



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: June 1, 2021

Agenda Item 8B  
Approvals:  
City Manager ET JS  
Dept. Head \_\_\_\_\_  
Attorney \_\_\_\_\_  
Finance TC

**Department:** Economic Development Department  
**Prepared By:** Jonathan Lightfoot, Economic Development Officer

**Subject:** *PROCLAMATION OF LOCAL EMERGENCY FOR ECONOMIC RECOVERY; AND FEE FOR CONTINUED OUTDOOR DINING OPERATIONS*

**Fiscal Impact:** Yes, potentially adding \$40,000-80,000 in new revenues to the General Fund. Staff recommends implementing a licensing agreement program with the temporary outdoor dining operators utilizing public spaces such as public street, sidewalk, or parking areas. Staff also supports a fee for displaced parking on private property due to outdoor dining or other operations. Revenues from the fees could offset costs from mobility improvements, such as extended days or hours of trolley operations.

**Summary:** Staff recommends that Council consider proclaiming a local emergency specific to local economic recovery [Attachment 1] and provide direction on the adoption of fees and other standards for the ongoing implementation of the outdoor operations program. Council previously approved a resolution authorizing the Outdoor Operations program in June of 2020. Attachment 2 includes a Resolution to adopt the license fees associated with ongoing participation in the Temporary Outdoor Operations Program.

**Background:** To support businesses impacted by the operational restrictions implemented by the State to mitigate the spread of Covid-19, the City Council voted to implement an outdoor operations program at the June 2, 2020 meeting one year ago. This allowed temporary signage and temporary outdoor operations for restaurants and retail businesses. At the August 18 meeting in 2020, the City Council expanded the scope of the emergency support program to incorporate other business sectors that the State had directed to operate outdoors and supported extending the program beyond the initial deadline of September 30, 2020. Because this program was established under the Council's emergency powers under the local emergency order, it will dissolve when the local emergency order ends. Outside the normal process for code amendments and formal lease arrangements, the City has the ability to consider an interim this program in the interest of the urgent need for economic recovery, notwithstanding the State or County resolution of the Covid-19 health emergency.

Council gave direction for various modifications or future projects during subsequent discussions of the program, such as:

- Standardizing some design features, to include encouraging wood or landscape planter barriers and market umbrellas for shade;
- Allowing use of alleyways on weekends for expanded business operations adjacent to those spaces;

- Directing that a decision package for a future CIP for permanent sidewalk expansion at Avenida Victoria be brought forward in the 2021-2022 budget process;
- Increasing bike parking near Ave. Del Mar and Ave. Ola Vista; and
- Initiating a permanent "parklet program" via Zoning Amendment to create a standardized funding and permitting process.

While Planning and Economic Development staff will be initiating the Zoning Amendment process in July, 2021, the permanent parklet program would likely not be implemented until early 2022. With Covid regulations easing and residents and customers gaining confidence, additional modifications to the ongoing Temporary Outdoor Operations program are warranted.

**Discussion: Rationale for New Proclamation of Emergency for Economic Development**

Governor Newsom announced that most business operations limits on capacity would end on June 15, 2021<sup>1</sup>. Orange County already progressed to the lowest threat tier (Yellow) of the "Blueprint for a Safer Economy" model on May 19, 2021<sup>2</sup>. With about 70% of adults in Orange County having received at least one dose of the vaccine<sup>3</sup>, customer confidence is quickly returning. Our stores, beaches, and downtown are seeing a significant increase in visitors.

As we approach the June 15<sup>th</sup> date, there is ambiguity as to if and when the State's declared emergency due to Covid-19 will end. The Governor has not provided a clear timeline. Regardless of the status of State and County declarations of health emergencies relating to Covid-19, the City and its businesses still face immediate economic challenges relating to economic recovery and employment in the aftermath of the pandemic. The Council may wish to end the local state of emergency regarding the health impacts of Covid-19 without terminating economic recovery programs, such as the temporary outdoor operations and dining program. The City will also be responsible for administering American Rescue Plan funds, which could be used for a variety of economic recovery initiatives. Planning and Economic Development staff will be initiating the Zoning Amendment process in July, 2021 to establish a permanent parklet program for outdoor dining per Council's prior direction, but that program would likely not be implemented until early 2022. Therefore, the temporary program can only continue to exist within the flexibility afforded to the City to provide relief from standard regulations during a declared local emergency.

