

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (hereinafter the "Agreement") is made and entered into this ____ day of _____, _____ by and between the CITY OF NEW PORT RICHEY, FLORIDA, a municipality of the State of Florida, (hereinafter the "Grantor") and _____, whose address is _____, _____, FL _____ (hereinafter the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property referred to hereinafter as the "Licensed Premises", and Grantee is the owner of other real property referred to hereinafter as the "Grantee's Property", said properties being legally described on Exhibits "A" and "B", respectively, attached hereto and incorporated herein by this reference.

WHEREAS, the Licensed Premises consists of a portion of real property that is located within, and as a part of, a city owned right of way.

WHEREAS, Grantee wishes to preserve a right to have access to and use the Licensed Premises for the purpose of providing seating to customers pursuant to the operation of a sidewalk café in conjunction with the café located on the Grantee's Property, and Grantor desires to provide limited access and use to the Licensed Premises, in accordance with the terms and provisions hereof. This license is limited to the know as, and operated by, (insert name of business and owner's name). Upon cessation of the aforementioned businesses enterprise, this license agreement shall automatically terminate.

WHEREAS, Grantor and Grantee desire to define, create and establish the rights and obligations of the parties with respect to Grantee's use of the Licensed Premises.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, with the mutual covenants herein contained to be kept and performed, the parties agree as follows:

1. Recitals. The aforesaid recitals are true and accurate and are hereby incorporated by this reference.

2. Definitions. For purposes of this Agreement, the following terms are defined as follows:

A. The term "Application" shall be defined as the application for sidewalk café permit submitted by Grantee to Grantor pursuant to Section 7.11.16 of the City Code, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference.

B. The term "City Code" shall be defined as the municipal code of ordinances of the City of New Port Richey, Florida, as amended from time to time.

C. The term "City Manager" shall be defined as the City Manager of the City of New Port Richey, Florida, or his/her designee or designees.

D. The term "License" shall be defined as a revocable grant of a nonexclusive limited interest in the Licensed Premises entitling Grantee to a limited use or enjoyment of the Licensed Premises in accordance with the terms and conditions of this Agreement. Any License created pursuant to this Agreement is personal to the Grantee and shall not be deemed to constitute a covenant running with the land.

E. The term "Licensed Premises" shall be defined as that area of real property located on the Licensed Premises as legally described on the sketch attached hereto as Exhibit "A" and incorporated herein by this reference.

F. The term "Permittees" shall be defined as all customers, clients, invitees and guests of Grantee.

3. Grant of License.

A. Grantor hereby grants to Grantee for the benefit of Grantee, and its Permittees, and for the benefit of Grantee's Property, a License for ingress and egress by pedestrian traffic over, across and upon the Licensed Premises, subject to the provisions contained within this Agreement and the City Code.

B. Grantor hereby grants to Grantee for the benefit of Grantee, and its Permittees, and for the benefit of Grantee's Property, a License to use the Licensed Premises for the operation of a sidewalk café, subject to the provisions contained within this Agreement and the City Code.

4. Use of Licensed Premises. Grantor hereby expressly grants to Grantee, and for the benefit of Grantee's Property, the following rights with respect to the Licensed Premises:

A. the right to use the Licensed Premises for pedestrian ingress and egress in order to serve the Licensed Premises; and

B. the right to install, construct, operate, repair, maintain and replace certain improvements now or hereafter located on the Licensed Premises, if any, provided said activities do not unreasonably interfere with the rights otherwise granted by Grantor to others, and further provided that Grantee restores the property, and any improvements disturbed by such activities, to its former condition within thirty (30) days from the date the City Manager provides written demand for such restoration.

Grantee shall be permitted to exercise its rights hereunder only to the extent specifically permitted by the City Code and only to the extent described in the Application. Nothing in this Agreement shall be deemed to create a property right for Grantee, or its assigns or successors in title, to the Licensed Premises or any other portion of Grantor owned property, nor to permit Grantee to extend the License any further than shown on Exhibit "A" attached hereto.

