

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

City of Novato  
Attn: City Clerk  
922 Machin St.  
Novato, CA 94945

No Fee for Recording  
Cal. Gov't Code 27383

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APN: [INSERT APN FOR RECORDATION]

**LICENSE AGREEMENT TO PERMIT  
OUTDOOR DINING OR DISPLAY OF MERCHANDISE WITHIN THE PUBLIC  
RIGHT-OF-WAY  
[INSERT NAME OF LICENSEE]**

This License Agreement is entered into on [ENTER DATE], by and between the City of Novato, a municipal corporation, hereinafter referred to as "Licensor", [INSERT NAME OF LICENSEE], a [DEFINE BUSINESS TYPE], hereinafter referred to as "Licensee," and [INSERT NAME OF PROPERTY OWNER], hereinafter referred to as "Owner" and is made with reference to the following facts:

**RECITALS**

- A. Owner is the owner(s) of the real property located at [INSERT ADDRESS OR BLOCK AND APN] and more particularly described in **Exhibit A**, attached hereto and incorporated by this reference ("Licensee Property")
- B. Adjacent to the property line of said Licensee Property, there exists a right of way owned and controlled by Licensor. Said right of way is commonly referred to as [INSERT STREET NAME] including the improvements located thereon including the roadway, sidewalk, curb, gutter, parkway strip, and excess land ("Right of Way").
- C. Licensee [INSERT BUSINESS TYPE] at the Licensee Property known as [INSERT BUSINESS NAME] ("Licensee Business"). Licensee desires to encroach upon and utilize a portion of the excess land in the Right of Way near the Licensee Property in order to [DESCRIBE USE OF LICENSE AREA] in conjunction with Licensee Business located at the Licensee Property.
- D. Licensor is agreeable to permitting said encroachment upon a portion of the Right of Way subject to the terms and conditions expressed herein below.

## AGREEMENT

In consideration of the foregoing, and subject to the terms and conditions set forth herein below, the parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee, subject to the terms and conditions contained herein, the right to construct, maintain and install the following described improvements and to use, for the purposes described herein, a portion of the Right of Way as described in the diagram set forth in **Exhibit B**, attached hereto and incorporated herein by reference. The License granted herein is personal to the Licensee, and any attempt to assign or transfer same shall result in immediate termination of this Agreement.

a. The improvements permitted to be constructed, installed, and required to be maintained by this License are described as follows: [INSERT DESCRIPTION OF ANY IMPROVEMENTS]

b. The Right of Way and/or property owned by the Licensor permitted to be burdened by said Improvements is described as follows: [INSERT DESCRIPTION OF LICENSE AREA], as depicted on **Exhibit B** (“License Area”).

c. Notwithstanding the measurements set forth herein and the depiction/description of the License Area set forth in **Exhibit B**, Licensee understands and agrees that at all times there shall remain access for Licensor, or any person, entity, firm or corporation authorized by Licensor to access, remove, repair or replace any improvements currently located in the License Area, including, but not limited to irrigation systems, backflow preventers, telecommunications cabinets and components, traffic signals, traffic signal controller cabinets and components, electricity meter, electric transformer, and subsurface utilities such as water lines and power lines at any time and from time to time.

2. Use of the License Area. The License Area shall be used solely for [INSERT ALLOWABLE USE OF LICENSE AREA] and the installation and maintenance of the Improvements as specifically described above.

a. At no time may Licensee install any other improvements, any impervious surfaces or groundcover, any permanent signs or signage, or perform any trenching or subsurface grading of any kind in the License Area.

b. Electricity, water and other utility service to the License area shall be the responsibility of Licensee and shall be serviced from a connection of Licensee and approved by Licensor. In the event that Licensee desires to obtain utility service from a service extension billed to Licensor, Licensee shall be required to install a sub-meter or make other arrangements approved in writing by Licensor in order to provide for Licensee to pay for the proportionate share of any utilities used by Licensee at the License Area.

3. License Fee. In consideration for the license herein granted, Licensee agrees to pay to Licensor an annual payment of [INSERT NEGOTIATED AMOUNT], payable upon execution of this License and paid annually on the anniversary date thereafter. This license fee is based upon Licensee's installation and ongoing maintenance of the landscaping improvements which are a part of the Improvements and which are a benefit to the Licensor and the general public.

