



**REVOCABLE ENCROACHMENT PERMIT  
FOR PRIVATE IMPROVEMENTS LOCATED IN  
PUBLIC RIGHT-OF-WAY  
VILLAGE OUTDOOR DINING PROGRAM**

BUSINESS ADDRESS: \_\_\_\_\_  
PROPERTY OWNER NAME: \_\_\_\_\_  
BUSINESS NAME: \_\_\_\_\_  
BUSINESS OWNER NAME: \_\_\_\_\_

This Agreement is made pursuant to Section 17.96.170 and Section 12.56.060 of the Capitola Municipal Code, by and between BUSINESS OWNER (Permittee) and the City of Capitola (City) (Party or Parties). Together the Parties, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

A. The City hereby grants to Permittee, who, by signing below, also warrants that he/she/they are the owners(s) of the business commonly known as BUSINESS NAME, located at BUSINESS ADDRESS, a revocable encroachment permit ("Permit") for private construction and placement of items ("Improvements") upon the public sidewalk and/or street right of way directly in front of BUSINESS ADDRESS, for the purposes of outdoor dining. Unless extended or as otherwise provided herein, the term of the Permit shall commence upon date of full execution of this Agreement ("Effective Date") and shall expire on \_\_\_\_\_.

B. The Improvements may be viewed at the office of the City of Capitola Community Development Department and more particularly described as follows: DESCRIPTION OF OUTDOOR DINING AREA/PARKING SPACES within the City right of way as approved by the Capitola PLANNING DEPARTMENT/PLANNING COMMISSION on APPROVED DATE, as part of Final Action Notice and Zoning Permit #PERMIT and Building Permit #PERMIT issued and approved on ISSUED DATE. This revocable encroachment permit shall remain in effect three years from the effective date specified in Section A.

C. Permittee understands and agrees that this Agreement confers no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement are temporary in nature.

D. Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this Agreement, including but not limited to laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act and County health laws regarding provision of food services. The City reserves the right to enter the Improvements area for any purpose, including but not limited to inspection of the condition, safety and compliance with all City issued permits.

E. Annual Parking Space Rent Payment - Permittee shall pay rent to the City of \$3,400.00 per year, per parking space or partial space utilized for the Improvements and \$18.00 per square foot per year, for sidewalk and non-parking spaces utilized for the improvements. The annual rent total will be adjusted upward annually by the Consumer Price Index (CPI) increase based on the San Francisco-Oakland-San Jose annual CPI as published by the U.S. Department of Labor, Bureau of Labor Statistics. Initial rent shall be paid in full by cash or check to the City Finance Department prior to the commencement of construction and/or placement of Improvements. Subsequent rent will be billed quarterly in advance and shall be due no later than the 10<sup>th</sup> of the month preceding the quarter being billed. Any partial year rent amounts will be prorated. Late payments will be charged a ten percent late penalty and incur interest at a rate of one and one-half percent per month until payment is received. Accounts that become over 30 days delinquent will be charged an additional late penalty of twenty percent of the current rent, continue to incur interest of one and one-half percent per month, and will

be required to pay rent for one year in advance. Accounts that become 60 days delinquent will be charged an additional late penalty of twenty five percent of the current rent, continue to incur interest of one and one-half percent per month, required to pay rent one year in advance, and be given notice to bring the account current or remove the improvements from the public right-of-way within 10 days.

F. Permittee shall deposit the following funds with the City to ensure maintenance of the Improvements area: \$500.00 for sidewalk dining; \$1,000.00 for 1-2 parking spaces; and \$1,500.00 for 3-5 parking spaces. Funds shall be deposited by cash or check with the City Finance Department prior to the commencement of construction and/or placement of Improvements. Deposit funds shall be held by the City Finance Department and released to Permittee three years from the effective date specified in Section A. Permittee agrees that in the event of its failure to maintain the Improvement area per Section G, the deposit funds shall be used by the City to maintain the Improvement area at the City's sole discretion.

G. Permittee shall maintain the outdoor dining area in a clean and orderly manner, and shall adhere to the following minimum standards:

1. All trash shall be collected and properly disposed.
2. All planters shall contain live and healthy vegetation.
3. All tables, chairs, equipment, and structures shall be kept clean and operational – and consistent with the approved plans.
4. All infrastructure related to the street dining deck, including but not limited to tables, chairs, umbrellas, lights, heating equipment, etc. must be maintained. If signs of weathering (fading, rust, holes, etc.) are visible, the item(s) shall be replaced in-kind consistent with the original approval.

H. Sound. Music and amplified sound are not permitted in the outdoor dining area.

I. Hours of Operation. Outdoor dining may occur between 7:00AM and 10:00 PM, seven days a week. The city may allow extended hours for approved special events and holidays.

