

LICENSE AGREEMENT BY AND BETWEEN THE CITY OF REDLANDS AND
P & D RESTAURANT GROUP INC.

This License Agreement ("License") is made and entered this 18th day of May, 2021 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and P & D Restaurant Group, Inc., dba Darby's American Cantina ("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 located at 1 E. State Street in the city of Redlands; and

WHEREAS, Licensee desires to provide its customers with an outdoor dining venue adjacent to its restaurant within City's right-of-way; and

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

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 license to provide outdoor dining services within City's right-of-way in connection with the operation of Licensee's restaurant located adjacent to the right-of-way (the "License"). The outdoor dining area subject to this License consists of approximately two hundred and twenty-eight (228) square feet (the "Premises") and is more particularly described in Exhibit "A," entitled "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 the License.

C. The consideration paid by Licensee pursuant to Section 4 of this License 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 set forth herein, City would not enter into this License.

Section 3. Term. The term of this License shall commence on May 18, 2021, and end on May 18, 2023, unless earlier terminated as provided for herein. Either Party may terminate this License by providing written notice of such termination to the other Party at least thirty (30) days prior to the noticed termination date. If Licensee remains in possession of the Premises after expiration or earlier termination of this License without City's written consent, Licensee's continued occupancy of the Premises shall be equivalent to a tenancy at sufferance and Licensee shall pay an increased License fee during the holdover period in the sum of one thousand dollars (\$1,000) per month.

Section 4. License Fee. Licensee shall pay to City a monthly fee in the sum of six hundred eighty four dollars (\$684) for use and occupancy of the Premises. The initial monthly fee payment shall be paid to City prior to June 3, 2021. All subsequent monthly fee payments shall be made prior to the second day of each month for which the fee 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 fee payment made after the tenth day of the month.

Section 5. Security Deposit. The security deposit shall be retained by City in compliance with the terms and conditions of this License, and shall be refunded to Licensee within thirty (30) days after the Premises have been vacated by Licensee, less any amounts reasonably necessary to pay City for, (i) cleaning costs, (ii) cost for repair or damages to the Premises exclusive of ordinary wear and tear, and (iii) any other amount legally allowable under the provisions of this License. A written accounting of said costs and damages shall be presented to Licensee within ten (10) days of the Premises being vacated. If the security deposit is insufficient to pay City for such costs and damages, Licensee shall immediately pay any additional costs for damages demanded by City.

Section 6. 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. The Premises shall be occupied by Licensee within ninety (90) days following the Effective Ddate of this License. Failure to continuously utilize the Premises for a period of greater than sixty (60) consecutive days, without the prior written consent of City, shall be grounds for City's immediate termination of this License.

C. The hours of operation for the Premises shall be limited to 8:00 a.m. to 2:00 a.m., Monday through Sunday.

D. Licensee's use of the Premises shall not jeopardize or endanger the health, welfare, peace, or safety of persons visiting, residing, working, or conducting business in the surrounding area.

E. During the term of this License, Licensee shall comply with all applicable federal, state, and local laws, and all applicable rules and regulations established by City.

F. Licensee shall require all customers to vacate the Premises upon closure of its restaurant at 2:00 a.m.

G. Licensee's operation 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, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, 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.

H. 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.

I. 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.

J. Licensee hereby grants City immediate access to the Premises in the event of an emergency; which is defined as any incident that threaten loss of life or property, interruptions of public utilities, disaster, war, acts of terrorism, strikes or similar emergencies.

Section 7. Alterations and Repairs. Licensee accepts the Premises in its "as-is" condition as of the Effective Date of this License, without any warranty, express or implied.

Section 8. Maintenance of Premises. Licensee shall be responsible for maintaining the Premises in a clean and orderly state. Any damage to the Premises incurred due to Licensee's use of the Premises shall be the sole responsibility of Licensee. City shall have the right to enter the Premises, at reasonable times, for inspection and maintenance purposes. Should an inspection by City disclose the need for maintenance or repairs, City shall provide Licensee with written notice of the items requiring repair or maintenance. If action is not taken on such items by Licensee within five (5) days from the provision of such notice, City may enter the Premises and take whatever action is necessary to perform such maintenance or repairs at Licensee's expense.

Section 9. Improvements. Licensee shall construct fencing and improvements for the Premises in conformance with Exhibit "B," entitled "Site Plan – Fence Design," which is attached hereto and incorporated herein by this reference. All such fencing and improvement to the Premises shall be construed in accordance with the provisions of an encroachment permit issued by City. Licensee shall not construct any fencing or improvements to the Premises not shown in Exhibit "B" without the prior written consent of City. All proposals for improvements to the Premises shall be submitted in writing to City for its consideration and prior written approval. Licensee shall have the right to remove all improvements made to the Premises by Licensee,

provided such removal results in no damage to the Premises. Improvements not removed by Licensee shall, on expiration or earlier termination of this License, become the property 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 location shown in Exhibit "A." Licensee shall cause the improvements to be constructed, rehabilitated or installed in compliance with applicable laws, including federal, state, and local laws and regulations.

