

**LEGISLATIVE #**

**130895D**

## SIDEWALK CAFÉ LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (the “Agreement”) is made effective on **[INSERT DATE AGREEMENT IS TO BE EFFECTIVE]** (the “Effective Date”) between the **City of Gainesville** (the “City”), a municipal corporation of the State of Florida, and **[INSERT NAME OF LICENSEE]** (the “Licensee”), regarding use of the following type of right-of-way for the operation of a sidewalk café (check one):

State of Florida right-of-way, or

City of Gainesville right-of-way.

### **WITNESSETH:**

**WHEREAS**, the Licensee has applied to the City for a license to operate a sidewalk café within the public right-of-way pursuant to and subject to the terms and conditions of the City of Gainesville Land Development Code (the “Code”), Section 30-121;

**WHEREAS**, the Code requires the Licensee enter into a License Agreement with the City for operation of the sidewalk café within the public right-of-way;

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

1. Grant of License and Sole Purpose. The City hereby grants to the Licensee and the Licensee hereby accepts from the City a license to use the public right-of-way that is depicted or described on **Exhibit “A”** attached hereto and made a part hereof as if set forth in full (the “Premises”). This Agreement shall be construed as a lease of only the interest, if any, of the City and no warranty of title shall be deemed to be given herewith.

The Licensee’s use of the Premises is for the sole purpose of a sidewalk café as defined in the Code; if the Premises are used for any other purpose, the City shall have the option of immediately terminating this Agreement.

2. Term and Fee. The annual administrative fee for this Agreement, as listed in Appendix A of the City of Gainesville Code of Ordinances, shall be based on the license agreement year that runs 12 months from October 1<sup>st</sup> to September 30<sup>th</sup> of each calendar year. Any license agreement with an effective date other than October 1<sup>st</sup> shall be pro-rated accordingly based on the above time period. This Agreement may be renewed annually, with any renewals based on the license agreement year that begins on October 1<sup>st</sup>, upon application by the Licensee and approval of the City. Any renewal shall be evidenced in writing, on the form provided by the City, and shall be either an amendment to this Agreement or a new License Agreement.
3. Maintenance. The Licensee shall perform, at its sole cost and expense, all work required in the preparation of the Premises for occupancy by Licensee, and Licensee does hereby accept the Premises as now being in fit and tenantable condition for all purposes of Licensee. The Licensee, at its sole cost and expense, shall throughout the term of this Agreement keep and maintain the Premises and any structure now or hereafter erected

thereon in a clean and safe condition, shall promptly repair any damage caused by the Licensee, its invitees, employees and others using the sidewalk café, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable.

4. Vacating Premises. Prior to vacating the Premises at the end of the Term or upon termination, the Licensee shall, at the Licensee's sole cost and expense, restore the Premises to the same condition as it existed prior to the Licensee entering into a sidewalk café license agreement with the City.
5. Terms and Conditions. The following terms and conditions, as set forth in the Code, shall apply to the Licensee's use of the Premises:
  - a. The principal use and sidewalk café shall remain in compliance with the requirements of the Code.
  - b. The sidewalk café shall be at least five feet from the curblineline of the street and from any fire hydrants.
  - c. A minimum five-foot wide clear pedestrian path shall be maintained on the sidewalk at all times. However, where a sidewalk café is adjacent to a lane of traffic with no on-street parking and located on an arterial street, a minimum six-foot wide clear pedestrian path shall be maintained on the sidewalk at all times. The width of a required clear pedestrian path may be increased or decreased by the City Manager or designee if deemed advisable for the public health, safety and welfare. However, in no event shall the clear pedestrian path be less than three feet in width.
  - d. A sidewalk café that is operated by an eating place, as defined in the Code, may include the area adjacent to the curblineline, when adjacent to on-street parking, provided there is sufficient sidewalk width to maintain a five-foot wide clear pedestrian path.
  - e. A sidewalk café that is operated by an alcoholic beverage establishment, as defined in the Code, shall be surrounded by an enclosure or barrier at least three feet in height, measured from the ground or sidewalk level. If the alcoholic beverage establishment is not open for business between the hours of 8:00 a.m. and 6:00 p.m., the enclosure or barrier shall not be permanently affixed to the sidewalk, unless otherwise required by a governmental permitting entity.
  - f. A sidewalk café that is operated by an eating place, as defined in the Code, shall not be required to have an enclosure or barrier, provided all chairs, tables, and related items are stored inside the building or are securely stored adjacent to the building when the eating place is closed for business.
  - g. If enclosures or barriers are required or provided, they shall be designed to provide ADA-compliant access to the public right-of-way. Enclosures or barriers may consist of screens, planters, fencing or other material that surrounds the area in which the sidewalk café is operated. Unless otherwise specified in this section, provided that the principal use operates four out of seven days a week and is in

operation by 6:00 p.m. each day it is open for business, such enclosure and other improvements may be permanently affixed to the sidewalk, provided they are removed, and the sidewalk repaired to its original condition, upon termination of the license or abandonment of the sidewalk café use. If at any time, parts or part of the enclosure are removed or missing to such an extent that the enclosure is no longer sufficient to meet the requirements of this section, the entire enclosure shall be removed.