J. Bike parking must be available to the public.

K. Open for Use. All outdoor dining areas shall be open for use a minimum of five (5) days a week, except in cases of inclement weather. "Open for Use" is defined as the Permittee must allow customers to use the outdoor dining areas when the business is open.

L. Permittee shall not sublet the Improvements area. Use of the outdoor dining area is intended solely for the permit holder and shall not be utilized by any other vendor or business.

M. Permittee shall procure and maintain for the duration of this Agreement, and furnish, along with this Agreement, proof of insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in this section. The cost of such insurance shall be borne by Permittee. Permittees whose activities do not encroach into public right-of-way and/or a public easement, shall not be required to obtain said insurance.

Notwithstanding any other section herein, failure to maintain insurance as provided herein constitutes a material breach of this Agreement and the City would have the right to immediately terminate this Agreement and revoke the Permit.

Minimum Scope of Insurance. Permittee shall obtain and maintain at all times during duration of this Agreement the following minimum coverage:

- (a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittee's with employees).
- (c) Property insurance against all risks of loss to any tenant improvements or betterments.

Permittee shall maintain limits no less than:

- (a) General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
- (c) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Permittee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

- (a) The City, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of ownership, maintenance or use of the premises/property owned by or leased to the Permittee.
- (b) The Permittee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Permittee's insurance and not contribute with it.
- (c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless otherwise acceptable to the City.

N. Any violation of this Agreement or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject

to enforcement as such; violations of this Agreement may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement.

O. Any violation of maintenance, insurance, payment of rent, or subletting as provided herein shall be subject to enforcement:

1. Upon a first violation by Permittee, the City Manager or designee, shall mail a written warning to the business owner. The warning shall recite the violation(s) and advise that future violations may result in fines.
2. Upon a second or subsequent violation by the business owner, the following penalties will apply:
  - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the first warning.
  - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation.
  - c. A fine not exceeding five hundred dollars (\$500.00) for the third violation
  - d. A Permittee with more than three violations during the lease term may have this permit revoked and be required to remove any improvements associated with the outdoor dining area.
  - e. Permittee whose permit is revoked may not receive another encroachment permit for outdoor dining for a period of two years, and only if there are available parking spaces under the 25-parking space cap.

P. Termination of Agreement. Except as provided herein, this Agreement may be terminated by either Party without cause by providing thirty (30) days' written notice to the other Party. Termination of this Agreement shall cause any permit issued under this Agreement to immediately expire and have no further force or effect.

Q. Renewal of Agreement. Six (6) months prior to the expiration of this Agreement, the City and Permittee shall review past performance and use of the outdoor dining area. At the conclusion of the review, either extension or termination of this Agreement may be referred to the City Council., at the sole discretion of the Capitola City Council.

R. Termination of the City's Outdoor Dining Program. Permittee understands and acknowledges that, notwithstanding any other provision herein, the expiration or nonrenewal of the City's Outdoor Dining Program shall cause any permit issued under this Agreement to immediately expire and have no further force or effect.

S. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon termination and/or expiration of this Agreement by Permittee, at their sole cost and expense. Upon failure of the Permittee to remove such improvements within a reasonable time after notice from the City Manager or designee, the same may be abated and removed by the City, and the cost thereof made with the funds held as deposit.

T. Authorization to proceed. Permittee shall not begin construction or placement of the Improvements until all required permits have been issued by City. Starting construction placement of Improvements prior to approval and issuance of all permits may result in revocation of any applicable permits, including Permit.

U. Indemnity. Permittee agrees to defend, indemnify, and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnified Parties") from any liability

whatsoever, based or asserted upon any act or omission of Permittee, its officers, employees, subcontractors, agents or representatives, arising from, related to or in any manner connected with Permittee's use and responsibilities in connection therewith of the Improvements area or the condition thereof, including, but not limited to, property damage, liens, bodily injury or death or any other element of any kind or nature whatsoever arising from, related to, or in any manner connected with private or public use of the Improvements area. Permittee shall defend, at its sole expense, Indemnified Parties in any claim or legal action based upon such alleged acts or omissions. This indemnification provision shall survive termination or expiration of this Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this Agreement.

V. This Agreement is non-transferable. Only the Permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.

W. Severability. If any provision (or portion thereof) of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

X. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California, and venue shall be set in the County of Santa Cruz.

Y. This Agreement approved herein contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification authorized in writing, and duly signed by the parties of this Agreement.

THE UNDERSIGNED AGREES THAT THE PROPOSED ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS, CITY OF CAPITOLA PLANNING DEPARTMENT/PLANNING COMMISSION APPROVED DATE #PERMIT AND BUILDING #PERMIT ISSUED AND APPROVED ISSUED DATE, AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS.

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Permittee

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Date

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Jessica Kahn  
Public Works Director  
City of Capitola

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Date

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Katie Herlihy  
Community Development Director  
City of Capitola

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Date