

**LICENSE AGREEMENT
BY AND BETWEEN THE CITY OF PALM DESERT
AND [LICENSEE]**

PARTIES AND DATE

This License Agreement (“Agreement”) is entered into as of _____, 2024 (“Effective Date”) by and between the City of Palm Desert, a California municipal corporation (“City”) and [Licensee], a [Entity Description], (the “Licensee”). The City and Licensee are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

- A. The City owns that certain real property, within the public Right-of-Way near the Licensee’s place of business at _____, in the City of Palm Desert, County of Riverside, State of California (the “Property”), which is more particularly described in Exhibit A (Property Description).
- B. The Licensee requested temporary access to the property for purposes of maintaining an outdoor dining area for its patrons, which is more particularly described in Section 3 (Permitted Activities).
- C. The City desires to accommodate the Licensee’s request, subject to the terms and conditions set forth in this Agreement.

TERMS

Now therefore, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. License.
 - 1.1. Grant. The City hereby grants to the Licensee, and the Licensee’s representatives and agents, a revocable, non-transferable, non-exclusive license to access the Property for the limited purpose of conducting the Permitted Activities described in Section 3 (Permitted Activities) (“License”). The Parties hereby acknowledge and agree that use of the Property by Licensee, as set forth in this Agreement, is with the consent of the City and shall be considered permissive.
 - 1.2. No Transfer of Interest. Nothing in this Agreement shall be interpreted as, or otherwise deemed to be, a transfer or conveyance of any interest in the Property whatsoever between the City and the Licensee. The Parties hereby acknowledge and agree that nothing in the Agreement shall be interpreted as an agreement for the lease or other use of the Property by Licensee.
 - 1.3. License Fee. The Licensee shall pay to the City \$7.08 per square foot of dining deck space as established by City Council Resolution _____. Within 10 days of the Effective Date of this Agreement, Licensee shall pay the first year’s

license fee, prorated the remaining months of the calendar year. Beginning on January 1st of the following year, Licensee shall remit the entire year's license fee either as a lump sum payment or in two (2) semi-annual payments submitted to the City no greater than six (6) months apart.

2. Term. The term of this License shall commence on the Effective Date and shall, unless otherwise modified, continue until the earlier of the City's termination of the Temporary Outdoor Dining Deck program or [REDACTED] per Section 11 (Termination, Default, and Restoration).
3. Permitted Activities and Other Uses.
 - 3.1. Permitted Activities. Licensee is authorized to conduct the following activities on the Property ("Permitted Activities"):
 - 3.1.1. Maintain or establish an outdoor dining deck/outdoor dining area with a footprint approved by the City through a Temporary Use Permit.
 - 3.1.2. Serve food and beverages within the outdoor dining area. Alcoholic beverages may be served in these areas with ABC approval. Alcoholic beverages may not leave the permitted outdoor dining area.
 - 3.2. Time. All Permitted Activities are limited to the time of [REDACTED] daily.
 - 3.3. Other Uses. The Licensee shall not use the Property for any other purposes whatsoever, except as authorized by subsequent written agreement signed by the City.
4. Required Approvals and Compliance.
 - 4.1. Required Approvals. The use of the property by the Licensee for Permitted Activities pursuant to this Agreement is subject to Licensee obtaining, at its sole cost and expense, and maintaining throughout the term of this License, all approvals and permits required by any federal, state, or local government agency, including the City Approvals listed in Section 4.2 (City Approvals) ("Required Approvals").
 - 4.2. City Approvals. The Licensee must apply for and obtain the following approvals from the City ("City Approvals"):
 - 4.2.1. Temporary Use Permit – Outdoor Business Expansion
 - 4.2.2. Building Department & Fire Marshal Permits if tents utilized greater than 400 square feet
 - 4.2.3. Building Department & Fire Marshal Permits if electrical lighting utilized
 - 4.3. City Review. The City does not make any representation that it will issue or otherwise assist in the issuance of any Required Approval. The City shall have no obligation or liability to verify whether Licensee has obtained all Required Approvals.

- 4.4. Compliance. The Licensee' rights under this Agreement shall be conditioned upon, and Licensee shall, at their sole cost and expense, comply with each and every federal, state and local law, regulation, standard, court decision, ordinance, rule, code, order, decree, directive, guideline, permit and permit condition, together with any declaration of covenants, conditions and restrictions that are recorded in any official or public records with respect to the Property or any portion thereof, each as currently existing and as amended, enacted, issued or adopted from time to time, that are applicable to the Permitted Activities and the Property. Notwithstanding any other provision of this Agreement, the City reserves the right to remove or require the Licensee to remove the outdoor dining deck if it is deemed, in the City's sole discretion, to pose a safety hazard. The determination of a safety hazard may be based on, but is not limited to, inspections, reported incidents, or changes in local safety regulations. If the City determines that the dining deck must be removed for safety reasons, the City shall provide written notice to the Licensee specifying the nature of the hazard and the required actions to rectify it. The Licensee shall have ten (10) days from the date of the notice to remove the dining deck or address the safety concerns to the satisfaction of the City. If the Licensee fails to comply within the specified time, the City may proceed with the removal of the dining deck. All costs associated with such removal shall be the responsibility of the Licensee and shall be reimbursed to the City upon demand.
5. Standard of Performance. All Permitted Activities shall be performed in accordance with the highest standards and practices in the industry.
6. Hazardous Materials. The Licensee shall not under any circumstances store or bring onto the Property any Hazardous Materials. As used in this Agreement, the term "Hazardous Material" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (7) defined as a "hazardous substance: pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. §6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. §9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.
7. No Duty to Warn. The City has no duty to inspect the Property and no duty to warn the Licensee or any person of any other latent or patent defect, condition or risk that might be incurred in entering the Property. The Licensee has inspected or will inspect the Property and hereby accept the condition of the Property "AS IS." The Licensee acknowledges that neither the City, nor any employee, agent or representative of the City, has made representations or warranties concerning the condition of the Property. All persons entering the Property under this Agreement do so at their own risk.