Staff recommends that the local state of emergency regarding economic development be defined for a period between June 15 and November 15, 2021. This defined timeline allows for continuation of outdoor dining through the summer and sunsets shortly after daylight savings (November 7). The even period of 5 months will help set clear fee expectations and allow staff to bill participants in advance with one invoice as opposed to a more burdensome monthly billing process. The order will sunset

<sup>1</sup> <https://www.gov.ca.gov/2021/04/06/governor-newsom-outlines-the-states-next-step-in-the-covid-19-pandemic-recovery-moving-beyond-the-blueprint/>

<sup>2</sup> <https://covid19.ca.gov/safer-economy/>

<sup>3</sup> <https://ochca.maps.arcgis.com/apps/dashboards/78884420040949199f3e034c486f1e86>

automatically on November 15. Participants would need to remove their outdoor dining assemblies by this date. With the time change, there will be lower demand for outdoor dining and the additional parking will facilitate holiday shopping. Avenida Del Mar will also need to be cleared in advance of the repaving and electrical CIP planned for January 2021.

### **Rationale for Implementing Fees for Outdoor Dining**

Due to increased business activity and traffic, City Council authorized an early start to the summer Trolley which began operating mid-May. Trolley capacity increased with the move to the Yellow tier (May 19), and the trolley will shift from weekend only to daily operations this month (June). To offset additional costs associated with operating the trolley on additional days or for additional hours, staff recommends implementing a license agreement with the restaurants that wish to continue to use public space for expanded capacity. Fees could also be used to support City leases of additional private parking lots. While the initial intent for the outdoor dining program was to offset capacity restrictions implemented by the State or County Health Departments, those restrictions are expected to end on June 15. Staff recommends implementing this license for use of public space beginning on that day. Staff introduced this concept to participating restaurants via a Zoom roundtable in early May. Most businesses supported the rationale of using the temporary "rental" funds to support other mobility improvements for the downtown. All businesses that participated indicated that they would be willing to pay a fee to continue using their outdoor dining decks.

A review of market leasing rate for commercial space near downtown shows that leases range from \$25-40 per square foot per year. This translates to \$2-4/sf/month. One parking space is approximately 200 square feet. So, a market rate would be \$400-800 per month for each parking space. Most restaurants are using the equivalent of 3 parking spaces, which translates to \$1200-2400 per month. This figure is very inflated, however, because the lease square footage is not commercial grade. The utilized spaces required investment of materials and equipment to make functional for dining. Additionally, there is public benefit, not necessarily attached to the adjacent building, in maintaining outdoor dining. The program has been very popular with both residents and visitors and improves the street life near the pier and downtown. Therefore, a significant downgrade of the rental rate is warranted. Staff believes that a fee in the range of 10-20% of the market rate range is reasonable. At that rate, the majority of businesses will continue to operate their outdoor areas. Some businesses with underutilized outdoor areas may choose to stop occupying their designated areas to avoid paying the additional fee.

### **Implementation of License Fee for Public Spaces**

There are two ways that staff could calculate a rental rate: by number of parking spaces (or equivalent square footage) or by seat, examples below:

- Restaurant A uses 3 parking spaces:  $3 \times \$200/\text{mo} = \$600/\text{month}$ .
- Restaurant A has 16 chairs:  $16 \text{ chairs} \times \$40/\text{chair} = \$640/\text{mo}$

The parking space method makes for a simpler, more standardized calculation for most businesses. However, the per chair method more closely aligns to how

businesses estimate their potential revenues. It also allows for Code Enforcement to quickly assess compliance with a set capacity, and it better captures businesses that are using public areas that are not parking spaces (such as sidewalk, curb space, etc). Staff recommends utilizing the "per chair" method with a requirement that outdoor spaces post their approved capacity limit to ensure that restaurants are fairly following the license-established numbers.

Staff recommends that the Council set a fee in the range of \$25-50/chair/month. Staff estimates that this will generate revenue of about \$500-\$1000 per business per month. There are about 20 restaurants using public property for their outdoor areas. If the program runs until October 15 (4 months), that would equate to \$40-80,000 in revenues that could be allocated towards mobility improvements. Staff recommends that Council consider setting the fee low enough to encourage most restaurants to continue operating their outdoor areas, but high enough to encourage businesses which are underutilizing their spaces to return them to public parking use.

#### **Additional Standards**

Staff recommends incorporating minimum hours of operation standards into the license agreements to ensure that the public space is being well utilized. For instance: "Businesses occupying public parking spaces must operate a minimum of eight hours per day for at least 6 days per week. The City reserves the right to terminate Outdoor Operations Permits for businesses that do not meet this standard."

