

OUTDOOR BUSINESS ACTIVITY LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“License Agreement”) is made and entered into as of this [DATE] day of [MONTH], 20__ (“Effective Date”), by and between THE CITY OF REDWOOD CITY, a charter city and municipal corporation of the State of California, hereinafter referred to as “the City”, and [NAME OF BUSINESS], a [ADD TYPE OF ENTITY (e.g. a California corporation, California limited liability company, general partnership, etc.)] hereinafter referred to as “the Licensee”. The City and the Licensee may be collectively referred to individually as “the City” or “the Licensee” and collectively as “the Parties.”

RECITALS

WHEREAS, on July 25, 2022, the City Council terminated the existing Temporary Outdoor Business Activity Program, Sidewalk Café Program and Sidewalk Café Pilot Program that allowed outdoor dining opportunities during the COVID-19 pandemic (collectively the “Terminated Program”); and

WHEREAS, concurrently, the City Council established a permanent program that allowed outdoor business activities within the City’s rights of way (“Program”) under City Code Chapter 29 via Ordinance No. 2510 and adopted via Resolution No. 16062 the City’s Program “Guidelines for Parklets and Sidewalk Cafés” dated May 9, 2022 as set forth in Volume III of the Engineering Standards, which were amended on March 10, 2025 via Resolution No. 16283 (“Guidelines”); and

WHEREAS, the Program replaces the Terminated Program and provides a predictable process for permitting to allow business establishments providing goods and services within the right-of-way through creation of a parklet and/or sidewalk café, including but not limited to retail, dining and personal services in compliance with the Guidelines (“Outdoor Business Activity”); and

WHEREAS, City Code Section 29.7 requires, among other things, a license agreement, in the form prescribed by the Community Development and Transportation Department (“Department”), for use of the City’s right of way to conduct an Outdoor Business Activity; and

WHEREAS, the Parties wish to enter into this License Agreement to specify the terms and conditions of the License to use the City right of way for the Outdoor Business Activity.

LICENSE PROVISIONS

1. **RECITALS.** The Parties agree that the foregoing Recitals and defined terms are true and correct and are hereinafter incorporated as terms of this License Agreement.

2. **LICENSE.** The City, for and in consideration of the performance of the covenants and agreements hereinafter contained to be kept and performed by the Licensee, and upon the following terms and conditions, hereby grants to the Licensee a revocable, non-exclusive license (“License”) for the use of those certain areas (“Licensed Area”) located within the right-of-way in front of [ADD STREET ADDRESS] in the City of Redwood City, San Mateo County, State

of California, more particularly described and depicted in Attachment (Description of Licensed Area) to Exhibit “A” (Encroachment Permit) and constructed as shown in Attachment (Building Plans) to Exhibit “A” (Encroachment Permit) to conduct the Outdoor Business Activity, described in Exhibit “A”, attached hereto and hereinafter incorporated by reference.

3. TERM OF LICENSE. The term of this License Agreement shall be for a period of one (1) year from the Effective Date of this License Agreement, unless terminated earlier in accordance with the provisions of this License Agreement, and may be renewed annually in the sole discretion of the City in accordance with Section 4 (Renewal of Term of License).

4. RENEWAL OF TERM OF LICENSE:

A. The term of this License Agreement may be renewed annually, for additional one (1) year terms.

B. If the Licensee seeks a renewal of the License Agreement, the Licensee shall submit an Outdoor Business Activity Permit renewal and renewal fee at least thirty (30) calendar days and no earlier than sixty (60) calendar days prior to the anniversary date of the Effective Date of the License Agreement, identified above.

C. The City shall conduct an inspection of the Licensed Area to determine if the Licensee is in compliance with the terms of this License Agreement. If City determines that the Licensee is in compliance with the terms of the License Agreement, the City may, in its sole discretion, renew the License Agreement for another one (1) year term (“Renewal Term”). If the License Agreement is renewed, the City shall issue written notice of the Renewal Term and any additional conditions or terms associated with the Renewal Term. The Parties agree that the terms and conditions of the License Agreement and any additional conditions or terms imposed as a result of the approval of the renewal by the City shall apply during the Renewal Term.