5. Permitted Improvements and Removals.

A. Grantee shall only be permitted to construct, install or create those improvements on the Licensed Premises specifically described in the Application. Grantee shall not be permitted to install, construct or create improvements on the Licensed Premises that are not specifically described in the Application.

B. Grantee shall only be permitted to remove or replace certain items and obstructions from the Licensed Premises as specifically described in the Application. Grantee shall not be permitted to remove or replace any items or obstructions from the Licensed Premises that are not specifically described in the Application.

C. Grantee hereby agrees to complete construction of the permitted improvements including construction and installation of all awnings, railings, fans, lights, as well as the removal or relocation of all necessary items and obstructions, in compliance with the City Code and all other applicable laws, rules, ordinances and other regulations. Grantee shall coordinate the construction of all improvements and removal or relocation of all items or obstructions with Grantor to facilitate the

prompt completion of same and to minimize costs and interference with the use of the Licensed Premises and the property surrounding the Licensed Premises.

D. No improvements to, or removal or relocation of items from, the Licensed Premises shall be undertaken by Grantee prior to the Grantor having approved in writing, (i) the plans and specifications for said improvements, (ii) the plans and specifications for the removal or relocation of certain items; and (iii) the schedule for completing said improvements and/or removal or relocation. All construction and work performed in or on the Licensed Premises shall be performed (i) subject to and consistent with all relevant permits, approvals, agreements, laws, regulations, ordinances and the City Code; and (ii) with due care and in a workmanlike manner.

E. Grantee shall pay for all costs related to the construction and installation of any improvements on or to, and the removal or relocation of items from, the Licensed Premises.

F. Grantee shall pay its own engineering, architectural, legal, consulting and professional fees in connection with this Agreement and the improvements hereafter to be located on, or items to be relocated or removed from, the Easement Premises.

6. Operation, Maintenance, Repair, Replacement and Removal. Grantee hereby agrees to and shall be responsible for installing, operating, maintaining, repairing, replacing and removing, at Grantee's sole cost and expense, any and all improvements now or hereafter constructed, installed and/or located in or on the Licensed Premises.

7. Condition of Licensed Premises. Grantee hereby agrees to and shall be responsible for ensuring that the Licensed Premises and the landscaping around and upon the Licensed Premises are kept in a clean and attractive condition and repair. Said duties shall include, but not be limited to, the removal or all garbage and rubbish on the Licensed Premises, the planting, grooming, cutting and maintaining of all shrubbery, grass, flowers, and trees located on the Licensed Premises, as necessary and appropriate, as well as keeping the Licensed Premises in a clean and attractive condition at all times.

8. Sale, Transfer or Assignment of Interest. Grantor and Grantee acknowledge and agree that prior to transferring, assigning or conveying to any person or entity any interest in the Grantee's Property, the person or entity receiving said interest must assume, in writing, all of the obligations of this Agreement with respect to the Licensed Premises, and the interest so transferred, assigned or conveyed, and the transfer, conveyance or assignment shall recite that it is subject and subordinate to the terms and provisions of this Agreement.

9. Covenants Do Not Run With the Land. None of the covenants, conditions, restrictions, rights, duties, obligations and licenses contained in this Agreement are intended to be covenants running with the land pursuant to applicable law, and none of the conditions, restrictions, rights, duties, obligations and licenses contained in this Agreement shall run with the land.

10. Revocation of License. Grantor may revoke the License granted hereunder at any time, in Grantor's sole and absolute discretion, in the event (a) Grantor believes that Grantee is in default of its covenants, representations or obligations hereunder, (b) Grantor believes Grantee has failed, or is failing, to abide by the applicable provisions of the City Code (c) Grantee's Property is no longer used as a restaurant, (d) the Licensed Property is no longer used as a sidewalk café, (e) Grantee has installed, constructed or created improvements not specifically described in the Application or in a manner other than that described in the Application, (f) Grantor desires or believes it needs to exert exclusive control of the Licensed Premises for any municipal purpose, (g) a transfer of ownership of the Grantee's Property occurs without a prior written assumption of the obligations of this Agreement by the transferee or assignee of Grantee's Property, or (h) encroachment by Grantee into or on the right of way owned by the Grantor and adjacent to the Licensed Premises.