8. Liability for Damage. With respect to Licensee' rights under this Agreement, the Licensee shall be responsible for any damage done to any person, or to the Property or any other real or personal property, caused by the Licensee, their officers, directors, employees, agents, independent contractors, insurers, lenders, representatives, successors or permitted assigns of the Licensee, and the other users.
9. Insurance. Each Licensee shall maintain in effect during the entire term of this Agreement each of the following:
 - 9.1. Insurance Coverage.
 - 9.1.1. Comprehensive General Liability. Comprehensive General Liability Insurance which affords coverage including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Licensee performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:
 - 9.1.1.1. Name the City of Palm Desert and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Licensee' performance of this Agreement.
 - 9.1.1.2. Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.
 - 9.1.2. Automobile Liability Insurance. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:
 - 9.1.2.1. Name the City and City Personnel as additional insured for claims arising out of Licensee performance of this Agreement.
 - 9.1.2.2. Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.
 - 9.1.3. Workers' Compensation Insurance. Workers' Compensation Insurance in accordance with the Labor Code of California and covering all employees of the Licensee providing any service in the performance of this agreement. Such insurance shall be endorsed to: Waive the insurer's right of Subrogation against the City and City Personnel.

- 9.2. Evidence of Insurance. The Licensee shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.
- 9.3. Endorsements.
- 9.3.1. Valid Endorsements. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.
- 9.3.2. Additional Insured Endorsements Additional Insured Endorsements shall not:
- 9.3.2.1. Be limited to “Ongoing Operations.”
- 9.3.2.2. Exclude “Contractual Liability.”
- 9.3.2.3. Restrict coverage to the “Sole” liability of Licensee.
- 9.3.2.4. Contain any other exclusion contrary to the Agreement.
- 9.4. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best’s rating of A VII or higher and authorized to do business in the State of California or approved in writing by the City.
10. Liens.
- 10.1. No Liens Due to Licensee’s Activities. Licensee shall not permit to be placed against the Property, or any part thereof, any design professionals’, mechanics’, materialmen’s, contractors’ or subcontractors’ liens due to Licensee’s construction activities thereon or use thereof. Licensee shall indemnify, defend and hold the City harmless from all liability for any and all liens, claims and demands, together with the costs of defense and reasonable attorneys’ fees, related to same.
- 10.2. Failure to Defend. In addition to, and not in limitation of, the City’s other rights and remedies under this Agreement, should Licensee fail either to discharge any lien or claim related to Licensee’ construction activities on or use of the Property or to bond for any lien or claim to the reasonable satisfaction of the City, or to indemnify, hold harmless and defend the City from and against any loss, damage, injury, liability or claim arising out of Licensee use of the Property, then the City, at its option, may elect to pay any lien, claim, loss, demand, injury, liability or damages, or settle or discharge any action or satisfy any judgment and all costs, expenses and attorneys’ fees incurred in doing so shall be paid to the City by Licensee upon written demand, together with interest thereon at the rate of ten

percent (10%) per annum from the date incurred or paid through and including the date of payment by Licensee.

11. Termination, Default, and Restoration.

11.1. Termination Without Cause. This Agreement may be terminated by either Party without cause by giving fourteen (14) days' written notice to the other Party.

11.2. Termination for Cause. In addition to the rights described in Section 11.1 (Termination Without Cause), the City shall have the right to terminate this Agreement immediately upon the Licensee's Default.

11.2.1. Default. "Default" means the failure of the Licensee to perform or violation of any term, condition, covenant or agreement of this Agreement, and the continuation of such failure or violation for a period of ten (10) days after the City shall have given the Licensee written notice specifying the same, or in the case of a situation in which the default cannot reasonably be cured within ten (10) days, if the Licensee shall not promptly, within ten (10) days after receipt of such notice, commence to remedy the situation by a means that can reasonably be expected to remedy the situation within a reasonable period of time, not to exceed thirty (30) days from the notice of Default, and diligently pursue the same to completion.

11.2.2. Termination and Removal of Licensee's Property. In the event of any Default by Licensee, including expiration of any applicable cure period, the City may terminate the Agreement and remove Licensee and their property from the Property by any lawful means available in law or equity.