D. If the City approves a Renewal Term, the Licensee shall pay the applicable Annual Use of Space Fee pursuant to Section 6 (License Fee), and the Parties shall execute an amendment to this License Agreement extending the term.

E. If the Licensee does not seek a renewal of the Outdoor Business Activity Permit at least thirty (30) calendar days and no earlier than sixty (60) calendar days prior to the anniversary date of the Effective Date of the License Agreement or the City declines to renew the License Agreement for another year, the License Agreement shall not be renewed and shall terminate on the anniversary of the Effective Date.

5. USE OF LICENSED AREA:

A. The Licensee is authorized to use said Licensed Area for the purposes of conducting the Outdoor Business Activity described in Exhibit “A” and make certain improvements to the Licensed Area in accordance with the Guidelines and in compliance with the encroachment permit, including the approved Building Plans and associated conditions issued to the Licensee (“Improvements”). No other uses of the Licensed Area are authorized. The Licensee agrees that it will not use the Licensed Area or install any improvements thereon in

a manner, which violates this License Agreement, the Encroachment Permit, the Guidelines or City Code Chapter 29 or any applicable governmental laws, rules, or regulations.

B. Without limiting subsection (A), the Licensee agrees that the Licensee and the Licensee's officers, agents, contractors, employees, guests and invitees, will not use, store, dispose or release within the Licensed Area any Hazardous Materials. As used herein, "Hazardous Materials" means any flammable explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB's), hazardous waste, toxic substances, or related materials, including, without limitation, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in any present or future federal, state, or local law applicable to the Licensed Area and the rules and regulations adopted or promulgated under or pursuant to any of the foregoing laws.

C. Use of the Licensed Area for the Outdoor Business Activity may be interrupted or suspended by the City, in its sole discretion, if access to the Licensed Area is requested for work within the right-of-way, including, but not limited, when access by the City or utility company is requested. The interruption or suspension of the Licensee's use of the Licensed Area may require removal of Improvements at the Licensee's sole cost and expense. The City shall endeavor to provide reasonable notice to the Licensee regarding the interruption or suspension of the use of the Licensed Area. If the City requests that the Licensee remove Improvements pursuant to this section, and the Licensee does not do so within fifteen (15) business days upon initial written notification from the City to the Licensee, the City or a third party, may remove the Improvements the Licensee's sole cost and expense.

D. In the case of an emergency or a threat to public health and safety that requires immediate action as determined by the City, in its sole discretion, the City or its designee, may remove any Improvements, without notice. If Improvements are removed by the City, or its designee, due to an emergency or threat to public health and safety, the Licensee shall be solely responsible for all costs of re-installing and repairing any Improvements.

6. LICENSE FEE:

The Licensee shall pay to the City, upon the Effective Date of this Agreement, the "Outdoor Business Activity Permit (Parklets and Sidewalk Cafes) –Annual Use of Space Fee," as adopted by Resolution 16063 of the Council, and as amended from time to time, until this License Agreement is terminated. The Annual Use of Space Fee shall be calculated based on the square footage of the Licensed Area and for this License Agreement is initially set at [INCLUDE AMOUNT]. The Licensee is solely responsible for confirming the accuracy of the square footage of the Licensed Area.

7. REPAIR AND MAINTENANCE:

A. The Licensee, at its sole cost and expense, agrees to repair and maintain the Licensed Area and all Improvements located thereon in good repair and condition (including the making of all necessary replacements) and in a neat, safe and clean condition. The City shall not be responsible for any damages or destruction of any Improvements to the Licensed Area.

B. The Licensee shall comply, at all times, with the terms and conditions of this License Agreement and with the Operation and Maintenance standards identified in the Guidelines, as may be amended from time to time, and any governmental laws, rules and regulations applicable to the Licensed Area or the Improvements.

C. The Licensee's obligations under this License Agreement include, but are not limited to, the making of all necessary repairs and replacements to all parts of the Licensed Area and any Improvements thereon, whether structural or non-structural, ordinary or extraordinary. The Parties agree that the City has no obligation to maintain, repair or replace any part of the Licensed Area or Improvements thereon during the term of this License Agreement.

