

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

### **OUTDOOR DINING LICENSE AGREEMENT**

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of San Rafael, a Charter City ("City") and \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ("Licensee").

#### **RECITALS**

- A. Licensee owns or leases real property in the City of San Rafael, County of Marin, State of California, located at \_\_\_\_\_, in which Licensee operates a food services establishment, adjacent to which on the City public sidewalk or within the parking space area immediately adjacent to the food services establishment, Licensee wishes to operate an outdoor dining area.
- B. City is willing to grant a license to Licensee for use of the City sidewalk or parking space area immediately adjacent to the City sidewalk and Licensee's food services establishment, on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

- 1. **License.** The City grants Licensee permission to 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 "premises"), 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 San Rafael Municipal Code §14.17.110(C), including but not limited to subdivisions 5 ("Barriers"), 6 ("Sunshades"), 7 ("Fixtures"), 8 ("Refuse Storage Area"), and 9 ("Maintenance") thereto, 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 the City's On Street Dining Program, any City rules or regulation adopted pursuant to that Program, and conditioned on the continued existence of that program.
- 2. **Term.** The term of this Agreement shall commence on the date hereinabove written and shall continue until it is terminated as set forth herein:

- (a) The City Council may terminate this License Agreement at any time with or without cause, and such termination shall become effective upon City giving notice to Licensee.
  - (b) If Licensee defaults with respect to any obligation, covenant or condition of this Agreement, and fails to correct the default within ten (10) days after receipt of notice from City to do so, City may immediately terminate this Agreement by giving notice to Licensee.
  - (c) If Licensee files a petition for bankruptcy, City may immediately terminate this Agreement by giving notice to Licensee.
  - (d) The City may terminate this Agreement with reasonable notice to Licensee if City determines that Licensee's use of the public sidewalk or parking space area immediately adjacent to the City sidewalk and food services establishment constitutes a public nuisance, unduly impedes or restricts the movement of pedestrians along the public sidewalk, or unduly impedes or restricts the movement of vehicles in the City street or adjacent parking spaces. In the case where City determines that Licensee's use of public space pursuant to this Agreement creates an undue risk to public health or safety, the City may terminate this License Agreement at any time and such termination shall become effective upon City giving notice to Licensee.
  - (e) 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.
3. 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.
4. Surrender and Restoration. Upon termination of this Agreement, Licensee, at its sole cost and expense, shall remove any improvements placed on the premises, remove any personal property there from, restore the premises to its original condition, and cease any further use of the premises as provided herein. Should Licensee neglect to restore the premises 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.
5. 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 Agreement or Licensee's occupancy, use or misuse of the premises, including any improvements or personal property located thereon.
6. Insurance. Licensee shall maintain in effect during the term of this 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 San Rafael, 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 San Rafael 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 San Rafael, 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 Agreement. Within thirty (30) days of City’s request, Licensee shall submit to City certified copies of the insurance policies and endorsements.**

7. 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 Marin County Department of Health and Human Services.

8. Suspension of License. City may temporarily suspend this license, from time to time, upon reasonable advance notice to Licensee in the event that Licensee’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.

9. Notices. Any notice required or permitted to be given under this 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 San Rafael  
P.O. Box 151560  
1400 Fifth Avenue, Third Floor  
San Rafael, CA 94915-1560

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.

10. Possessory Interest; Taxes. Licensee expressly recognizes and understands that this 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.
11. 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 premises pursuant to this Agreement.
12. Attorney's Fees. If either party should commence a legal action or proceeding to enforce the terms of this Agreement, the prevailing party in the proceeding shall receive, in addition to court costs, reasonable attorneys' fees, including the reasonable value of services rendered by the City Attorneys' Office.

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

**CITY OF SAN RAFAEL**

**LICENSEE**

\_\_\_\_\_  
PAUL JENSEN  
Community Development Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or print name and title

Approved as to form:

\_\_\_\_\_  
ROBERT F. EPSTEIN  
City Attorney