4. Construction and Maintenance Expenses. Licensee shall bear the entire cost and expense of constructing, reconstructing and maintaining the Improvements described above. Licensee further agrees that all work upon or in connection with said Improvements shall be done at such times and in such manner as is approved by Licensor and shall be done in accordance with plans and specifications approved by Licensor and an encroachment permit issued pursuant to the Novato Municipal Code including the provision of the required bonds and insurance for said construction.

a. Licensee shall not modify or in any fashion change the Improvements, once constructed, without the written permission of Licensor.

b. Licensee agrees to construct or cause to be constructed said Improvements in a workmanlike fashion and to maintain said improvements in a good and sound condition and in a condition that remains aesthetically and visually pleasing and acceptable to the Licensor. If Licensee fails to maintain said improvements in said condition, Licensee hereby grants to Licensor the right to either remove said improvements or to maintain them. If Licensor is required to remove and/or maintain said improvements, Licensee agrees to reimburse the Licensor for the cost thereof within 30 days after receipt of an invoice and, if such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not paid, Owner agrees to permit Licensor to impose a lien upon the real property described in **Exhibit A**.

5. Indemnification and Hold Harmless.

a. Licensee shall assume all risks of damage to the Improvements and any appurtenances thereto and to any other property of Licensee or any property under the control of Licensee while upon or near the License Area.

b. Licensee further agrees to indemnify, release, defend and hold harmless Licensor, its officials, officers, employees, agents, successors, and assigns ("Licensor Indemnitees"), from any and all claims, liabilities, damages, failure to comply with any current or prospective laws, attorney's fees, for loss or damage to property and for injury to or death of any person arising out of any and all activities conducted pursuant to the terms of this Agreement, including, but not limited to, construction, maintenance, removal, replacement, rehabilitation, repair, failure to repair, design or the location of the Improvements and the use of the License Area, by any person or entity, including, but not limited to Licensee, Licensee's contractors, subcontractors, officers, officials, directors, owners, employees, agents, guests, customers, invitees, and trespassers, excluding therefrom liability arising from the sole active negligence of Licensor.

c. Licensee shall be responsible for all damage to Licensor's property, including, but not limited to the Right of Way and the License Area as a result of the construction and maintenance of the Improvements and use of the Right of Way and License Area.

d. This hold harmless and indemnification obligation shall apply to all damages and claims for damages of every kind, suffered, or alleged to have been suffered by reason of any of the aforesaid events, regardless of whether or not Licensor has prepared, supplied, or approved plans or specifications submitted in connection with work to be performed in the Right of Way and/or License Area and irrespective of the grant of permission contained herein, Licensor's inspections of the work or any other activity of Licensor in permitting said Improvements and use of the License Area. Said indemnification shall remain in full force and effect irrespective of any limitation on the amount or the damages or compensation payable by or for Licensee under Worker's Compensation coverage, disability or other employee benefit acts, or the terms, applicability or limitations of any Worker's Compensation, property, casualty or liability insurance or coverages held by Licensee.

This indemnification shall survive termination of this Agreement for any reason and shall continue to apply to all claims which occurred during the term of this License and while the Improvements, or any portion thereof or damage therefrom, remain on the License Area.

6. Insurance. Licensee, at its sole cost and expense, shall obtain and maintain insurance acceptable to the Licensor in a company or companies acceptable to the Licensor with a Best Rating of no less than A: XIII. The required documentation of such insurance shall be furnished to the Licensor at the time of execution of this Agreement and annually thereafter. Without limiting Licensee's indemnification provided in this Agreement, Licensee shall take out and maintain at all times during the term of this Agreement, the following policies of insurance:

a. Worker's compensation insurance to cover Licensee's employees as required by the Labor Code of the State of California. Licensee shall also cause all contractors, subcontractors and suppliers performing work in the Right of Way and/or License Area to also provide said Worker's Compensation coverage for all such contractors, subcontractors and supplier's employees. All Worker's compensation policies shall be endorsed with the provision that it will not be cancelled without first giving notice to Licensor. All such policies shall include the following language: "All rights of subrogation are hereby waived against the City of Novato, its officials, officers and employees when acting within the scope of their appointment or employment".

b. Commercial General Liability insurance including bodily injury and property damage insurance for all activities of the Licensee, it's officers, partners, directors, employees, and agents, arising out of or in connection with this Agreement or the use of the Right-of-Way and License Area, written on a commercial general liability form, including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than One Million Dollars (\$1,000,000.00) combined, single limit personal injury and property damage for each occurrence. Each such policy shall be enforced with the following language:

- (1) The City of Novato is named as an additional insured for all liability arising out of the work/operations by or on behalf of the named insured, and this policy protects the additional insured, its officials, officers, employees and agents against liability for personal injury, death or property damage or destruction arising in any respect, directly or indirectly, in the performance of the Agreement.
- (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
- (3) The insurance provided herein is primary and no insurance held or owned by the City of Novato shall be called upon to contribute to a loss.
- (4) The coverage provided by this policy shall not be cancelled without thirty (30) days prior written notice given to the City of Novato.

c. All commercial general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity provisions of paragraph 5.

d. Each policy, or a certificate of the policy, shall be deposited with Licensor at the commencement of the term of this Agreement, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy. Licensee shall provide evidence of said insurance by completing and having signed, by the appropriate official, the certificate and endorsements on forms acceptable to the Licensor, with language at least as broad as ISO Forms CG 20 10 11 85 or CG 20 10 10 01 and CG 20 37 10 01 as well as CG 20 01 04 13.

e. Any deductible or self-insured retentions must be declared to and approved by Licensor. At the option of Licensor, the Licensee shall cause the insurer to reduce or eliminate such deductible or self-insured retention as respects Licensor.