#### **Outdoor Seating on Private Property**

Outdoor dining that takes up private parking areas also impacts on-street public parking facilities. For instance, a restaurant that uses its eight private parking stalls for tables and chairs potentially displaces eight on-street parking spaces. As these restaurants see a benefit from continued outdoor operations, staff believes that it would be equitable to charge a baseline "parking displacement fee" as a condition of continued participation in the Temporary Outdoor Operations program. Staff believes that a monthly fee of \$100/parking spot is a reasonable fee. This fee would affect businesses such as Pizza Port or Sonny's, which have set up tables within their required parking areas on private property. The fee would assist in paying a fair share contribution towards the mobility improvements from the new General Fund revenues. While staff would like Council to provide general direction on this fee, it will not be adopted at this meeting. The City attorney will review any nexus and noticing requirements that may apply, and this consideration will return for adoption at a subsequent meeting.

#### **Discontinuing Certain Program Elements**

Staff recommends that the prior Council approved use of bulb out seating areas (with the "Landmarks on Del Mar" file art) and alleyways be discontinued effective immediately. With the imminent return to full commercial capacity, staff believes that these spaces should no longer be designated for commercial use. Staff has received noise and cleanliness complaints associated with these specific areas, and recommends returning them to their intended uses of public seating and circulation.

**Recommended**

**Actions:** STAFF RECOMMENDS THAT the City Council:

1. Adopt Resolution 21-\_\_\_\_ proclaiming a local emergency regarding economic stabilization and recovery from the impacts of the coronavirus pandemic;
2. Establish a monthly rental fee in the range of \$25-50/chair for use of public spaces for outdoor dining;
3. Establish standard hours of operation requirements for dining areas on public property;
4. Provide preliminary direction regarding a fee for parking that is displaced on private property, to be reviewed for adoption at a future meeting;
5. Adopt Resolution 21-\_\_\_\_ approving the modifications to the Temporary Outdoor Operations Program and establishing the applicable license fee.
6. Authorize the Economic Development Officer to execute the temporary license agreements with participating restaurants in consultation with the City Attorney with a term beginning on June 15, 2021 and not to extend beyond November 15, 2021;
7. Direct staff to discontinue the Temporary Outdoor Operations program's use of alleyways and bulb out areas for commercial use; and

**Attachments:**

1. **Resolution 21-\_\_\_\_, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA PROCLAIMING A LOCAL EMERGENCY REGARDING ECONOMIC STABILIZATION AND RECOVERY FROM THE IMPACTS OF THE CORONAVIRUS PANDEMIC**
2. **Resolution 21-\_\_\_\_, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA DIRECTING THE DIRECTOR OF EMERGENCY SERVICES TO EXTEND CERTAIN ZONING-RELATED SMALL BUSINESS ASSISTANCE STRATEGIES AND IMPLEMENT LICENSE AGREEMENTS WITH PARTICIPATING BUSINESSES**
  - a. **Exhibit A, Sample License Agreement**

**Notification:** San Clemente Chamber of Commerce and Downtown Business Association  
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## Attachment 1

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN CLEMENTE, CALIFORNIA PROCLAIMING A LOCAL  
EMERGENCY REGARDING ECONOMIC STABILIZATION  
AND RECOVERY FROM THE IMPACTS OF THE  
CORONAVIRUS PANDEMIC

WHEREAS, on March 17, 2020, as empowered by California Government Code section 8630 and San Clemente Municipal Code chapter 8.12, the City Council adopted Resolution No. 20-13 proclaiming a local emergency regarding novel coronavirus (COVID-19); and

WHEREAS, with Resolution No. 20-13 section 3, the City Council authorized the City Manager, as Director of Emergency Services, to furnish information, to promulgate orders and regulations necessary to provide for the protection of life and property pursuant to California Government Code section 8634, to enter into agreements and to take all actions necessary to obtain State emergency assistance to implement preventive measures to protect and preserve the residents of the City within the scope of the local emergency; and

WHEREAS, on March 30, the City Council adopted Resolution No. 20-24 and, on April 21, the City Council adopted Resolution No. 20-30, which both supplement its proclamation to further address the local emergency; and

WHEREAS, every Californian above the age of 12 is now eligible to receive the COVID-19 vaccine, and the State of California anticipates a broad reopening of the economy on June 15, 2021; and

WHEREAS, small businesses have been disproportionately impacted by the effects of the pandemic and by closures or operational modifications mandated by the State or County Health Departments; and

WHEREAS, small businesses were not necessarily provided relief from rent or debt payment obligations during the pandemic as they faced these disproportionate impacts, with many still facing the need to recover economic ground and to re-employ and re-train their workforce lost during the pandemic; and

WHEREAS, the City of San Clemente supported a transition to outdoor operations for restaurants and other businesses in the creation of the Temporary Outdoor Operations Program; and

