

**- PARKLET PROGRAM PARTNER -
LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT
("Company Name".)**

THIS LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT

This ("**Agreement**") is made as of this — day of June, 2014, by and between the CITY OF BOSTON, a municipal corporation located at 1 City Hall Plaza, Boston, MA 02201, acting by and through its Transportation Department, (the "**City**,"), and COMPANY NAME., a small café, located at ADDRESS ("**Licensee**") (each a "**Party**" or collectively, "**Parties**").

WITNESSETH THAT:

WHEREAS, Licensee is the owner and operator of the restaurant known as the "Fornax Bread Co.," which is located at ADDRESS; and

WHEREAS, the City has installed a parklet, an outdoor seating area, on the public way [adjacent to/near] Licensee's place of business as part of its Parklet Program ("**the Licensed Premises**"); and

WHEREAS, as the Licensee and the City wish to work together to ensure the success of the Parklet Program, the Licensee has agreed to perform certain maintenance activities on the Licensed Premises;

NOW THEREFORE, in consideration of the license given by the City to the Licensee, the Licensee agrees as follows:

1. TERM OF LICENSE:

The license issued under this Agreement shall run beginning, April 13, 201X ending, November 30, 201X ("initial term") (hereinafter "Program Term").

IT IS AGREED: the contract shall automatically renew itself thereafter from April to November of each subsequent year ("renewal period"). However, this contract can be terminated by either party within by giving 60 days' notice to the other. However, this contract can be terminated by either party within 60 days. The Licensee is responsible for oversight of the parklet during the duration of this agreement, and has agreed to share the terms of this agreement with XXXX Main Streets.

2. LICENSED AREA:

(a) Location:

- (i) The Licensed Premises shall be located directly in front of, adjacent to and contiguous to the Site. The exact location of the Licensed Premises is shown on an engineer's plan entitled "License Plan – ADDRESS", prepared by NAME OF DESIGN FIRM, and dated XXXX, X 201X, which plan is on file with the office of the Public Improvement Commission for the City of Boston, City Hall, Room 714, Boston, MA 02201, attached hereto as **Exhibit A**.

- (ii) The Licensee shall occupy only the Licensed Premises.

3. PERMITTED ACTIVITIES/ SCOPE OF LICENSE:

- (a) The License granted under this Agreement grants the Licensee the right to:
 - (i) enter onto and occupy the Licensed Area for the purpose of maintaining it;
 - (ii) may place its tables, chairs, etc. on the Licensed Area;
 - (iii) At no time is the Licensee permitted to sell or serve alcohol or food on the Licensed Premises. At no time may the Licensee deliver food or drink from its place of business across the sidewalk to the Licensed Premises.
- (b) The Licensee shall, at its own cost and expense, ensure that it performs all of its maintenance obligations described herein in compliance with any and all relevant laws and regulations.
- (c) *Pedestrian/Patron Access:*
 - (i) The Licensee shall provide safe and adequate access to patrons making use of the Licensed Premises and to pedestrians making use of the public way near or around the Licensed Premises.
 - (ii) Any structure located on the Licensed Premises shall be maintained, so as not to constitute a hazard or danger to persons making use of the Licensed Premises and the public way. At no time may the public way (including the sidewalk) between the Licensee's place of business and the Licensed Premises be blocked or constitute a hazard or danger to persons making use of the Licensed Premises or the public way.

4. MAINTENANCE:

The Licensee shall, at its own cost and expense, maintain the Licensed Premises for the Program Term, which maintenance activities shall include:

- (a) The Licensee shall clean the Licensed Premises on a daily basis and keep it free of dirt, trash, grime, and graffiti. The Licensee shall only use cleaning products approved by the City.
- (b) The Licensee shall remove and dispose of refuse collected on the Licensed Premises on a daily basis.
- (c) The Licensee shall keep any plants on the Licensed Premises in good health.
- (d) The Licensee shall lock down and/or remove and store movable items, such as chairs and tables, each evening at a time mutually agreed upon by the City and the Licensee.

- (e) The Licensee shall sweep out any trash and debris from under the Licensed Premises twice a month.
- (f) If Licensee identifies the need for any repair on/to the Licensed Premises that does not pose a danger to the public, it shall notify the City within twenty-four (24) hours of identifying the condition.
- (g) If Licensee identifies any condition of or on the Licensed Premises that poses a danger to the public, it shall notify the City immediately (within one (1) hour) of identifying the condition.

