

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (this “Agreement”) is made and entered into this _____ day of _____, 2023, by and between the **CITY OF LOVELAND, COLORADO** (the “City”), and _____, (the “Patio Program Participant” or “PPP”).

WHEREAS, the Patio Program was developed by the City in the wake of the COVID-19 global pandemic and the subsequent promulgation of rules, regulations, and orders designed to assist local businesses who rely upon on-premises consumption of food items and beverages when indoor dining options generally increased the risk of transmission; and

WHEREAS, the City supports local businesses who rely upon the on-premises consumption of food items and beverages and hereby seeks to facilitate continued outdoor dining opportunities within City’s right-of-way. The City also supports local businesses who may sell retail items within private or public right-of-way consistent with this Agreement;

WHEREAS, the City agrees to license the PPP to use the Licensed Property for the above-stated purposes, for a limited period of time, revocable at any time, and on the conditions set forth below in this Agreement and the rules and instructions set forth in **Exhibit A** (“Additional Rules”); and

WHEREAS, the PPP, desires to use portions of sidewalk held by the City as right-of-way for the sale of alcoholic beverages and the on-premises consumption of food items, beverages, seating space, or retail sale space as shown on **Exhibit B** (the “Licensed Property”); and

WHEREAS, the PPP, as applicable, has agreed to take reasonable measures to prevent alcoholic beverages from leaving the Licensed Property, any licensed premises held by a PPP, and shall comply the provisions of Colorado Code of Regulations 1 CCR 203-2, Regulation 47-302(A)(4); and

WHEREAS, the PPP acknowledges that it is being provided a limited right of use that can be revoked at any time, and for any reason and under any such circumstance, any licensed premises for on-premises consumption of alcoholic beverages, food items, or general retail sales, would not include the City’s right-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Grant of License. The City hereby grants to the PPP, its assigns, and authorized agents, including but not limited to staff, contractors, and invitees, a revocable, exclusive license to occupy and use the Licensed Property for outdoor dining, subject to all of the terms, conditions, and limitations of this Agreement.

2. Compensation. In consideration of the PPP’s limited right to occupy and use the Licensed Property, the PPP agrees to pay the City \$500.00 or \$1000.00 depending on the use of jersey barriers. Said amount shall be paid upon execution of this Agreement.

3. **Term.** This Agreement shall be effective upon execution of this Agreement (“execution” shall mean the date upon which the City and the PPP have signed this Agreement) and shall automatically terminate on October 31, 2023, unless sooner terminated by either party as set forth herein. The City, in its sole discretion, may extend the termination date for up to 30 days.

4. **Termination.** Either party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other party. However, the City has the right of immediate possession and control of the Licensed Property without notice and may remove all obstructions from the City’s right-of-way. During immediate removal, the City agrees to reasonably protect all personal property held by the PPP on the Licensed Property.

5. **Restoration.** Upon termination of this Agreement, the PPP shall return the Licensed Property to the same condition existing prior to the effective date of this Agreement. The obligations set forth in this paragraph five (5) shall survive expiration or termination of this Agreement. The PPP specifically acknowledges that the City may seek any legal remedy to enforce this paragraph five (5).

6. **Compliance.** PPP specifically agrees to adhere to all applicable City standards concerning the maintenance, operation, and layout of the Licensed Property consistent with **Exhibit A.**

7. **Insurance.**

a. **Policies.** The PPP, shall procure and keep in force during the duration of this Agreement the following insurance policies and shall provide the City with a certificate of insurance evidencing the same upon execution of this Agreement:

(i) Comprehensive general liability insurance insuring the PPP and naming the City as an additional insured with minimum combined single limits of \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate. The policy shall be applicable to at least the Licensed Property. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

b. **Requirements.** Required insurance policies shall be with companies qualified to do business in Colorado with a general policyholder’s financial rating acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. The PPP shall identify whether the type of coverage is “occurrence” or “claims made.” If the type of coverage is “claims made,” which at renewal the PPP changes to “occurrence,” the PPP shall carry a six-month tail. Such policies shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of the PPP, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.