WHEREAS, outdoor dining has been successful and popular with both residents and visitors of San Clemente and may continue to be a preferred venue for restaurant service in terms of the public's comfort in returning to public spaces; and

WHEREAS, there exists an ambiguity in the timeline of the end of the State's declared emergency with regard to Covid-19; and

WHEREAS, regardless of the status of State and County declarations of health emergencies relating to Covid-19, the City and its businesses still face immediate economic challenge relating to economic recovery and employment in the aftermath of the pandemic; and

WHEREAS, the City will be responsible for administering funding from the American Rescue Plan to implement recovery programs to support economic stabilization initiatives including but not limited to small business recovery and housing assistance; and

WHEREAS, the City and local businesses rely upon advance planning to manage bookings, reservations, programs, operations and demand for the continuation of outdoor dining; and

WHEREAS, California Government Code Section 8630 and San Clemente Municipal Code Chapter 8.12 empower the City Council to proclaim the existence of a local emergency to protect and preserve public welfare when the City is affected or likely to be affected by a public calamity; and

WHEREAS, a declaration of a local emergency will assist in a coordinated public response to manage economic development programs and responses to support the businesses and the citizens of the City; and

WHEREAS, under Government Code section 8630(b), a proclamation of local emergency must be ratified by the City Council within seven (7) days to remain in effect; and

WHEREAS, Government Code section 8630 generally requires the City Council to review the need for continuing the local emergency at least every sixty (60) days; but as this Resolution identifies a definitive end to the economic recovery response period as November 15, 2021, Council will schedule its review at a regular meeting in November, 2021; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Clemente, California resolves as follows:

Section 1. Pursuant to California Government Code section 8630 and San Clemente Municipal Code Chapter 8.12, the City Council hereby finds and proclaims and

ratifies a local emergency caused by conditions or threatened conditions of economic instability in San Clemente, which constitutes a threat to the health and/or property of persons within the territorial limits of the City.

Section 2. The local emergency shall be deemed to continue to exist until November 15, 2021 unless terminated at an earlier date by the City Council or extended by the City Council at a regular meeting in November of 2021.

Section 3. The City Council hereby consents to the Mayor's appointment of the City Manager as the Director of Emergency Services and hereby authorizes the City Manager to furnish information, to promulgate orders and regulations necessary to provide for the protection of life and property pursuant to California Government Code section 8634, to enter into agreements and to take all actions necessary to obtain State emergency assistance to implement preventive measures to protect and preserve the residents of the City within the scope of the local emergency hereby declared.

Section 4. Powers of Government

During the existence of said local emergency, the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, ordinances, and resolutions of this City of San Clemente.

Section 5. Certification

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    ) §  
CITY OF SAN CLEMENTE    )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. \_\_\_\_\_ was adopted at a regular meeting of the City Council of the City of San Clemente held on the 1st day of June, 2021, by the following vote:

AYES:

NOES:



ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
City Attorney

## Attachment 2

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN CLEMENTE, CALIFORNIA DIRECTING THE  
DIRECTOR OF EMERGENCY SERVICES TO EXTEND  
CERTAIN ZONING-RELATED SMALL BUSINESS  
ASSISTANCE STRATEGIES AND IMPLEMENT LICENSE  
AGREEMENTS WITH PARTICIPATING BUSINESSES

WHEREAS, on March 17, 2020, as empowered by California Government Code section 8630 and San Clemente Municipal Code chapter 8.12, the City Council adopted Resolution No. 20-13 proclaiming a local emergency regarding novel coronavirus (COVID-19); and

WHEREAS, with Resolution No. 20-13 section 3, the City Council authorized the City Manager, as Director of Emergency Services, to furnish information, to promulgate orders and regulations necessary to provide for the protection of life and property pursuant to California Government Code section 8634, to enter into agreements and to take all actions necessary to obtain State emergency assistance to implement preventive measures to protect and preserve the residents of the City within the scope of the local emergency; and

WHEREAS, on March 30, the City Council adopted Resolution No. 20-24 and, on April 21, the City Council adopted Resolution No. 20-30, which both supplement its proclamation to further address the local emergency; and

WHEREAS, on June 2, 2020, the City Council adopted Resolution 20-41, which authorized and directed the Director of Emergency Services to implement certain zoning-related small business assistance strategies including the permitting of outdoor dining intended to help businesses operate safely and successfully following social distancing and other guidelines; and

WHEREAS, on June 1, 2021 the City Council adopted a Resolution of the City Council Proclaiming a Local Emergency Regarding Economic Stabilization and Recovery from the impacts of the Coronavirus Pandemic, finding that small businesses have been disproportionately impacted by the effects of the pandemic and by closures or operational modifications mandated by the State or County Health Departments and that they were not necessarily provided relief from rent or debt payment obligations during the pandemic as they faced these disproportionate impacts, with many still facing the need to recover economic ground and to re-employ and re-train their workforce lost during the pandemic; and