5. REMOVAL AND REINSTATEMENT OF STRUCTURES:

- (a) The Licensee shall remove all structures not built-into on the Parklet, including but not limited to chairs, tables, and any other items related to the Licensee at the end of the Program Term specified in Section 1 above, or immediately upon earlier termination pursuant to Section 7 of this Agreement below. .

6. DEFAULT:

- (a) If the Licensee fails to comply with any of the terms or conditions of this Agreement, the City will notify the Licensee and the Licensee shall have the opportunity to cure breach of this Agreement as follows:
 - (i) The Licensee shall have Five (5) days from the date notice is received to cure any breach of this Agreement.
- (b) If it is a practical impossibility for the Licensee to cure in accordance with Section 6(a), the City will not find the Licensee in default provided that:
 - (i) The Licensee requests additional time in writing to cure the violation(s); and
 - (ii) The Licensee explains in writing why it cannot comply with Section 6(a).
 - (ii) The City will determine how much additional time is necessary on a case-by-case basis.

7. TERMINATION:

- (a) The license issued under this Agreement shall terminate on the date set forth in Section 1 above, unless:
 - (i) The City determines that public necessity requires termination of the license, in which case the Agreement will terminate upon notice by the City to Licensee; or
 - (ii) The Licensee is in default. If the Licensee is in default, then this Agreement shall terminate upon the expiration of the five days stated in Section 6(a)(i); or

(iii) The City and the Licensee mutually agree to terminate the license on a date certain.

8. FEES AND COSTS:

- (a) The Licensee is responsible to perform maintenance obligations hereunder to the Parklet.
- (b) The Licensee Partner shall be responsible for improvements associated with damage of & the repair of the Parklet during the program period.
- (c) The City shall not be required to make any improvements to the public way or expend any money for the benefit of the Licensee.

9. INDEMNIFICATION AND INSURANCE REQUIREMENTS:

- (a) The Licensee shall indemnify and hold harmless the City and its departments, agents, officers and employees against any and all claims and demands for damages to person or property, costs, expenses (including reasonable attorneys' fees and costs), for compensation on account of, or in any way growing out of or related to its obligations under this Agreement, except if caused by the sole negligence of the City, its agents, contractors, subcontractors and/or employees. The Licensee shall at no time be considered an agent or representative of the City.
- (b) Prior to the execution of this Agreement, the Licensee shall obtain and maintain liability insurance for Program Term. The minimum amount of insurance shall be in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. Insurance shall be provided by a company licensed to do business in the Commonwealth of Massachusetts and the policy(ies) shall name the City as an additional insured. **A copy of the Certificate of Insurance naming the City of Boston as an additional insured is attached hereto as Exhibit B.**
- (c) The City shall give written notice of any such suits, actions, claims, demands, damages or losses, expenses or costs to the Licensee. In the event that any such suit, action, claim, demand or notice of damage, loss, expense or cost arises for which the City may seek indemnification hereunder, then the Licensee shall have the obligation to defend the City in connection therewith.

10. NOTICE REQUIREMENTS:

All notices shall be in writing, sent by certified or registered mail, return receipt requested, addressed as follows:

If to the Licensor at: Boston Transportation Department
City Hall, Room 721
One City Hall Plaza
Boston, MA 02201
Attn: XXXXXXXXXXXX

And if to the Licensee at: XXXXXXXX

XXXXXXX, Boston, MA XXXX
Attention: Partner Name
Partner Contact #

Joint Partner/ MainStreets Contact

11. MISCELLANEOUS:

The Parties have freely entered into this Agreement and agree to each of its terms without reservation. This Agreement shall inure to and be binding upon the Parties and their respective successors and assigns, may not be amended except by a writing signed by the Parties, and shall be governed by the laws of the Commonwealth of Massachusetts.

(Signatures are on the next page)

SAMPLE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BOSTON, acting by
and through its Transportation Dept

XXXXXXX
XXXXXX, Boston, MA XXXX
Attention: XXXXXX
(617) XXX-XXXX

XXXXXXX, Commissioner

By: _____
XXXX
Owner, XXXXX

By: _____
XXXXXX
Director, XXXXX MainStreets

APPROVED AS TO FORM:

City of Boston Date
Assistant Corporation
Counsel