8. **Warranty.** The City warrants that it is the owner in fee simple of the Licensed Property.

9. Reservation of Rights. The City reserves all rights in and to the Licensed Property, including the right of possession, except for those temporary rights granted to the PPP through this Agreement necessary to carry out the above-stated purposes.

10. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

11. Indemnification. The PPP agrees to indemnify and hold harmless the City, its officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with the Agreement, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the PPP or any subcontractor of the PPP, or any officer, employee, or agent of the PPP or any subcontractor, or any other person for whom the PPP is responsible. The PPP shall investigate, handle, respond to, and defend against any such liability, claims, and demands, and shall bear all other costs and expenses related thereto, including court costs and attorneys' fees. If the PPP is providing architectural, engineering, design, or surveying services, the obligation to indemnify and pay costs, expenses, and attorneys' fees, is limited to the amount represented by the degree or percentage of negligence or fault attributable to the PPP, or the PPP's agents, representatives, employees, servants, subcontractors, or suppliers as determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the PPP and the City. The PPP shall notify the City and provide a copy of any and all written claims or demands within two business days of receipt. The PPP's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City. This paragraph shall survive the termination or expiration of this Agreement.

12. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to City:

City of Loveland
City Clerk's Office
Attn: Delynn Coldiron
500 East Third Street, Suite 230
Loveland, CO 80537

If to PPP:

13. Legal Constraints. The parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States, and imposed upon Loveland by its Charter and Municipal Code, and, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall either of the parties exercise any power or take any action which shall be prohibited by applicable law.

14. Miscellaneous. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. This Agreement is for the benefit of the Parties, and there is no third party or other intended beneficiaries to this Agreement. The PPP shall not assign this Agreement without the City's prior written consent. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

15. Conflict and Applicable Law. To the extent this Agreement and **Exhibit A** are in conflict, this Agreement shall control. The PPP agrees to follow all applicable local, state, and federal laws concerning the use of the City's property.

16. Signature. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement. This Agreement may be executed by electronic signature in accordance with C.R.S 24-71.3-101 *et seq.*

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date setforth above.

CITY OF LOVELAND, COLORADO

By:

Mark Jackson, Public Works Director

ATTEST:

Assistant City Clerk

BUSINESS NAME:

By:

EXHIBIT A

LOVELAND PATIO PROGRAM REGULATIONS

General Information and Permit Fee

The City will impose a nonrefundable \$500.00 fee per application for processing the permit. The City will impose an additional \$500.00 should the PPP require the use of City-Owned jersey barriers. The PPP shall complete an application by visiting a hyperlink¹ and depositing the aforementioned fee with the Loveland Clerk's Office.

If the business has an existing liquor license, and the revocable license will be used for the sale of liquor, a separate fee will be collected by the State Liquor Board. The fee is currently \$300.00 and is required to be paid by.

Approval, Revocation, and Enforcement of Regulations

The public right of way in the City of Loveland is governed by various departments and agencies. An application review team is assembled that includes representatives from Loveland Police, Fire, Traffic, Liquor Enforcement, City Clerk, Public Works, Economic Development and the Downtown Development Authority. The review team will analyze the applications and work with the applicant for approval. The revocable license may be awarded or revoked at the sole discretion of any agency that governs the use of the public right of way. Any temporary permit granted under the Loveland Patio Program is revocable at any time.

Patio Inspections/ Violations

An initial Patio Inspection will be conducted and scheduled with the applicant prior to opening to the public. Additional patio inspections may be conducted by staff or members of the review team, without limitation, and without advanced notice. Any life safety violation shall be corrected immediately. All violations of the Loveland Patio Program's regulations will be emailed to the applicant. If violations are not corrected immediately, or the applicant receives more than two (2) violation notices, the patio permit will be revoked and the patio will not be allowed to operate the remainder of the season. Notwithstanding the aforementioned, Paragraph Four (4) of the Agreement shall control in the event the City requires immediate possession of the City's right-of-way.