## 7. Term and Termination.

a. The Term of this Agreement shall be from the date of execution hereof through December 31, 2020 ("Term"). Not less than sixty (60) days prior to the expiration hereof, Licensee shall notify Licensor in writing of their desire to renew this Agreement for an additional term of one year. Upon the payment of the annual license fee and the provision of certificates of insurance and endorsements required pursuant to paragraph 6 hereof, this Agreement may be renewed annually for a period of up to five (5) consecutive years upon the mutual consent of the Parties hereto.

b. Notwithstanding the Term hereof, this Agreement and the rights granted hereunder may be terminated by Licensor at any time, for any reason or no reason whatsoever, in the sole and absolute discretion of Licensor, upon giving written notice to Licensee at least thirty (30) days prior to the termination, except in the event Licensor needs to terminate this Agreement for the preservation of the public health, safety and/or welfare, in which case Licensor may terminate this Agreement immediately upon written notice to Licensee without providing said thirty (30) day notice.

c. Should Licensee, at any time transfer or sell or abandon the use of the property described in **Exhibit A** or any part thereof, or fail at any time to use the same for the conduct of the Licensee Business for a continuous period of sixty days, the rights and obligations hereby created shall cease to the extent of the use so transferred, abandoned and/or discontinued, and Licensor shall have the right to declare this Agreement immediately terminated.

d. Upon the failure of Licensee to comply with any of the terms and conditions of the Agreement, Licensor may terminate this Agreement immediately upon providing written notice to Licensee.

8. Removal of Improvements.

a. Upon expiration of the Term or earlier termination of the rights and privileges hereby granted, Licensee, at its sole cost and expense, shall remove the Improvements, with the exception of any of the landscaping, irrigation and related improvements desired to be retained by Licensor and return the Right of Way and License Area to the condition it was in prior to the execution of this Agreement. Licensee agrees to effect the removal and restoration within 30 days of receipt of written notice to do so from Licensor. Said notice from Licensor shall describe the landscaping, irrigation and related improvements desired to be retained by Licensor. In the event that Licensee declines to effect said removal and restoration, Licensee grants to Licensor the right to remove said Improvements and the right to go upon the Licensee's Property described in **Exhibit A** in order to perform such work. If Licensor is required to remove and/or maintain said Improvements, Licensee agrees to reimburse the Licensor for the cost thereof within 30 days after receipt of an invoice and, if such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not paid, Owner agrees to permit Licensor to impose a lien upon the real property described in **Exhibit A**.

b. Licensee and Owner hereby waive any/or all claims against Licensor for any and all damage or injury done to the Improvements, the real property described in **Exhibit A** and/or the structures located thereon caused as a result of the removal described in the immediately preceding paragraph and Licensee indemnifies and holds Licensor harmless for any and all such damages or injuries, irrespective of the passive or active negligence of Licensor.

9. Notices. Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

If to Licensor, to: City of Novato  
Attention: City Clerk  
922 Machin Street  
Novato, CA. 94945

If to Licensee, to: [INSERT LICENSEE CONTACT INFO]

If to Owner, to: [INSERT OWNER CONTACT INFO]

10. Waiver. The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

11. Authority of Parties. Each individual executing this Agreement on behalf of a corporation or other private entity hereby represents and warrants and that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution or other proof of such authority satisfactory to Licensor shall be provided to Licensor, along with the executed original of this Agreement.

12. Attorney's Fees. In the event that either party is required to bring an action to enforce or interpret terms and conditions of this Agreement, the prevailing party shall be entitled to payment of its attorney's fees and all costs, as well as expert witness fees.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. Any and all modifications concerning this Agreement shall be in writing and signed by the parties hereto.

14. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in the County of Marin.

15. Tax Liability. This Agreement may create a possessory interest subject to taxation. Pursuant to Cal. Revenue & Taxation Code section 107.6, the Licensee is hereby notified that it may be subject to the payment of property taxes levied on such interest.