11.3. Restoration of Land to Original Condition. Upon termination of the Agreement, the Licensee shall be responsible for removing all improvements the Licensee placed upon the land, unless the City elects in writing to accept some or all of said improvements. Any improvements accepted by the City will be at no cost to the City. The Licensee shall promptly initiate and exercise due diligence in removing said improvements until all improvements have been removed, which shall be completed within not more than thirty (30) days following termination of this Agreement.

11.4. Effect of Termination. Termination of this Agreement shall in no way prejudice any of the rights and remedies available to the City at law or in equity, and the Licensee acknowledge and agree that all of the obligations and responsibilities of Licensee under this Agreement shall continue and survive such termination.

12. Miscellaneous.

12.1. Indemnification.

12.1.1. Indemnification of the City by the Licensee. The Licensee shall defend, indemnify and hold the City, its elected and appointed officials, officers, employees, and agents (the "Indemnified Parties") free and harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to acts, omissions, and/or operations by the Licensee, its officials, officers,

personnel, employees, contractors, and/or subcontractors as well as its contractors' and/or subcontractors' officials, officers, employees, and agents. Further, the Licensee shall defend at its own expense, including attorneys' fees, the Indemnified Parties in any legal action based upon such acts, omissions and/or operations.

12.1.2. The Licensee's Obligations. The Licensee's obligations under this Section 12.1 (Indemnification) shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, regardless of whether or not the City has prepared, supplied, or approved any plans or for the uses allowed by this Agreement, and regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

12.1.3. The City's Rights. The City does not and shall not waive any rights against the Licensee that the City may have under the indemnification provision in this Section 12.1 (Indemnification) because of the City's acceptance of any security deposits or insurance policies.

12.1.4. Survival. The indemnification provision in this Section 12.1 (Indemnification) shall survive the termination or expiration of this Agreement.

12.2. Attorneys' Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

12.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

12.4. Waiver. The City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or the City's waiver of any breach hereunder, shall not relieve the Licensee of any of its obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the City's actions are intentional or unintentional. Further, the Licensee agrees to waive as a defense, counterclaim, or setoff any and all defects, irregularities, or deficiencies in the authorization, execution, or performance of this Agreement as well as any laws, rules, regulations, ordinances, or resolutions of the City with regard to this Agreement.

12.5. Supplement, Modification, and Amendment. No supplement, modification, and/or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

12.6. Assignment or Transfer.

12.6.1. No Assignment without the City's Consent. The Licensee shall not assign, hypothecate, or transfer, either directly or by operation of law, this

Agreement or any interest herein without prior written consent of the City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in the City's written consent, any assignment, hypothecation, or transfer shall not release or discharge the Licensee from any duty or responsibility under this Agreement.

12.6.2. Merger. The transfer of a majority of the ownership interests in the Licensee, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, or the merger of the Licensee into any other entity in which the Licensee is not the surviving entity, or the sale of all or substantially all of the Licensee's assets, shall be deemed an assignment of the Licensee's rights hereunder subject to the requirements of Section 12.6.1 (No Assignment without the City's Consent).

12.7. Construction, References, and Captions.

12.7.1. Simple Construction. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

12.7.2. Section Headings. Section headings contained in this Agreement are for convenience only and shall not have an effect in the construction or interpretation of any provision.

12.7.3. Calendar Days. Any term referencing time, days, or period for performance shall be deemed calendar days and not business days.

12.7.4. References to the City. All references to the City shall include, but shall not be limited to, City Council, City Manager, City Attorney, City Engineer, or any of their authorized representatives. The City shall have the sole and absolute discretion to determine which public body, public official or public employee may act on behalf of the City for any particular purpose.

12.7.5. References to the Licensee. All references to the Licensee shall include all officials, officers, personnel, employees, agents, contractors, and subcontractors of Licensee, except as otherwise specified in this Agreement.

12.8. Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

To City:

City of Palm Desert
73-510 Fred Waring Dr.
Palm Desert, CA 92260
Attn: _____

To Licensee:

Attn: _____

12.9. Entire Agreement and Severability.

12.9.1. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied.

12.9.2. Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

12.10. Binding Effect.

12.10.1. The Parties. Each and all of the terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns.

12.10.2. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

12.10.3. Recordation. The Licensee acknowledges and agrees that the City may cause a copy of this Agreement to be recorded in the Riverside County Recorder’s Office.

12.10.4. Not Authorization to Assign. This Section 12.10 (Binding Effect) shall not be construed as an authorization for any Party to assign any right or obligation under this agreement other than as provided in Section 12.6 (Assignment or Transfer).

Signatures on next page.

**SIGNATURE PAGE TO LICENSE AGREEMENT
BY AND BETWEEN THE CITY OF PALM DESERT
AND [LICENSEE]**

In witness thereof, the Parties here to have executed this Agreement:

City of Palm Desert

[Licensee]

By: _____
Todd Hileman
City Manager

By: _____
NAME,
POSITION

ATTEST:

By: _____
Anthony Mejia
City Clerk

By: _____
NAME,
POSITION

APPROVED AS TO FORM:

By: _____
Isra Shah
City Attorney

EXHIBIT A
PROPERTY DESCRIPTION

To be included.