

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
ADDENDUM TO LEASE AGREEMENT

Item/Seg No.: \_\_\_\_\_  
Sec/Job No.: \_\_\_\_\_  
SR No.: \_\_\_\_\_  
County: \_\_\_\_\_  
Parcel Nos.: \_\_\_\_\_

This Addendum made this \_\_\_\_ day of \_\_\_\_\_ 2013, is an Addendum to the Lease Agreement dated \_\_\_\_\_ between the City of Gainesville (“Lessee”), and the Florida Department of Transportation (“Lessor”).

In addition to the provisions contained in said Lease Agreement, the following terms, conditions and/or amendments shall be deemed to be a part thereof pursuant to Paragraph 9(b) of said Lease Agreement:

1. Where the provisions of this Addendum conflict with the provisions of the Lease Agreement, this Addendum shall control. Except as otherwise agreed herein all other terms of the Lease Agreement shall remain in full force and effect.
2. Sidewalk Café License Agreement approval process:

The Lessor does hereby agree that Lessee shall be permitted to issue License Agreements (“license agreement”) for portions of the leased property to such third parties for purposes of the operation of a sidewalk café, but only to users who apply for, and are granted, a sidewalk café license agreement (“Licensee”) issued by the Lessee, in accordance and compliance with the Lessee’s Ordinance No. 110942, Lessee’s guidelines and procedures for sidewalk cafés, FDOT’s applicable regulations (as same may be amended from time to time), and any and all administrative regulations.

Upon the issuance of a sidewalk license agreement by Lessee to a Licensee, the Lessee shall submit a Sidewalk Café Supplement, in the form attached hereto as Exhibit “A-1”, for approval by Lessor. Upon approval by Lessor, any such Supplement shall be incorporated to and constitute an addendum to the Lease Agreement (“Supplement Addendum”).

In addition, the Lessee shall:

- a) Submit any sidewalk café license agreement site plan modification to Lessor within fifteen (15) days from the date that such modification is granted to a Licensee;
- b) Submit a Supplement Addendum to Lessor for each sidewalk café license agreement renewal by no later than October 15<sup>th</sup> of each calendar year.

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3. Rent:

Paragraph 3 of the Lease Agreement is modified as follows:

Rent calculation. The Lessee and Lessor have agreed to an annual rent of two and 00/100 dollars (\$2.00) per square footage of the area permitted by the license agreement to the Licensees.

The Lessee shall be responsible for collection of all rent and providing one annual lump sum payment to the Lessor. Lessee shall provide any and all backup and supporting documents required to demonstrate the annual lump sum payment.

Rent shall be paid by Lessee to Lessor annually as follows:

- a) License agreements issued subsequent to October 1<sup>st</sup> of each calendar year shall be due and payable within thirty (30) days from the date the license agreement is issued by the Lessee to the Licensee and shall be pro-rated accordingly;
- b) Renewals shall be due and payable on or before November 1<sup>st</sup> of each calendar year.

The annual rental for each license agreement issued shall be based on the Lessee’s license agreement year, to wit: October 1<sup>st</sup> to September 30<sup>th</sup> of each calendar year, and any rental pro-rations shall be based on this time period.

For purposes of any Supplement Addendum, the commencement date shall be deemed to be the date of the issuance of the license agreement by the Lessee.

Late fees or charges of any kind may be classified as additional rent if not paid when demanded, and may be included in any statutory notices served on the Lessee for non-payment of rent.

Lessor reserves the right to review and adjust the rent rate every two (2) years, and at renewal, to reflect market conditions.

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4. Maintenance:

Paragraph 5 of the Lease Agreement is modified as follows:

Notwithstanding anything contained in Paragraph 5 of the Lease Agreement, Lessor will be responsible for any structural repairs to the leased property not resulting from damage caused by Lessee, Licensee, or their respective employees, agents, guests or invitees. Lessee shall be responsible for maintenance of the leased property, including but not limited to, proper cleaning, upkeep and housekeeping of the leased property at its expense and for restoration repairs resulting from affixing items to the sidewalk surface.

5. Indemnification:

Paragraph 6 of the Lease Agreement is modified as follows:

Notwithstanding anything contained in Paragraph 6 of the Lease Agreement, Lessee shall indemnify Lessor, to the extent provided by law and subject to the limitations as provided in Section 768.28, F.S. If Lessee's license agreement includes indemnification of the Lessee by the Licensee then such indemnification shall be amended and include the Lessor.

6. Insurance:

In addition to the provisions of paragraph 7 of the Lease Agreement:

Lessee does hereby agree that any sidewalk café license agreement issued to a Licensee shall include a provision requiring the Licensee, at its expense, to maintain, at all times during the License agreement term, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the license agreement area arising out of the act, negligence, omission, nonfeasance, or malfeasance of Licensee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum than one million dollars (\$1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one

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million dollars (\$1,000,000.00) for property damage, or a combined coverage of not less than two million dollars (\$2,000,000.00).

All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies.

7. Paragraph 9 of the Lease Agreement is modified to include the following provision:

h. Lessee agrees to regularly inspect the premises to ensure compliance with the provisions of the sidewalk license agreements and Lessee’s Ordinance No. 110942; Lessee’s administrative guidelines and procedures for sidewalk cafés; and FDOT’s applicable regulations.

8. Paragraph 9 of the Lease Agreement is modified to include the following provision:

i. The Lessee shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Lessee in conjunction with this Agreement. Specifically, if the Lessee is acting on behalf of a public agency the Lessee shall:

(1) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Lessee upon termination of the contract 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 Department in a format that is compatible with the information technology systems of the Department.

(2) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

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(3) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(4) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Lessee.

Failure by the Lessee to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Lessee shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Lessee and shall promptly provide the Department a copy of the Lessee's response to each such request.

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IN WITNESS WHEREOF, the parties have executed this Addendum to the Lease Agreement as of this \_\_\_\_ day of \_\_\_\_\_ 2013.

**Florida Department of Transportation**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Greg Evans

Printed Name: \_\_\_\_\_

Title: District Two Secretary

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Office of the General Counsel  
Florida Department of Transportation

**City of Gainesville, Florida**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Legal Counsel for City of Gainesville, Florida