- h. No heating or cooking of food or open flames shall be allowed in the sidewalk café, except as may be allowed by the chief fire official.
- i. Sidewalk cafes shall not use or obstruct a sidewalk located within the vision triangle, as defined in the Code.

6. Insurance.

- a. *For a sidewalk café located in a City of Gainesville right-of-way as noted above:* The Licensee, at its expense, shall maintain general liability insurance in an amount not less than \$500,000 combined single limit for bodily injury and property damage. The City shall be named as an additional insured, as evidenced by a policy endorsement. Policies must be issued by companies authorized to do business in the State of Florida and must be rated at least A- and have a size category rating of VI or higher as per Best's Key Rating Guide, latest edition. The Licensee must give the City no less than 30 days written notice prior to any cancellation, nonrenewal, or any material change in a continuing policy. The City's Risk Management Director is authorized to lower the amount of general liability insurance required, if the Licensee can show that the above amount is excessive for the particular activity. The Licensee shall furnish evidence of such insurance to the City annually.
- b. *For a sidewalk café located in a State of Florida right-of-way as noted above:* The Licensee, at its expense, shall maintain general liability insurance in an amount not less than one million dollars (\$1,000,000) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million dollars (\$1,000,000) for property damage, or a combined coverage of not less than two million dollars (\$2,000,000). The State of Florida and the City shall be named as additional insured, as evidenced by a policy endorsement. Policies must be issued by companies authorized to do business in the State of Florida and must be rated at least A- and have a size category rating of VI or higher as per Best's Key Rating Guide, latest edition. The Licensee shall give the City no less than 75 days written notice prior to any cancellation, nonrenewal, or any material change in a continuing policy. The Licensee shall furnish evidence of such insurance to the City annually.

7. Taxes. The Licensee agrees to pay any and all taxes, including without limitation ad valorem property taxes and personal property taxes, assessed by virtue of the operation of a sidewalk café on the Premises. This provision shall survive the termination or expiration of this Agreement until such time as the taxes are due for the period of time this Agreement was in effect.

8. Utilities. The Licensee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, or any other utility or service used on the Premises.
9. Compliance with Laws. The Licensee agrees to obtain all permits and approvals required by the City in order to use the Premises for a sidewalk café. In addition, Licensee agrees, at Licensee's sole cost and expense, to use the Premises and any portion thereof in compliance with all federal, state and municipal laws, ordinances, rules, regulations, requirements, or orders of governmental authorities or agencies, now in effect or hereafter enacted or adopted (the "Laws") and the Licensee agrees not to use, nor suffer or permit any person to use in any manner whatsoever, the Premises or any part thereof for any illegal purpose, or for any purpose in violation of any Laws. Licensee will release, indemnify and hold harmless the City, its employees, officers, and agents, from and against any damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation of Laws by any act, omission or neglect of the Licensee, or any owner, employee or agent of Licensee. In the event of any such violation, or in case the City Manager or designee shall deem any conduct on the Premises to be objectionable or improper, the City Manager shall have the right and power to at once declare this Agreement terminated without previous notice to the Licensee.
10. Hazardous Materials. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. Licensee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by any governmental authority with jurisdiction, within the Premises. If any contamination either spread to or was released onto adjoining property as a result of Licensee's use of the Premises, the Licensee shall be held similarly responsible. The Licensee shall indemnify, defend, save, and hold harmless the City and its officers, agents and employees, as well as the State of Florida Department of Transportation and its officers, agents and employees if the sidewalk café is located in a state right-of-way as noted above, from and against, including but not limited to, any and all liability, claims, suits, losses, demands, fines, fees, penalties, proceedings, actions and causes of action, including reasonable attorney's fees for trial and on appeal, of any kind and nature arising from or in any way related to the actual or threatened damage to the environment, agency cost investigation, personal injury or death, or damage to property, due to a release or alleged release of hazardous materials by the Licensee or its respective employees, agents, invitees and assigns on or under the Premises or in the surface or ground water located on or under the Premises, or gaseous emissions from the Premises or any other condition existing on the Premises resulting from hazardous materials released or alleged released by the Licensee or its respective employees, agents, invitees and assigns. Licensee further expressly agrees that its indemnity obligations shall include, but are not limited to, the cost of any required or necessary inspection, audit, cleanup, remediation, or detoxification and the preparation of any enclosure, remediation or other required

plans, consent order, license application, or the like. This indemnity shall survive the termination or expiration of this Agreement.