WHEREAS, this Resolution, based on the findings and conclusions of that Resolution, which are incorporated herein by this reference, authorizes and directs the Director of Emergency Services, or designee, to implement a license agreement as

appropriate for the continuation of outdoor business operations which supplant public space or private parking facilities.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Clemente, California resolves as follows:

Section 1. Temporary Outdoor Operations Generally

The City Council hereby authorizes and directs the Economic Development Officer to update the terms and conditions of the Temporary Outdoor Operations Permit [exhibit A] to reflect current best practices, to include minimum hours of operation, and to insert references to license and/or permit fees as appropriate and as directed by the City Council at its regular meeting on June 1, 2021.

Section 2. Temporary Outdoor Operations on Public Property

The City Council hereby authorizes and directs the Director of Emergency Services and/or the Economic Development Officer to enter into license agreements [sample in Exhibit B] with those businesses desiring to continue outdoor operations beyond June 15, 2021. The license fee of \$\_\_\_ per chair per month shall be collected in a single payment, calculated by the Economic Development Officer, in advance of continued participation in the Temporary Outdoor Operations program.

Section 3. Temporary Outdoor Operations on Private Property

Reserved.

Section 4. Duration

The City Council's authorization and direction to the Director of Emergency Services shall last for the duration of the local emergency, or until terminated by the City Council. Any action taken by the Director pursuant to this authorization and direction shall last for the duration of the local emergency, or until terminated by the Director or City Council.

Section 5. Powers of Government

During the existence of said local emergency, the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, ordinances, and resolutions of this City of San Clemente.

Section 6. Certification

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) §  
CITY OF SAN CLEMENTE    )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. \_\_\_\_\_ was adopted at a regular meeting of the City Council of the City of San Clemente held on the 1st day of June, 2021, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
City Attorney

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## Exhibit A

### LICENSE AGREEMENT BY AND BETWEEN THE CITY OF SAN CLEMENTE AND [LICENSEE]

#### PARTIES AND DATE

This License Agreement ("Agreement") is entered into as of [June 15, 2021] ("Effective Date") by and between the City of San Clemente, a California municipal corporation (the "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 [address], in the City of San Clemente, County of Orange, 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) (the "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 \$ \_\_\_ per chair per month as established by City Council Resolution 21- . This fee shall be payable in advance for a 5-month period. The Licensee shall cause to be posted on the primary entry

to their place of business the permitted outdoor dining area occupancy as established by the chair count of this license.

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 Operations program or November 15, 2021 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") [OR as described in Exhibit B (Permitted Activities)]:

3.1.1. [Maintain or establish an outdoor dining area with a footprint approved by the City through a Temporary Outdoor Operations Permit.]

3.1.2. [Maintain XX seats for the purpose of outdoor dining.]

3.1.3. [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 are limited to the time of [6 am to 10 pm] [daily]. Operations must be conducted for a minimum of eight hours per day and six days per week. Failure to implement these minimum hours shall be considered cause for default of the agreement.

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 Outdoor Operations Permit]

4.2.2. [City Approval 2]

4.2.3. [City Approval 3]

- 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.
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 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 San Clemente 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-III 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's 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 ~~forty-five (45)-~~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' 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 ~~violation~~ 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 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 Orange 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 work 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 San Clemente  
910 Calle Negocio  
San Clemente, CA 92672  
Attn: Jonathan Lightfoot

**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 Orange County Recorder's Office.

12.10.4. Not Authorization to Assign. This Section 3.10 (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 3.6 (Assignment or Transfer).

**Signatures on next page.**

**SIGNATURE PAGE TO LICENSE AGREEMENT  
BY AND BETWEEN THE CITY OF SAN CLEMENTE  
AND [LICENSEE]**

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

**City of San Clemente**

**[Licensee]**

By: \_\_\_\_\_  
NAME,  
POSITION

By: \_\_\_\_\_  
NAME,  
POSITION

ATTEST:

By: \_\_\_\_\_  
NAME,  
POSITION

By: \_\_\_\_\_  
NAME,  
POSITION

APPROVED AS TO FORM:

By: \_\_\_\_\_  
NAME,  
POSITION

DRAFT

**EXHIBIT A  
PROPERTY DESCRIPTION**

To be included.

**DRAFT**

**EXHIBIT B  
PERMITTED ACTIVITIES**

To be included, if not detailed in Section 3.

**DRAFT**