If any of the events described hereinabove in this paragraph occur at any time, the Grantee shall immediately (a) remove all improvements previously installed, constructed or created on the Licensed Premises, (b) return the Licensed Premises to the condition in which it existed prior to the commencement of this Agreement, and (c) peaceably surrender the Licensed Premises to the Grantor. If Grantee fails to perform (a), (b) and (c) hereof within ten (10) days of receipt of written notice to surrender the Licensed Premises to Grantor, then Grantor may pursue any one or more of the following remedies:

A. The right, but not the obligation, to cure any such default for the account of and at the expense of the Grantee; provided, however, that in the event of emergency conditions constituting default, Grantor, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Grantor shall have the right to perform any necessary work or furnish any necessary materials or services to cure the default. Grantee shall be responsible hereunder for the default of its Permittees or other parties claiming any type of interest in its property by or through Grantee;

B. Any and all remedies available at law or in equity, including without limitation injunctive relief, specific performance, ejection and/or the imposition upon Grantee's property for all costs and expenses set forth herein;

C. All costs and expenses reasonably incurred by Grantor to cure a default by Grantee hereunder, together with interest thereon at the maximum rate allowed by applicable usury law, and all costs and expenses of any proceedings at law or in equity, including without limitation reasonable attorneys' and expert witness fees, expended in preparation and during any trial, any appeals process, or any bankruptcy proceeding, all of which shall be assessed against and paid by Grantee; and/or

D. An action against the Grantee and/or the Grantee's Property pursuant to and in front of the City of New Port Richey Code Enforcement Board.

Notwithstanding the foregoing, Grantor may exert exclusive control of the Licensed Premises upon providing Grantee with ten (10) days prior written notice of the revocation of the License. In the event of an emergency requiring immediate revocation, however, Grantor shall have the right to revoke the License hereunder upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter.

11. No Waiver. No waiver by Grantor of any default by Grantee under this Agreement shall be effective or binding on Grantor unless made in writing by Grantor and no such waiver shall be implied from any omission by Grantor to take action in respect to such default. No express written waiver by Grantor of any default committed by Grantee shall affect any other default by Grantee or cover any other period of time other than the default and the period of time specified in such express waiver. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

12. Insurance.

A. Grantee agrees to secure and maintain public liability insurance coverage covering the Easement Premises and Grantee's property, as legally described herein, in the amount of at least Five Hundred Thousand and 00/100 Dollars (\$500,000.00), against claims for bodily injury or death and property damage occurring thereon.

B. The policy evidencing such coverage shall: (i) name Grantor as an additional insured and insure the Grantor's contingent liability under this Agreement; (ii) be issued by an insurance company which is acceptable to Grantor and licensed to do business in the state of Florida and ruled A VII or better by A.M. Best Company; and (iii) provide that said insurance shall not be cancelled unless thirty (30) days prior written notice shall have been received by Grantor.

C. In the event the insurance coverage expires at any time, a renewal certificate shall be issued thirty (30) days prior to said expiration date. Said policy or policies, or certificates thereof, shall be delivered to, approved by, and on file with, the Grantor prior to commencement of this Agreement and upon each renewal of said insurance.

D. In the event Grantee fails to furnish such insurance, Grantor may obtain such necessary insurance policy and the premiums shall be paid by Grantee to Grantor upon demand. Grantor shall have the right to periodically raise required coverage limits as it deems necessary. Grantee agrees to waive its right of recovery against the Grantor to the extent that Grantee is covered or would have been covered by the property insurance coverage that it agreed to in the terms of this Agreement.