11. Indemnification. The Licensee shall indemnify, defend, save, and hold harmless the City and its officers, agents and employees, as well as the State of Florida Department of Transportation (FDOT) and its officers, agents and employees if the sidewalk café is located in a state right-of-way as noted above, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), for any personal injury or property damage resulting from the existence or operation of the sidewalk café and the condition and maintenance of the Premises, including utilities located within the Premises, or otherwise arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the Licensee and its officers, agents, employees, and invitees.
12. Right of Entry. The City, and the FDOT if in state right-of-way, shall have the right to at any time enter the Premises for purposes of inspection. This right of entry shall not relieve the Licensee of its duty to maintain the Premises.
13. Sovereign Immunity. The Licensee and the City agree that nothing in this Agreement is intended to be or shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.
14. Eminent Domain. The Licensee acknowledges and agrees that its relationship with the City under this Agreement is one of licensee and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle the Licensee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in this Agreement, or any other facts or circumstances arising out of or in connection with this Agreement.

The Licensee hereby waives and relinquishes any legal rights and monetary claims that it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from the Licensee's loss of occupancy of the Premises, or any such rights, claims, or damages flowing from adjacent properties owned or leased by the Licensee as a result of the Licensee's loss of occupancy of the Premises. The Licensee also hereby waives and relinquishes any legal rights and monetary claims that it might have for full compensation, or damages of any sort as set out above as a result of the Licensee's loss of occupancy of the Premises, when any or all adjacent properties owned or leased by the Licensee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale, or has been terminated prior thereto.

15. Public Records. If the Licensee is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, the Licensee shall:

- a. Keep and maintain all public records, as defined in Section 119.011(12), Florida Statutes, that ordinarily and necessarily would be required by the City; and
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided by law; and
- c. Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Licensee upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The Licensee shall promptly provide the City with a copy of any request to inspect or copy public records in possession of the Licensee and shall promptly provide the City a copy of the Licensee’s response to each such request. Failure by the Licensee to comply with this section, including failure to provide a public record upon request, is a breach of this Agreement and the City may immediately terminate this Agreement and may pursue all remedies for breach of this Agreement.

16. Assignment. This Agreement is personal to the Licensee. The Licensee shall not assign, transfer, encumber or otherwise convey this Agreement or its interest in this Agreement to any other person, legal entity or corporation. Any attempted or actual assignment, transfer, encumbrance, or other conveyance, shall render this Agreement null and void.

17. Amendment. This Agreement may not be amended, unless evidenced in a writing executed by all parties.

18. Default. Violation of this Agreement by the Licensee shall place the Licensee in default. Except as otherwise provided in this Agreement, the City shall provide notice of the default to the Licensee and Licensee shall have ten calendar days to correct the default. If the default is not corrected, the City may terminate this Agreement.

19. Termination. This Agreement may be terminated by either party without cause upon one hundred and twenty (120) days prior written notice to the other party.

20. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.

21. Notice. Any notice required under the terms of this Agreement must be in writing and must be either hand delivered or sent by certified mail to the address of the party to whom the notice is to be given (the "Notice"). Addresses of the parties are as follows:

- As to the City:  
City of Gainesville  
P.O. Box 490  
Gainesville, FL 32627  
  
200 E. University Avenue, 4<sup>th</sup> Floor  
Gainesville, FL 32601  
  
Attn: Russ Blackburn, City Manager

- As to the Licensee:  
[INSERT BOTH PHYSICAL AND MAILING ADDRESS AND NAME OF CONTACT PERSON]

**IN WITNESS WHEREOF**, the parties to this Agreement have set their hands and seals on the day and year first above written.

WITNESSES:

\_\_\_\_\_  
  
\_\_\_\_\_

**CITY OF GAINESVILLE, FLORIDA**

\_\_\_\_\_  
Russ Blackburn, City Manager

WITNESSES:

\_\_\_\_\_  
  
\_\_\_\_\_

[INSERT NAME OF LICENSEE]

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



THIS IS A FORM DOCUMENT, APPROVED AS TO FORM AND LEGALITY BY THE OFFICE OF THE CITY ATTORNEY. THIS DOCUMENT SHALL NOT BE ALTERED OR REVISED IN ANY MANNER WITHOUT REVIEW AND APPROVAL OF THE OFFICE OF THE CITY ATTORNEY.

**EXHIBIT "A"**  
**DESCRIPTION/DEPICTION OF THE PREMISES**

[ATTACH A SKETCH OR SURVEY OF THAT PORTION OF RIGHT-OF-WAY FOR WHICH THE LICENSE IS BEING ISSUED]