8. ACCEPTANCE; CONSTRUCTION OF IMPROVEMENTS:

A. The Licensee acknowledges that prior to entering into this License Agreement it has investigated and inspected the Licensed Area to the full extent that the Licensee has deemed necessary and appropriate. The Licensee acknowledges that the City has made, and is making, no representations or warranties, express or implied, as to the condition of the Licensed Area or as to the suitability of the Licensed Area for the Licensee's intended use. THE LICENSEE ACCEPTS THE LICENSED AREA "AS-IS" AND "WHERE-IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, AND SUBJECT TO ALL MATTERS, LIMITATIONS, CONDITIONS, AND RESTRICTIONS WHETHER OR NOT OF PUBLIC RECORD.

B. The Licensee agrees that any and all work in the Licensed Area will be performed in a good and workmanlike manner, pursuant to plans and specifications reasonably approved in advance by the City, and in compliance with City Code Chapter 29 and any other applicable governmental laws, rules and regulations.

C. All contractors engaged by the Licensee to perform any such work must be duly licensed and approved in advance by the City, which approval will not be unreasonably withheld, and must provide such bonds and insurance as is reasonably acceptable to the City, including, without limitation, comprehensive general liability insurance. The Licensee agrees to pay for all such work and agrees not to permit any liens, claims or encumbrances to be placed against the City's title to the Licensed Area as a result of such work. The Licensee also agrees that upon completion of such work the Licensed Area and the Improvements thereon will be free from all liens, claims and encumbrances relating to such work. Title to any Improvements shall remain with the Licensee at all times during the term of this License Agreement, except as provided in subsection 11(E) (Termination).

9. INDEMNIFICATION AND HOLD HARMLESS: The Licensee shall indemnify, defend, reimburse and hold harmless the City, and each of its councilmembers, commissioners, officers, employees, representatives, agents, and contractors ("Indemnified Parties"), from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("Claims"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Licensed Area, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of the Licensee, its officers, directors, members,

employees, agents, consultants, contractors or subcontractors (collectively, “Agents”), its invitees, guests or business visitors (collectively, “Invitees”), or third persons, relating to any use or activity under this License Agreement, (b) the use of the Licensed Area or any activities conducted thereon by the Licensee, its Agents or Invitees, (c) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by the Licensee, its Agents or Invitees, on, in, under or about the Licensed Area, any improvements or into the environment, or (d) any failure by the Licensee to faithfully observe or perform any terms, covenants or conditions of this License Agreement; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of Indemnified Parties. In addition to the Licensee's obligation to indemnify the Indemnified Parties, the Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Licensee by any of the Indemnified Parties and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs and all other reasonable costs and expenses incurred by the Indemnified Parties. The Licensee's obligations under this Section shall survive the expiration or earlier termination of this License Agreement. Indemnified Parties shall have no liability to the Licensee or any of the Licensee's Agents or Invitees as the result of damage or loss to property or injury or death to any such person arising on the Licensed Area or out of the Licensee's use of the Licensed Area, except the City shall be liable for damages to the Licensee's property caused by the sole negligence or willful misconduct of the City.

10. GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE:

A. Coverages and Limits. During the term of this License Agreement, the Licensee shall maintain the types of coverages and minimum limits indicated below. These minimum amounts of coverage will not constitute any limitation on Licensee's indemnification obligations under this License Agreement.

(i) Commercial General Liability Insurance. Commercial General Liability insurance written on a form that provides coverage at least as broad as form ISO CG 00 01 covering the insured with a duty to defend against claims of bodily injury, personal injury and property damage arising out of the Licensee's use of the Licensed Area (which shall include the use described in Section 5 above), assumed liabilities, or use of the Licensed Area, including contractual liability coverage for the performance by the Licensee of the indemnity agreements set forth in this License Agreement, and coverage for damage to the Licensed Area (including all improvements in the Licensee's care, custody, or control), for limits of liability not less than: Bodily Injury, Personal Injury and Property Damage: [FOR PARKLETS:] \$2,000,000 each occurrence [OR] [FOR SIDEWALK CAFES] \$1,000,000 [REMOVE THE PART THAT IS NOT CHOSEN]. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Outdoor Business Activity and Licensed Area, or the general aggregate limit shall be twice the required occurrence limit. The General Liability insurance policy shall be endorsed to name the City, its Council, its officers, agents, employees and volunteers as additional insureds for ongoing and completed operations,

and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City. The Licensee shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers. The Licensee agrees to obtain this endorsement and this provision applies whether or not the City has received a waiver of subrogation endorsement.

