

SIDEWALK CAFÉ PERMIT AGREEMENT

1. **Permit.** This Sidewalk Café Permit Agreement ("Permit") is issued by the City of Lincoln, Nebraska, a municipal corporation and Nebraska political subdivision ("City") to _____ ("Permittee") for the uses at the Premises outlined below. Administration and enforcement of this Permit shall be the responsibility of the enforcement official designated by the Mayor.
2. **Location of the Premises.** This Permit is for use of City property by Permittee located in City right-of-way and is described as (street address or other verifiable description) _____ ("Premises") for use as a sidewalk cafe as described in Lincoln Municipal Code (LMC) Chapter 14.50. The business and property benefitted by this Permit is (Name and Address of restaurant or bar) ("benefitted property").
3. **Ownership of Abutting Property.** Permittee acknowledges and warrants that Permittee is the record owner or owner-approved tenant as defined in LMC section 14.50.030 that abuts and is adjacent to the Premises and that the Permittee is benefitted by the use of the Premises as a sidewalk café.
4. **Grant of Use of the Premises.** The City hereby grants to Permittee the exclusive privilege to develop, construct, and install a sidewalk café on the Premises subject to the terms and conditions herein.
5. **Term.** This Permit becomes effective on March 1 of the current calendar year or the date of execution, whichever is later, and expires on the last day of February of the following calendar year. This Permit shall not run longer than one year.
6. **Fees.** Permittee shall pay a Permit Fee of One Hundred Dollars (\$100), plus a fee of twenty-five cents (\$0.25) per square foot of space used for the Premises as determined by the City. Fees are not prorated for a partial year.
7. **Termination or Expiration of Permit.** Either party has the right to terminate this Permit Agreement for convenience ten (10) business days after delivery of written notice to the other Party. If the Permit Agreement is not timely renewed as required in Lincoln Municipal Code Chapter 14.50, this Permit Agreement is deemed expired. In the event of any termination for convenience, cause, or expiration of this Permit, the Permittee shall do the following:
 - (a) Immediately cease operations on, or use of, the Premises as a sidewalk café;
 - (b) Within sixty (60) calendar days of the effective date of termination Permittee shall remove all structures, including permanently placed concrete structures, equipment, fencing, fixtures, signage, furnishings, canopies, awnings, and any and all other attachments, encroachments, or other property placed on or into the Premises by the Permittee following execution of this Permit Agreement.
 - (c) Repair or replace any damage to concrete or other surfaces within the Premises used for the sidewalk café to a condition similar to the condition of the Premises at the time of execution of this Permit Agreement. Such repairs shall include filling holes, removing rigid barriers, canopies, awnings, or other structures, equipment, fixtures, signage, or furnishings.

8. **Suspension or Revocation of Permit Agreement.**

This Permit Agreement may be suspended or revoked by the enforcement official for any of the reasons set forth in Lincoln Municipal Code section 14.50.070. In the event of a suspension, the enforcement official shall provide written notice to the Permittee that includes an explanation of why the Permit Agreement is suspended and shall state terms, including length of time, of the suspension. In the event of revocation, the enforcement official shall provide written notice to the Permittee that includes an explanation of why the Permit Agreement is revoked. Permittee shall immediately cease all operations of the sidewalk café and shall comply with the requirements in section 7 (a), (b), and (c).

9. **Effect of Termination, Revocation, or Expiration.**

(a) After sixty (60) days following termination, revocation, or expiration of this Permit Agreement for any reason, the City is authorized to enter the Premises to remove any and all remaining property as described in section 7(b) of this Permit Agreement in the event that all removal actions required therein are not fully completed.

(b) The reasonable costs of such removal action by the City shall be the responsibility of the Permittee. Such costs shall be due and payable within thirty (30) days of issuance of an invoice to the Permittee for such costs.

(c) If the costs are not paid as set forth herein, the City may submit a report to the City Clerk outlining all work completed pursuant to this section or may exercise its rights under the surety bond provided to the City.

(d) This section shall survive termination, revocation, or expiration of this Permit Agreement

10. **Permittee Responsibilities.** Permittee shall have the following responsibilities: (a) apply for and obtain any and all other necessary permits, releases, certifications, permits, variances, and approvals required by any applicable law or regulations that relate to the use of the Premises; (b) conduct all activities related to the use of the Premises in a lawful manner and comply with any applicable statutes, City ordinances, rules, and regulations; (c) not place or utilize display signs, advertising, or tents on the Premises, except upon written approval by the enforcement official in advance, and to not publish any claim whatsoever related to City endorsement or sponsorship of the event unless authorized by the enforcement official in writing; (d) comply with all Permit Conditions set forth in Lincoln Municipal Code section 14.50.060; (e) promptly remove all litter or waste of any kind deposited on the surface of the Premises resulting from the business activity of the sidewalk café; conform to and operate the sidewalk cafe within the terms provided in this Permit Agreement and any application for the Permit.

11. **No Joint Venture.** Permittee has sole and exclusive charge and control of the manner and means of operating its event or activity. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties. The parties agree that each of them is acting on its own behalf and not as an employee or partner of the other. Neither party shall be deemed an agent or representative of the other and neither party has permission or authority to bind or commit the other party to any agreements or other obligations.

