

License Agreement
By and Between
The City of Redlands
And
Jon Darby

This License Agreement ("Agreement") is made and entered this 27th day of July, 2020 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Jon Darby ("Licensee"). City and Licensee are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, Licensee is the owner and operator of a restaurant facility located at 1 E. State Street, in the City of Redlands; and

WHEREAS, Licensee desires to provide its customers with an outdoor dining area within City's rights-of-way; and

WHEREAS, City and Licensee desire to cooperate to further the above-stated purpose in a way compatible with the public interest and in compliance with the terms and conditions specified herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Licensee agree as follows:

AGREEMENT

Section 1. Premises. City hereby grants to Licensee a non-exclusive license to provide outdoor dining services within City's rights-of-way in connection with the operation of Tenant's restaurant (the "License"). The outdoor dining area subject to this Agreement consists of approximately one-thousand five-hundred (1,500) square feet (the "Premises") and is more particularly described in Exhibit "A," titled "Darby's Outdoor Seating," which is attached hereto and incorporated herein by this reference.

Section 2. Acknowledgment of License and Disclaimer of Tenancy.

A. Licensee is not a tenant or lessee of City, and holds no rights of tenancy or leasehold in relation to the Premises.

B. In consideration of City's grant of this License, Licensee specifically and expressly waives, releases, and relinquishes any and all rights to assert any claim of right, privilege, or interest in the Premises other than the rights expressly granted by this Agreement.

C. The consideration paid by Licensee pursuant to Section 4 of this Agreement is consistent with the value of the rights comprising the License privilege; the consideration is not

consistent with the higher market value for a greater right, privilege, or interest (such as a lease) in the Premises.

D. Licensee further acknowledges and agrees that without the representations and agreements by Licensee set forth herein, City would not enter into this Agreement.

Section 3. Term. The term of this Agreement shall commence on July 27, 2020, and shall end on October 31, 2020, unless earlier terminated as provided for herein. Either Party may terminate this Agreement by providing written notice of such termination to the other Party at least seven (7) days prior to the noticed termination date.

Section 4. License Fee. Licensee shall pay to City a Licensee fee in the sum of one-hundred seven dollars and fourteen cents (\$107.14) per three-day period, Thursday through Saturday, for use and occupancy of the Premises, billed monthly. All subsequent monthly rent payments shall be made prior to the second day of each month for which rent is then due. All payments are to be made payable to the City of Redlands, Finance Department/Revenue Division, P.O. Box 3005, Redlands, California, 92373. A late fee of fifty dollars (\$50) shall be added and due for any payment of rent made after the tenth day of the month. Any dishonored check shall be considered as unpaid rent.

Section 5. Use of Premises.

A. The Premises shall be used by Licensee solely for the purpose of outdoor dining associated with Licensee's operation of its restaurant.

B. Licensee's hours of operation within the Premises shall be limited to 6:30 p.m. to 10:00 p.m., Thursday through Saturday.

C. Licensee shall require all customers and patrons of Licensee to vacate the Premises no later than 10:00 p.m.

D. Licensee shall be responsible for clearing all tables, chairs, and debris from the Premises no later than 10:30 p.m.

E. Use of the Premises shall not jeopardize or endanger the health, welfare, peace, or safety of persons visiting, residing, working, or conducting business in area surrounding the Premises.

F. Licensee shall comply with all applicable federal, state, and local laws, and all applicable rules and regulations established by City.

G. Licensee shall submit an outdoor dining plan that shall be reviewed and approved by the Development Services Director. Upon approval, Licensee shall adhere to the plan at all times. Any changes to the approved plan must receive subsequent approval. The plan shall adhere to all Fire Department standards, including number of occupants, points of egress, tent and awning ratings, if applicable, and fire hydrants clearance requirements. In addition, the plan shall incorporate the following standards:

- i. Include suitable demarcation of the boundary of the outdoor dining or use area, such as bollards/rope or temporary fencing not exceeding four (4) feet high, placed in safe manner around outdoor dining area, or other means acceptable per State of California ABC COVID-19 Temporary Catering Authorization guidelines;
- ii. Clearly and physically separate the outdoor dining area from general pedestrian walkways;
- iii. Not include installation of any permanent structure or other items;
- iv. Ensure that all tables and associated seating be spaced at least six (6) feet apart from other tables and seating or, for other uses, maintains a physical separation of six feet between persons;
- v. Not permit groups of more than ten (10) persons at one table;
- vi. Not permit smoking in the expanded outdoor dining area; and
- vii. Ensure that outdoor areas are maintained free of trash and other debris.
- viii. Alcoholic beverages may be served and consumed in the outdoor dining area only if associated with a food order.

H. Licensee's use of the Premises shall not result in nuisance activities within the Premises, or in close proximity of the Premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, harassment of passersby, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, illegal parking, excessive loud noises especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests.