16. Representation. Licensee and Owner represent and warrants that he/she/they have consulted with legal counsel, been informed of and understand the legal implications of his/her/their execution this Agreement and with that knowledge voluntarily and willfully execute same.

17. Time. Time is of the essence to each and every provision hereof.

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first written above.

CITY OF NOVATO:

By: \_\_\_\_\_  
City Engineer

LICENSEE:

By: \_\_\_\_\_

OWNER:

By: \_\_\_\_\_

Attach Notary Acknowledgement for both Licensee and Owner



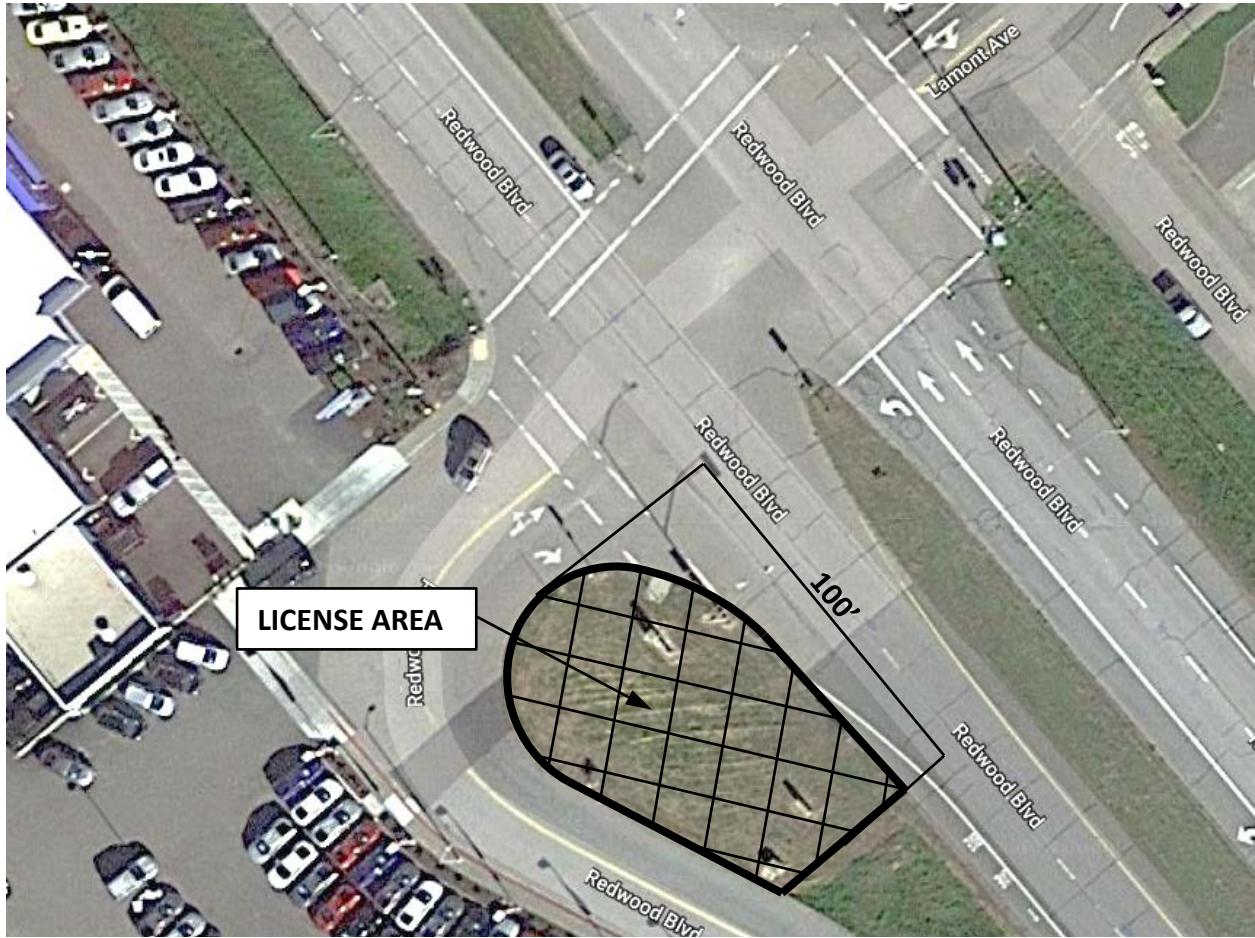
**Exhibit A**

Description of Licensee Property

[INSERT LEGAL DESCRIPTION OF LICENSEE PROPERTY HERE]

**Exhibit B**  
Diagram of License Area

[REPLACE EXAMPLE BELOW]



**Exhibit A**

Description of Licensee Property

[INSERT LEGAL DESCRIPTION OF LICENSEE PROPERTY HERE]