12. **Condition and Use of the Premises.** Permittee accepts the Premises in its then current "as is" condition and acknowledges that the Premises is in good and satisfactory condition at the time Permittee takes possession of the Premises. Permittee has inspected the Premises and has determined the Premises to be suitable for the uses intended. City is not responsible to make any improvements to the Premises. All personal property on the Premises shall be at the risk of the Permittee only. City shall not be or become liable for any damage to such personal property or for

any damage arising from any act or neglect of Permittee, Permittee's employees, or invitees of the Premises. No representations have been made by City as to the condition of the Premises. Permittee shall, at all times, keep the Premises in clean, sanitary and safe condition, and in compliance with all codes and regulations. Permittee and all participants, and parents shall be required to follow all applicable rules and regulations, health and safety guidelines, Directed Health Measures, and protocols. At all times during the term of this Agreement, Permittee shall comply with all environmental laws and permitting requirements impacting the Premises.

13. **Return of Premises to its Present Condition.** During the term of this Permit Agreement, Permittee shall continuously maintain the Premises in a neat and clean condition. No structures or improvements shall be erected by Permittee unless prior written authorization is provided by the City. The Permittee shall not drill holes or otherwise penetrate the concrete sidewalk or other areas owned by the City without consent from the City. All structures and improvements remaining on the Premises after the term of this Agreement shall be and become the property of the City. Upon the termination, revocation, or expiration of this Agreement, Permittee agrees to return the Premises to the City in compliance with section 7(c). Permittee shall be responsible for payment for repairs for any damage or breakage to the Premises that occurs in connection with the Permit granted to Permittee. In the event that damage or breakage to the Premises is not completed within a reasonable time not to exceed sixty (60) days after receiving notice of such damage or breakage from the City, the City may enter the Premises to make appropriate repairs.

14. **Insurance.**

A. Permittee shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Permittee and City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Permittee and Permittee's employees, or those directly or indirectly employed by Permittee. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - \$1,000,000 combined single limit, each occurrence; \$2,000,000 general aggregate; and
2. Bodily Injury/Property Damage - \$1,000,000 each occurrence; \$2,000,000 Aggregate; and
3. Personal Injury Damage - \$1,000,000 each Occurrence; and
4. Contractual Liability - \$1,000,000 each Occurrence; and
5. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
6. Medical Expenses (any one person) - \$10,000;
7. Fire Damage (any one fire) - \$100,000.

B. The following shall be provided and attached to this Agreement by Permittee:

1. A Certificate of Insurance for its General Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance.
2. Proof of Workers' Compensation Insurance, where appropriate.

C. Permittee is required to provide City with thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

15. **Indemnification.** To the fullest extent permitted by law, Permittee shall indemnify, defend and hold harmless City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness and disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the

intentional or negligent act or omission of Permittee, or anyone for whose acts any of them may be liable. Permittee and all participants shall be required to follow all applicable rules and regulations, health and safety guidelines, Directed Health Measures, and Protocols. City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement. These obligations of Permittee remain continuous and uninterrupted for the entire term of the Agreement.

Permittee is fully aware and understands the specific risks associated with use of the Premises, including physical injury, sickness and disease, and death, and that the use may be hazardous. Permittee and all participants, coaches, and parents shall be required to follow all applicable rules and regulations, health and safety guidelines, and Directed Health Measures. Permittee shall also be required to obtain and keep signed Warning of Risk, Waiver, and Release of All Claims forms (see approved form attached hereto) from every participant and coach (including opposing participants and coaches) and provide copies of all the signed forms to the Planning Director when requested.

16. **Integration, Amendment, Severability, Waiver, Applicable Law.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. This Agreement shall be governed and interpreted by the applicable laws of the Nebraska, without reference to analysis of conflict of laws principles.

17. **Restriction of Assignment, Subletting.** Permittee shall not assign, sublet, or in any manner transfer this Permit Agreement without the previous written consent of City.

18. **Appeals.** Any final decision or action of the enforcement official may be appealed by an applicant or permittee under a permit agreement to the City Council. An appeal shall be filed with the City Clerk on a form provided by the City within twenty (20) calendar days following the decision or action. The appeal will be presented to the City Council for hearing within forty-five (45) calendar days of filing the appeal. At the hearing, the applicant or permittee under a permit agreement shall present evidence and arguments supporting the appeal. City representatives may present evidence and arguments supporting its case in opposition to the appeal. Following the hearing, the City Council may vote to deny the appeal, sustain the appeal, or modify the decision or action taken by the enforcement official. The City Council may vote to delay a decision until another date not to exceed twenty-one (21) calendar days. In the event no decision is made by the City Council within twenty-one (21) calendar days of the hearing, the appeal will be deemed sustained and in favor of the applicant or permittee under a permit agreement.

19. **Capacity.** The undersigned person(s) representing Permittee does hereby agree and represent that they are legally capable to sign this Agreement and to lawfully bind Permittee to this Agreement.

IN WITNESS WHEREOF, Permittee and City do hereby execute this Agreement.

[PERMITTEE NAME]

DATED: _____

BY: _____

TITLE: _____

ORGANIZATION NAME & ADDRESS:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

DATED: _____

BY: _____