Location requirements

A clearly marked, unobstructed, and durable pedestrian right-of-way, also known as the "pedestrian path", that meets the required accessibility standards of forty-eight (48) inches (ADA requirement), shall be maintained for each outdoor patio area and shall adhere to the following standards:

1. The pedestrian path shall maintain a minimum of six (6) feet from large obstructions (bus stop shelters or any other object fifteen (15) square feet in area). No tables, chairs, umbrellas or other fixtures shall be permitted within six (6) feet of a pedestrian crosswalk or corner curb cut. For the purposes of this section, large obstructions shall be bus stops shelters, newsstands, existing planters or any other object greater than fifteen (15) square feet in area.

¹ <https://www.lovgov.org/city-government/city-clerk/loveland-patio-program#:~:text=The%20Loveland%20Patio%20Program%20is,7%20a.m.%20and%2010%20p.m>

2. Access to fire hydrants, fire hose connections for sprinkler systems, and entrances and exits of all buildings shall not be obstructed at any time by barriers or seating. The fire lane (emergency-vehicle access) shall not be obstructed at any time and shall have a minimum unobstructed travel width of 20 feet. There should be a minimum of forty (40) inches in distance separating the edge of a table, chair or other objects to a fire department connection.

Public and Private parking lots

Public and private parking spaces may be converted to outdoor patios when the lot is immediately adjacent to the property and near to the merchant's store front. The converted use must be in conformance with all Fire safety requirements for building accessibility and public health, local and executive orders. Pursuant to ADA requirements, no parking for disabled persons may be repurposed or replaced in parking lots for restaurant use. If you have questions regarding the Fire Code requirements, contact LFRA at (970) 962-2537 or Eplan-Fire@LFRA.org.

Setbacks on Private Property

Any permanent structures being proposed to expand the seating area for outdoor seating must meet required setbacks. Temporary placement of equipment such as wash stations and hand sanitizing stations or stations for staff set up and service do not need to meet required setbacks.

Temporary Outdoor Patios in Public Rights-of-Way

Outdoor seating within sidewalks and public rights of way shall maintain adequate pedestrian flow of at least forty-eight (48) inches (ADA requirement); access to public utilities, building entrances, crosswalks, bus stops and transit entrances; and shall maintain pedestrian and traffic safety and aesthetic compatibility with the surrounding area.

Construction, Signage, Maintenance

- Appropriate lighting of the outdoor patio space is required if operating outside of daytime hours.
- The patio space must be operated for a continuous 8-hour window if jersey barriers are required. Applicants not adhering to this requirement maybe subject to revocation.
- Solar lighting options are encouraged.
- Use of electrical cords is discouraged. Electrical cords are not permitted across any pedestrian path at the ground level. All electrical cords must be elevated at least ninety-six (96) inches above the ground if they cross a pedestrian path. Electrical cords shall be listed for outside use. Overloading electrical cords is a fire hazard and is not allowed.
- Use of landscaping and planters is permissible, however these materials should not be permanently affixed to any public rights-of-way.
- All temporary signage must be submitted for approval.
- Use of removable barriers to define the outdoor restaurant space is required.
- No heating, cooking or open flames are permitted in the outdoor restaurant space, including under canopies or tents. However, space heaters are permitted provided that they are listed for outdoor use, are located in accordance with the manufacturer's recommendations, and are located at least two (2) feet from the edge of any umbrella canvas, any foliage, or any other combustible object or material.
- No food preparation, plastic food displays, food storage, or refrigeration apparatus shall be allowed on the public right-of-way.

- All decorative materials shall be fire-retardant, pressure-treated or manufactured of fire-resistant material.
- Visual appeal of the patio space is encouraged. The review team will work with the applicant to encourage the use of decorative elements, tables, chairs and materials that add to the retail ambiance.

General Requirements for Use of Umbrellas on Sidewalks, On-Street Parking Spaces, or Closed Streets

The Loveland Fire Rescue Authority (LFRA) has a policy which provides details for International Fire Code compliance and can be obtained at 410 E 5th St., or on line at:

<http://lfra.org/wp-content/uploads/TentandCanopyPolicy2016Rev.pdf>. The requirements listed under “General Requirements for Restaurants Use of Tents or Shade Structures” must be met.