I. Licensee's operation of the Premises may include the sale and service of alcoholic beverages, provided that such use complies with all provisions of local, state and/or federal laws, regulations or orders, including but not limited to those of the State Department of Alcohol and Beverage Control, California Business and Professions Code sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes payment of annual City business license taxes.

J. Licensee shall ensure that the Premises' upkeep and operating characteristics are compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood.

K. City may enter upon the Premises at any time, and without prior notice to Licensee.

Section 6. Alterations and Repairs. Licensee accepts the Premises in its "as-is" condition as of the Effective Date of this Agreement, without any warranty, express or implied.

Section 7. Improvements. Licensee shall not make any alterations or improvements to the Premises without the prior written consent of City. Lighting may be incorporated in such a way to prevent glare onto, or direct illumination of any vehicle traffic or adjacent properties. Tables and chairs shall be placed only within the locations shown in Exhibit "A."

Section 8. Indemnity. Licensee shall defend, indemnify, and hold harmless City, and its elected and appointed officials, officers, employees, and agents, from and against any and all claims, causes of action, damages, lawsuits, and liability, including personal injury (including death) and property damage to any person, resulting from Licensee's negligent acts or omissions, or willful misconduct of Licensee, and/or its agents, employees, and invitees, arising from Licensee's occupation and use of the Premises during the term of this Agreement. This section shall survive any termination of this Agreement.

Section 9. Public Liability and Property Damage Insurance. Licensee shall maintain at its own cost for the term of this Agreement, public liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, issued by an insurance company acceptable to City. Licensee shall provide City with a certificate of insurance and endorsements showing City as an additional insured on the policy prior to Licensee's use and occupancy of the Premises. Such insurance shall be primary with respect to City and non-contributory to any insurance or self-insurance maintained by City. The policy shall require that, before amending or canceling the policy, the issuing insurance company shall give City at least thirty (30) days prior written notice of any modification or termination.

Section 10. Assignment Prohibited. Licensee shall not encumber, assign, sublease or otherwise transfer this Agreement, or any right or interest herein, without the prior written consent of City. Any such encumbrance, assignment, sublease or transfer without such prior consent and approval of City shall constitute a breach of this Agreement and may, at the sole discretion of City, result in the immediate termination of this Agreement.

Section 11. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

Section 12. Notices. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the day of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice of in accordance with this section:

CITY:
City of Redlands
Jeanne Donaldson
City Clerk
P.O. Box 3005
Redlands, CA 92373
JDonaldson@cityofredlands.org
909-798-7531

LICENSEE:
Jon Darby, Owner
Darby's American Cantina
1 E. State Street
Redlands, CA 92373
jon.darby@darbysredlands.com
(909)792-2119

Section 13. Entire Agreement/Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. Any prior verbal or written representations or agreements respecting the Premises not expressly set forth herein are null and void. Any and all amendments to this Agreement shall be in writing and executed by the Parties.

Section 14. Termination. Either Party may terminate this Agreement, without cause, upon three (3) City business days prior written notice to the other Party. In the event City determines that Licensee's use or occupancy of the Premises endangers the public health, safety, or welfare, City may, in City's sole discretion, immediately suspend Licensee's rights under this Agreement, or terminate this Agreement, without liability to Licensee. In addition to any other rights or remedies City may have, City shall have the immediate right of reentry and may remove all property from the Premises in the event this Agreement is terminated. Such property may be removed and stored in a public warehouse or elsewhere at the cost of Licensee. All remedies of City under this section shall be cumulative and in addition to any other legal or equitable rights and remedies which City may have.

Section 15. Waiver. No waiver by either Party of any provision of this Agreement, or waiver of any breach of this Agreement, shall be deemed to be a waiver of any other provision of this Agreement, or of any subsequent breach by either Party of the same or any other provision of this Agreement.

Section 16. Severability. If any particular provision of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction, this Agreement shall otherwise remain in full force and effect and shall be construed in all respects as if such invalid or unenforceable provision was omitted.

Executed on the 27th day of July, 2020, at Redlands, California

CITY OF REDLANDS



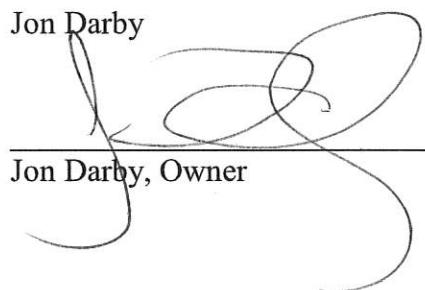
Charles M. Duggan, Jr., City Manager

ATTEST:



Jeanne Donaldson, City Clerk

Jon Darby



Jon Darby, Owner

EXHIBIT "A"
Caprice Cafe Outdoor Seating