Section 10. Indemnity. Licensee shall defend, indemnify and hold harmless City, and its elected officials, officers, employees and agents, from and against any and all claims, causes of action, damages and liability resulting from Licensee's negligent acts or omissions, and willful misconduct of Licensee, and its agents, employees and invitees arising from Licensee's occupation and use of the Premises during the term of this License. This section shall survive any termination of this License.

Section 11. Public Liability and Property Damage Insurance. Licensee shall maintain at its own cost for the term of this License, 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. City and Licensee acknowledge and agree that the insurance required of Licensee is subject to annual review by City and subject to increases in the amount and scope of coverage, as reasonably determined by City.

Section 12. Assignment Prohibited. Licensee shall not encumber, assign, sublease or otherwise transfer this License, or any right or interest therein, 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 License and may, at the sole discretion of City, result in the immediate termination of this License.

Section 13. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this License, 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 14. Notices. Any notice or other communication required, or which may be given, pursuant to this License, 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 or electronic email transmission (including PDF), 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 Clerk
City of Redlands
35 Cajon Street
P.O. Box 3005 (mailing)
Redlands, CA 92373
jdonadlson@cityofredlands.org
(909) 798-7531

LICENSEE:

P & D Restaurant Group, Inc.
dba Darby's American Cantina
1 E. State Street
Redlands, CA 92373
jon.darby@darbysredlands.com
(909) 792-2119

Section 15. Entire Agreement/Amendment. This License 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 License shall be in writing and executed by the Parties.

Section 16. Termination. City shall have the right to terminate this License, with or without cause, upon thirty (30) days prior written notice to Licensee. City shall have no liability for any claims or damages resulting to Licensee as a result of any exercise by City of its right to terminate this License. This License may be terminated at the discretion of City should Licensee fail to fulfill its requirements as specified herein.

Section 17. Waiver. No waiver by either Party of any provision of this License, or waiver of any breach of this License, shall be deemed to be a waiver of any other provision of this License, or of any subsequent breach by either Party of the same or any other provision of this License.

Section 18. Severability. If any particular provision of this License is held invalid or unenforceable for any reason by a court of competent jurisdiction, this License shall otherwise remain in full force and effect and shall be construed in all respects as if such invalid or unenforceable provision was omitted.

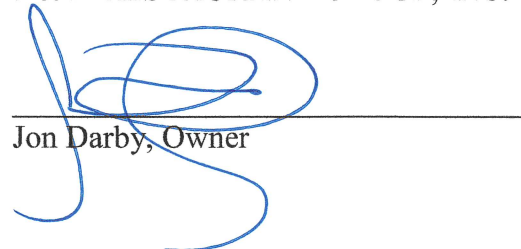
Executed on the 18th day of May, 2021, at Redlands, California

CITY OF REDLANDS



Paul T. Barich, Mayor

P & D RESTAURANT GROUP, INC.



Jon Darby, Owner

ATTEST:



Jeanne Donaldson, City Clerk

EXHIBIT "A"

DARBY'S OUTDOOR SEATING

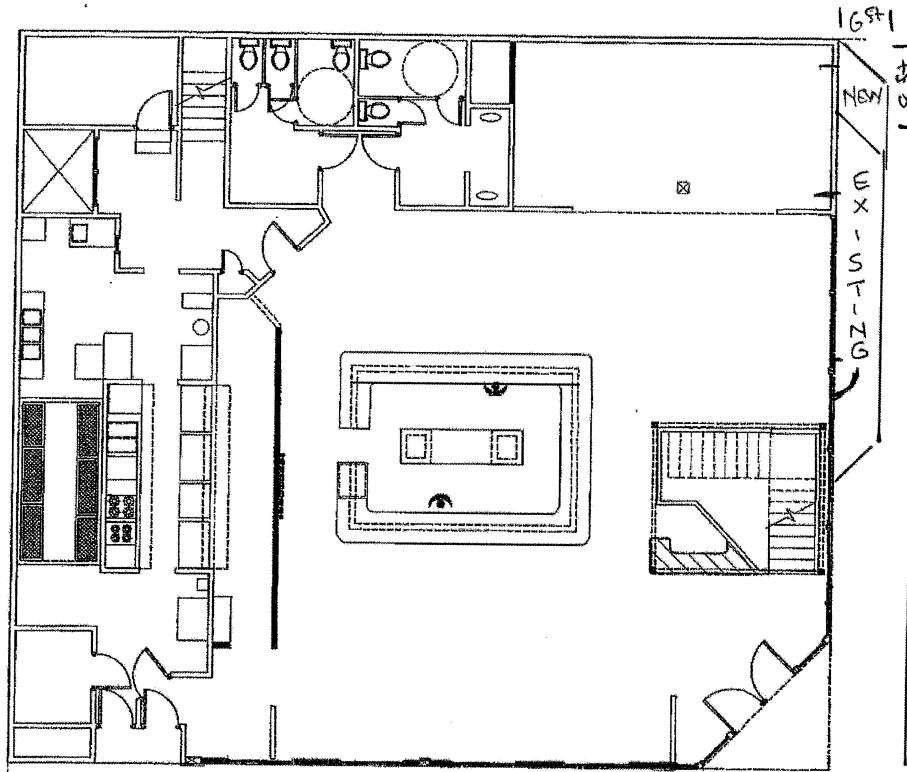


EXHIBIT "B"
SITE PLAN – FENCE DESIGN

