees. The Licensee shall pay current annual Outdoor Dining License Fee, as approved by Resolution of the City Council. Prior to City entering into this License Agreement, the Licensee shall pay the first year's Outdoor Dining License Fee, prorated for the remaining months of the calendar year. Beginning on January 1st of the following year, the Licensee shall remit the entire year's Outdoor Dining License Fee, as determined by Resolution of the City Council, either as a lump sum payment or in monthly installments. Monthly payments also require the payment of an administrative processing fee, as approved by Resolution of the City Council.
18. Miscellaneous.
 - (a) **Governing Law and Venue.** This License Agreement is to be governed by, and construed in accordance with, the laws of the State of California. The venue of all legal proceedings arising from or in connection to this License Agreement shall be in the Superior Court of California, in and for the County of Tuolumne.
 - (b) **Modification.** This License Agreement may be modified only through a written amendment signed by both Parties.
 - (c) **Legal Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret the provisions of this License Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.
 - (d) **Severability.** If this License Agreement in its entirety is determined by a court of competent jurisdiction to be invalid or unenforceable, this License Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this License Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this License Agreement shall be valid and be enforced to the fullest extent permitted by law.
 - (e) **Entire Agreement.** This License Agreement contains the entire understanding between the Parties. All previous proposals, offers, and other communications relative to this License Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this License Agreement.
 - (f) **Construction.** This License Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.
 - (g) **Further Assurances.** The parties hereto agree to execute all such additional instruments and documents and take all such additional actions, as may be reasonable and necessary to carry out the provisions of this License Agreement.

- (h) **Survival.** Licensee's obligations hereunder shall survive the termination of this License Agreement.
- (i) **Counterparts.** This License Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.
- (j) **Authority.** All parties to this License Agreement warrant and represent that they have the power and authority to enter into this License Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this License Agreement had been fully complied with. Further, by entering into this License Agreement, no party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.
- (k) **Headings.** The headings in this License Agreement are included for convenience only and neither affect the construction or interpretation of any section in this License Agreement nor affect any of the rights or obligations of the Parties to this Agreement.
- (l) **Necessary Acts and Further Assurances.** The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the day and year first written above.

CITY OF SONORA
A Municipal Corporation

Melissa Eads
City Administrator

LICENSEE

Signature

Type or print name and title

Approved as to form:

City Attorney