(ii) Workers' Compensation and Employers' Liability. Workers' compensation policy is written in accordance with the laws of the State of California. This policy shall include Employer's liability coverage with limits not less than \$1,000,000 per occurrence. The Licensee shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

(iii) Damage to the Licensee Property. Licensee shall be responsible, at its expense, for separately insuring Licensee's personal property. The Licensee hereby waives any recovery of damages against the City (including their employees, officers, directors, agents, or representatives) for loss or damage to any personal property, including, but not limited to the Licensee's Improvements.

B. Notice of cancellation and Failure to Maintain Coverage. This insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to the City per the Notices provisions of this agreement. Notwithstanding anything to the contrary in this License Agreement, this License Agreement shall terminate immediately, without notice to Licensee, upon the lapse of any required insurance coverage without prior written notice.

C. Other Requirements. All policies required hereunder shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Licensee's use of the Licensed Area under this Agreement.

D. Providing Certificates of Insurance and Endorsements. Prior to Effective Date of this License Agreement, Licensee shall deliver to the City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to the City, evidencing the coverages required hereunder, together with complete copies of the policies at the City's request.

E. Claims Made Insurance. Should any of the required insurance be provided under a claims made form, the Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the License Agreement expiration or termination, to the effect that should any occurrences during the Term give rise to claims made after expiration or termination of the License Agreement, such claims shall be covered by such claims-made policies.

11. TERMINATION:

A. This License Agreement may be terminated at any time by the City or the Licensee for any reason, upon ten (10) business days' written notice.

B. This License Agreement shall terminate immediately upon the breach by the Licensee of any terms and conditions of this License Agreement or any terms and conditions imposed during the Renewal Term.

C. This License Agreement shall terminate immediately upon revocation of the Licensee's Encroachment Permit.

D. If the Licensee terminates use of the Licensed Area for more than thirty (30) consecutive days or ceases business operations the License Agreement will be deemed terminated.

E. Upon termination of the License Agreement, the Licensee shall immediately remove all Improvements and return the Licensed Area to as good as or a better condition than, the Licensed Area existed prior to the License Agreement.

(i). If the Licensee fails to remove the Improvements, the City shall give written notice of its intent to remove and destroy or otherwise dispose of any Improvements ("Removal Notice"). The Removal Notice shall identify the date and time that the Licensee must remove the Improvements from the Licensed Area ("Removal Date"), which shall be at least ten calendar days from the date of the Removal Notice.

(ii). If the Licensee responds to the Removal Notice and requests additional time to remove the Improvements, the City may agree to any such request and new Removal Date, in its sole discretion.

(iii). If the Licensee does not respond to said Removal Notice by the Removal Date and/or fails to remove the Improvements by the Removal Date, as may be amended pursuant to subsection (E)(ii), the Parties agree that the Licensee's failure to remove the Improvements shall be deemed by the Licensee to be a relinquishment of all ownership rights and title to the Improvements to the City. Upon said relinquishment, the City may enter the Licensed Area and remove and destroy or otherwise dispose of the Improvements and return the Licensed Area to pre-License Agreement conditions.

(iv). The Licensee shall be responsible for any costs the City incurs relating to the removal and destruction or disposal of the Improvements, including but not limited to compensation for all City staff time and payment of all third party contractor fees and attorneys' fees, to restore the Licensed Area to its pre-License Agreement condition.

12. TAXES. The Licensee agrees to pay all real property taxes and assessments (whether general or special), if any, which may be levied against the Licensed Area, including any Improvements located on the Licensed Area, during the term of this License Agreement.