E. In addition to the foregoing, Grantee agrees to maintain workers compensation insurance at all time during the construction and installation of the improvements to be located on the Licensed Premises within the statutorily required limits.

13. Condemnation. In the event of any taking by condemnation of all or any portion of the Licensed Premises by a governmental agency other than Grantor, the eminent domain award with respect thereto (whether awarded as compensation or as severance damages) shall be paid solely to Grantor, and Grantee shall have no right to share in any award. Nothing contained herein shall forbid Grantor to condemn the Licensed Premises in the event its governing body declares a need for such action. For the purposes of this paragraph, the term "taking" includes a voluntary conveyance made under threat of or in anticipation of any involuntary eminent domain taking.

14. Indemnification. Grantee shall indemnify and hold Grantor harmless from and against all claims, losses, damages, liabilities and expenses of any kind (including without limitation reasonable attorneys' and expert witness fees and costs) relating to any and all accidents, injuries, loss or damage of or to any person or property arising from the negligent, intentional, or willful acts or omissions of Grantee, its contractors, employees, agents, invitees, guests, Permittees or others acting on behalf of, through or under Grantee. Grantee shall further indemnify and hold Grantor harmless from and against all fines, levies, claims, losses, damages, liabilities and expenses of any kind (including without limitation all attorneys', expert witness and consulting fees and costs) which Grantor may incur, suffer, become liable for or which may be asserted or claimed against Grantor by any person or entity as a result of the use of the Licensed Premises by Grantee, its contractors, employees, agents, invitees, guests, Permittees or others.

15. Captions. The captions heading the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

16. Governing Law and Venue. This Agreement shall be construed and enforced in all respects in accordance with the laws of the State of Florida, and the parties agree that venue for any action brought hereunder shall lie exclusively in the state and federal courts in and for Pasco County, Florida.

17. Litigation. In the event of litigation to enforce any part of this Agreement by either party, including without limitation the collection of any sums owed to Grantor by Grantee, the prevailing party shall be entitled to recover from the other party or parties, among other things, a reasonable attorney's fee (both at the trial and appellate levels), expert witness fees, consultant's fees and costs.

18. Severability. Invalidation of any one of the covenants, conditions, restrictions, easements or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, easements or provisions hereof, and the remaining provisions shall remain in full force and effect.

19. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and all of which together shall constitute one and the same instrument.

20. Time. To the extent that performance is governed by time, time shall be deemed to be of the essence.

21. Assignment. This Agreement may not be assigned, transferred or conveyed without the prior written consent of the other party.

22. Advice of Counsel. Grantor and Grantee hereby acknowledge that each, if it so desired, had the ability to seek and receive the advice of counsel in connection with the meaning and import of each provision of this Agreement and each hereby enters into this Agreement with full understanding hereof.

23. Effective Date of Agreement. This Agreement shall take effect when executed by the appropriate corporate representative of Grantee, as well as the Mayor or Deputy Mayor, City Clerk or Deputy City Clerk and City Attorney or Assistant City Attorney for the Grantor.

24. Recording. This Agreement shall NOT be recorded in the office of the Clerk of the Circuit Court of Pasco County, Florida or any other jurisdiction.

ATTEST:

GRANTOR:

THE CITY OF NEW PORT RICHEY,
FLORIDA, a Florida municipal corporation

Doreen Summers, City Clerk

By: _____
Rob Marlowe, Mayor - Council Member

APPROVED AS TO LEGAL FORM
AND CONTENT

Joseph Poblick, City Attorney

(Name of Party)

Print Name: _____

By: _____
(Signature of party)

(Name of Party)

Print Name: _____

By: _____
(Signature of party)

(Name of Party)

Print Name: _____

By: _____
(Signature of party)

EXHIBIT "A"

Legal Description and Sketch of Licensed Premises

EXHIBIT "B"

Legal Description of Grantee's Property

EXHIBIT "C"

Application