



RECORDING REQUESTED BY:
THE CITY OF SAN DIEGO
AND WHEN RECORDED MAIL TO:

(THIS SPACE IS FOR RECORDER'S USE ONLY)

SIDEWALK CAFÉ MAINTENANCE AND REMOVAL AGREEMENT

APPROVAL NUMBER: _____

PROJECT NUMBER: _____

In accordance with the provisions of [Section 129.0715](#) of the San Diego Municipal Code [MC], this agreement is made by and between the City of San Diego, a Municipal Corporation [City] and the owner [Property Owner] of real property, located at:

PROPERTY ADDRESS

and more particularly described as _____

LEGAL DESCRIPTION

in the City of San Diego, County of San Diego, State of California.

In consideration of the grant of permission by the City of San Diego to construct and operate a sidewalk café, over, under, and across the Public Right-of-Way for the use and benefit of the Property as shown on the plans on file with the City of San Diego and referenced by the Exhibit listed below, Property Owner covenants and agrees with the City of San Diego as follows:

1. The sidewalk café shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Property Owner(s) and the successors in interest.
2. With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismemberment, illness damages, or death) or property, arising from, related to, or resulting from the construction, maintenance, state of use, repair, or presence of the sidewalk café, the Property Owner agrees to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.

Also covered by this Section is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees that may be in combination with active or passive negligent acts or omissions of the Property Owner, its employees, agents or officers, or any third party. The Property Owner's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. Property Owner further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

3. The Property Owner(s) shall remove, relocate or restore the sidewalk café as directed by the City Engineer within thirty (30) calendar days of written notice from the City, or in the case of an emergency, as determined by the City, the City may request that the work be done immediately or within less than thirty (30) calendar days. If the Property Owner(s) fails to remove, relocate or restore or otherwise comply with the direction of the City Engineer regarding the sidewalk café, the City may cause the work to be done, and the costs thereof shall be a lien against the property. The City's request to remove, relocate, or restore the sidewalk café shall not be arbitrary or without reason.

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4. Failure to comply with agreement will be ground for revocation of this agreement.
5. Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the sidewalk café.
6. The Property Owner shall maintain a policy of liability insurance, with the City of San Diego and its respective elected officials, officers, employees, agents, and representatives named as additional insureds, in an amount approved by the City, which will protect the City from any potential claims which may arise from the sidewalk café.
7. Prior to installation of any furniture or improvements in the public right-of-way and prior to operation of a sidewalk café:
 - a. This agreement shall be recorded in the Office of the San Diego County Recorder.
 - b. The Owner/Permittee shall obtain a Public Right-of-Way Permit or Building Permit as applicable in accordance with [MC Sections 129.0203](#) and [129.0702](#).
8. Prior to occupancy of a sidewalk café, inspection shall be required in accordance with [MC Section 129.0111](#) and [129.0760](#), as applicable.
9. An annual inspection of a sidewalk café, and associated fees shall be required to ensure compliance with the limited use regulations for sidewalk cafés in accordance with [MC Section 141.0621\(a\)\(2\)\(D\)](#).
10. While this Agreement is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Agreement.
11. The continued use of this Agreement shall be subject to the regulations of this and any other applicable governmental agency.
- 12. The property owner agrees to comply with the Regulations of the [MC Section 141.0621](#) and as follows:**
 - a. The sidewalk café shall be used only for dining, drinking, and circulation, and shall operate only in conjunction with an adjacent eating and drinking establishment.
 - b. Outdoor cooking and preparation of food within the public right-of-way is prohibited.
 - c. The sidewalk within, and adjacent to, the sidewalk café shall be clean and free of litter at all times.
 - d. Trash or storage areas shall not be located on or adjacent to the public right-of-way.
 - e. A sidewalk café shall be maintained and operated so that unsafe conditions are not created for the physically disabled, blind, or partially sighted.
 - i. At least one wheelchair seating space shall be provided for each 20 seats, or portion thereof.
 - ii. Accessible wheelchair spaces shall have a minimum unobstructed maneuverability dimension of 30 inches in width by 48 inches in depth.
 - iii. Access to designated wheelchair spaces shall be provided via an accessible path with not less than 36 inches unobstructed width.
 - f. Maintain an unobstructed path of ingress and egress travel with a minimum 4-foot width that leads occupants directly from exit doors to the public right-of-way for a sidewalk café and associated eating and drinking establishment.
 - g. Portable heaters, if provided, shall be located a minimum of 4 feet away from the exterior face of the building and from any combustible materials, including architectural projections, or in accordance with manufacturer recommendations, whichever is most restrictive.
 - h. The hours of operation of a sidewalk café shall be limited to the hours that the kitchen facilities of the associated eating and drinking establishment are open for meal ordering. Alcohol, food, or beverages shall not be served or permitted within the sidewalk café after 10:00 p.m. Sunday through Thursday, and after 11:00 p.m. Friday through Saturday.

- i. Smoking shall not be permitted within a sidewalk café at any time.
- j. A sidewalk café shall comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.
- k. A copy of the approved Public Right-of-Way Permit or Building Permit, as applicable, for a sidewalk café shall be posted on the premises of the associated eating and drinking establishment.

Exhibit(s): See Plan for Construction Permit Number: _____
 See Drawing Number(s): _____
 See Attached _____

THE CITY OF SAN DIEGO

APPROVED: _____ Date: _____

By: _____
PRINT NAME

SIGNATURE

Deputy City Engineer

TITLE

I HEREBY CERTIFY I am the record owner of the Property and that I have read all of this Agreement, this

_____ day of _____, _____.
DAY MONTH YEAR

By: _____
PRINT NAME/TITLE

OWNER'S SIGNATURE

NOTE: ALL SIGNATURES MUST INCLUDE NOTARY ACKNOWLEDGMENTS PER CIVIL CODE SEC. 1180 ET.SEQ.