13. ASSIGNMENT; SUBLETTING: The Licensee may not, either voluntarily or involuntarily, assign, sublet, transfer, hypothecate or encumber all or any part of its interest in this License Agreement or the Licensed Area or any Improvements.

14. NOTICES. Except as otherwise required by law, notices desired or required to be given by this License Agreement may be given by enclosing the same in a sealed envelope addressed to the party for whom intended and sent by commercial delivery service or by depositing such envelope, with postage prepaid, in the United States Post Office or any substation thereof, or any public letter box, and any such notice and the envelope containing the same shall be addressed to the Lessor at

City: City of Redwood City
City of Redwood City
ATTN: City Manager
Subject: Outdoor Business Activity
1017 Middlefield Rd
Redwood City, CA 94063

or such other place as may hereinafter be designated in writing by the City, and the notices and envelopes containing the same to the Licensee shall be addressed to:

Licensee: [ADD ADDRESS/PHONE/EMAIL]

Notices given in the foregoing manner will be deemed given, in the case of commercial delivery service, upon delivery to the party's notice address, and in the case of mail, three business days following deposit in the United States Post Office or any substation thereof or any public letterbox.

15. WARRANTY OF AUTHORITY. The Licensee covenants, warrants and guarantees that it has the power and authority to enter into this License Agreement, and agrees to defend, indemnify, and hold harmless the City from any and all costs, expenses, and damages resulting from its breach of said covenants, warranty and guarantee.

16. CITY'S TITLE. Nothing in this License Agreement grants to the Licensee any right, title or interest in the Licensed Area, except for the revocable right to use the Licensed Area as provided in this License Agreement.

17. GOVERNING LAW/VENUE. This License Agreement is to be governed by and construed in accordance with the internal laws of the State of California, without regard to principles of conflicts of laws. In the event of litigation between the parties, venue in state trial courts will be in the County of San Mateo. In the event of litigation in a U.S. District Court, venue will be in the Northern District of California.

18. AMENDMENT; WAIVER. No term or provision of this License Agreement may be amended, altered, modified or waived orally or by a course of conduct, but only by an instrument in writing signed by a duly authorized officer or representative of the party against which enforcement of such amendment, alteration, modification or waiver is sought. Any amendment, alteration, modification or waiver shall be for such period and subject to such

conditions as shall be specified in the written instrument effecting the same. Any waiver shall be effective only in the specific instance and for the specific purpose for which given.

19. SEVERABILITY. The invalidity or unenforceability of any term or provision of this License Agreement shall not affect the validity or enforceability of any other term or provision of this License Agreement all of which shall remain in full force and effect.

20. COUNTERPARTS. This License Agreement may be executed in counterparts, each of which is an original but all of which together constitute but one and the same instrument. Signature pages of this License Agreement may be detached from any counterpart and re-attached to any other counterpart of this License Agreement, which is identical in form hereto but having attached to it one or more additional signature pages.

21. INTERPRETATION. Each party has had the opportunity to review this License Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either Party.

22. ENTIRE AGREEMENT. This License Agreement, including all exhibits attached hereto, is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to the matter contained in this License Agreement. Any waiver, modification, consent, or acquiescence with respect to any provision of the License Agreement shall be set forth in writing and duly executed by both parties. No waiver by any party or any breach hereunder shall be deemed a waiver of any other subsequent breach.

23. BINDING EFFECT. This License Agreement is binding upon the heirs, executors, administrators, and successors of the Parties.

24. ELECTRONIC SIGNATURES. Electronic signatures may be used in place of original signatures on this License Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Parties will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this License Agreement based on the use of an electronic signature. After all Parties agree to the use of electronic signatures, all Parties must sign the document electronically.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement the day and year first hereinabove written.

FOR THE LICENSEE:

By: _____

Print Name & Title

Date: _____

FOR THE CITY OF REDWOOD CITY:

By: _____

City Engineer

Date: _____

ATTEST:

By: _____

City Clerk

Date: _____

EXHIBIT "A"
ENCROACHMENT PERMIT

DRAFT