- Only commercial grade umbrellas with proper anchors may be used for shade. **Tents, tops, sidewalls and drops are not allowed in the public right-of-way.**
- High wind events are common in Loveland, and umbrellas can be quickly closed and harnessed where the other shade structures cannot. It is the merchant’s responsibility to secure their entire patio area, and they are liable for property damage caused by unsecured items in the patios.
- Umbrellas and other decorative material shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six (6) feet, eight (8) inches (eighty (80) inches) above the sidewalk.
- The following requirements shall apply to use of umbrellas within public spaces:
 - The maximum size umbrella that may be placed within sidewalks and parking spaces will be ten (10) feet in diameter.
 - All umbrellas must be weighted with a minimum of forty (40) pounds per leg.
 - Weights must be securely attached to umbrella legs separately.
 - Ropes and straps should be high quality.
 - Bungee or rubber straps are prohibited.
 - Weights must be on the ground and not dangling.
 - Weights and lines must not pose a hazard and be clearly visible.
 - For maximum safety, umbrellas should be secured as soon as they are put up, and brought down as soon as weight is removed. Do not leave unsecured umbrellas at any time.
 - Heaters of any kind shall not be used under umbrellas.
 - Smoking is prohibited under umbrellas.
 - Umbrellas must not have closed walls in place while open to the public, and all sides should be open for air flow.
 - Items that make acceptable weights:
 - Five (5) gallon bucket full of water, sand, or concrete.
 - Four (4) inch PVC pipe at least thirty-six (36) inches long filled with concrete.
 - Large commercially available umbrella weights.
 - Sandbags or salt bags forty (40) pounds or heavier.

- Loveland Fire Recue Authority oversees the use of shade structures within City Limits and may have additional requirements during the review process and/or during inspections.

Fire and Life Safety

The LFRA Fire Marshal's office will have staff available to assist with ensuring life safety needs and can be reached by calling (970) 952-2537 or emailing Eplan-Fire@LFRA.org.

Responsibility to Clear Right-of-Way

The City reserves the right to remove an outdoor patio space or objects that create an obstruction to, or cause congestion of, pedestrian or vehicular traffic due to existing conditions on the surrounding public right-of-way if it finds the installation represents a danger to the health, safety or general welfare of the public. Any temporary permit granted under the Loveland Patio Program is revocable at any time.

Each business is responsible for the removal, temporary or permanent, of equipment in the outdoor patio space for street and parking lot sweeping, redevelopment of the street or sidewalk if utility repairs necessitate such actions. If the City is required to remove the equipment in the outdoor space, any costs incurred by the City for removal or storage of outdoor restaurant tables, chairs and other equipment shall be the responsibility of the business. The City is not responsible for any damages or loss of equipment removed pursuant to this subsection.

Temporary Removable Barrier Materials

Temporary barrier materials shall be provided by the business and be utilized to define boundaries of extended business operations. Any equipment or furniture placed in the parking space cannot be placed closer than two (2) feet from the edge of the adjacent travel lane and shall not include any tents. Safe pedestrian pathways between barrier walls must be provided. For questions relating to barrier wall placement, please call Matt Ruder at (970) 962-2647 or email at matt.ruder@cityofloveland.org.

Business Responsibilities for Street Use

It shall be the responsibility of the business to activate the spaces with temporary materials such as tables and chairs, umbrellas, and visual/physical barrier materials as needed per site specific conditions. Maintenance (daily upkeep, litter cleanup, etc.) associated with business operations is the responsibility of the business. If a site is not maintained and cleaned, the temporary permit may be revoked.

Alcoholic Beverages – Liquor License Temporary Modification of Premises (submitted to City Clerk's Office)

The State Liquor Enforcement Division established regulations to allow on-premises consumption licensed establishments to apply for temporary modifications in order to pre-plan for temporary outdoor seating areas to support social distancing requirements while complying with all public health orders and other liquor laws and regulations. See attached Liquor License Temporary Modification Information Sheet and Form DR8442 – Permit Application and Report of Changes.