



Approved by: _____

Date Approved: _____

**ENCROACHMENT AGREEMENT
FOR
SIDEWALK CAFÉ IN PUBLIC RIGHT-OF-WAY**

(Property Address)

1. Definitions:

- (a) "Authorized Improvements" shall mean those improvements authorized to be located within the public right-of-way by this Agreement, including tables, chairs, benches, umbrellas, etc., provided the improvement is consistent with the Policy.
- (b) "Sidewalk Cafe" shall mean an outdoor dining area on the public sidewalk where patrons may consume food and/or beverages provided by an abutting food service establishment. Such establishments may either provide table service in the outdoor dining areas or sell take-out to be consumed in the outdoor dining area.
- (c) "Permit Zone" shall mean the area designated for outdoor dining in the public right-of-way abutting Permittee's food service establishment, which is approved by the Public Works Director and shown on the attached Site Plan as Exhibit A.
- (d) "Permittee" shall mean owner of the food service establishment known as:
_____ located at _____
- (e) "Policy" shall mean City Council Policy L-21, Sidewalk Café Standards and Procedures, as approved by the City Council on March 11, 1996, together with any amendments approved subsequent to that date.
- (f) "Public Works Director" shall mean the Public Works Director for the City of Newport Beach or his/her designee.
- (g) "Site Plan" shall mean the drawing approved by the Public Works Director attached to this Agreement as Exhibit "A" which depicts and describes the authorized improvements.

2. Permit Principles:

This Agreement represents a balance between the City's desire to allow appropriate outdoor dining activities on the public right-of-way, and to ensure adequate space for safe pedestrian circulation. The terms and conditions of this Agreement are important to protect public health, safety, and welfare for all uses of the public right-of-way.

3. Encroachment Permit/Term:

Permittee may operate a Sidewalk Cafe within the Permit Zone. Permittee shall use only the Authorized Improvements to operate the Sidewalk Cafe during the term of this permit. No additions, enlargements, or modifications are permitted without amendment of this Agreement.

4. Permit Conditions:

- (a) Permittee shall strictly comply with City Council Policy L-21, Sidewalk Cafe Standards and Procedures, the standard conditions contained in this Encroachment Agreement for Sidewalk Café in Public Right-of-Way, and any additional conditions specified in the Encroachment Permit for Sidewalk Café in Public Right-of-Way.
- (b) Permittee must place, install, and maintain all Authorized Improvements in accordance with the terms and conditions of this Agreement and in compliance with the Site Plan.
- (c) Permittee shall maintain all Authorized Improvements in good condition and repair.
- (d) Permittee shall remove any improvements which are not authorized by this Agreement within ten (10) days after notice to do so. Permittee consents to City summary abatement of unauthorized improvements which are not removed within the time specified in the notice and shall pay all costs incurred by the City in removing any unauthorized improvements.
- (e) Permittee shall immediately remove any improvements which are determined by the Public Works Director to pose a danger to public safety. If Permittee fails to immediately remove any improvements after notice to do so, Permittee consents to City summary abatement of such improvements.
- (f) Permittee consents to inspection of the improvements within the Permit Zone during normal business hours without notice to Permittee.
- (g) Construction within Permit Zone:
 - (i). All construction or installation of improvements within the Permit Zone must be performed by licensed contractors, unless waived by the Public Works Director.
 - (ii). All work must be inspected and approved by the appropriate City Department. Forms and subgrades must be inspected and approved before concrete is ordered. Inspectors are normally available during working hours upon 24 hours advanced notice. Call (949) 644-3311 to arrange for an inspection.
 - (iii). Barricades and/or flagging must be provided and maintained around all trenches, excavations and obstructions.
 - (iv). Refuse or unused materials shall be removed within 24 hours after completion of the work. If materials are not removed, the City may remove the material and bill the applicant.

5. Encroachment Permit Term/Renewal:

(a) Term

This Agreement shall be effective on the date of issuance and shall expire on the next 30th of June following issuance.

(b) Renewal

1. In order to maintain the Authorized Improvements within the Permit Zone, Permittees must pay the annual encroachment fee established by Policy, by June 30th of each year.
2. In order to construct new improvements or modify existing improvements within the Permit Zone, Permittee must file a new Sidewalk Café Encroachment Permit with an updated Site Plan and pay Encroachment Permit Processing Fees, if applicable. Proposed improvements within the Permit Zone will need to be approved by the Public Works Director prior to beginning work.

6. Termination:

City shall have the right to terminate this Permit, or require Permittee to modify the authorized improvements, if the City Council determines that termination or modification is in the public interest or is necessary to promote public safety.

7. Indemnification:

Permittee agrees to defend, indemnify and hold the City and its officers and employees harmless with respect to any claim, damage, or injury arising from Permittee's operations under this Agreement and the use or existence of the Authorized Improvements.

8. Revocation:

The Public Works Director may revoke this Permit after notice and hearing upon a determination that Permittee has failed to pay the annual encroachment fee or, is in violation of any of the terms or principles or conditions of this Permit.

9. Notice:

Notice shall be deemed given when personally delivered to Permittee or when deposited in the United States mail, first class postage prepaid, and addressed to Permittee at the address specified on the Application for the Permit.

IN WITNESS WHEREOF, the parties have caused this Encroachment Agreement for Sidewalk Café in Public Right-of-Way to be executed on the day and year first written below.

CITY OF NEWPORT BEACH
A Municipal corporation

“DIRECTOR”

By: _____
Print

Sign

DATE: _____

“PERMITTEE”

By: _____

“PROPERTY OWNER”

By: _____

DATE: _____