

**LICENSE AGREEMENT**  
**FOR**  
**CITY-OWNED FUTURE SIDEWALK**

THIS LICENSE AGREEMENT (this “Agreement”), is made effective as of the 7th day of June, 2016, by and between the **CITY OF MCKINNEY, TEXAS** (the “City”) and the David Ernest Dorman Revocable Trust (“Licensee”), witnesseth that:

WHEREAS, Licensee is the owner of certain real property (“Premises”) located within the Type A Sidewalk Use and Fence Permit Zone in McKinney, Collin County, Texas, as more particularly described on **Exhibit “A”** attached hereto and incorporated by reference herein;

WHEREAS, the City is the owner of certain unimproved real property which Licensee desires to use in conjunction with a restaurant tenancy within the Premises (the “City-Owned Future Sidewalk”) for pedestrian usage which is adjacent to the Premises;

WHEREAS, Licensee has requested permission to install certain permanent improvements (“Improvements”) onto a portion of the City-Owned Future Sidewalk located adjacent to the Premises to allow for restaurant seating and food and alcohol sales (the “Services”) (collectively referred to as “Licensee’s Use”) on the City-Owned Future Sidewalk in compliance with Sections 122-181 and 14-21 of the City’s Code of Ordinances; and

WHEREAS, this Agreement allows Licensee the right to use a portion of the City-Owned Future Sidewalk (“License Area”) for the purpose of erecting such Improvements, including but not limited to a concrete surface, lighting, landscaping, irrigation and fencing, as approved by City and as necessary to comply with Section 122-181 for the provision of the Services; and

WHEREAS, the City agrees to thereafter allow Licensee to use the License Area and such License Area shall be considered a part of Licensee’s Premises; provided Licensee agrees to hold the City harmless with respect to any damage to, or necessary modification of the City-Owned Future Sidewalk and/or the License Area and to indemnify the City from and against any and all claims or causes of action arising out of or related to Licensee Use of the City-Owned Future Sidewalk and/or License Area and to maintain and keep the City-Owned Future Sidewalk and/or License Area in good repair.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and the mutual covenants herein contained, and for other valuable and good consideration in hand paid by Licensee to the City, the sufficiency and receipt of which are hereby expressly acknowledged and confirmed, the parties hereby agree as follows:

**Section 1. Installation and Maintenance of Improvements; Permitted Encroachment.** The parties hereby agree that on or before September 15, 2016 Licensee shall install Improvements the plans and specification for which shall be approved and permitted in advance by City planning, engineering and building code staff, and pursuant to all applicable building codes. In addition to the foregoing, the Licensee shall construct such further Improvements as are necessary to comply with Section 122-181 of the City's Code of Ordinances and maintain such Improvement at Licensee's sole cost and expense, subject to the terms of Section 3 below. In connection with the foregoing, the City specifically consents to the Licensee's Use of the License Area exclusively for the Services, and no other. Such License Area shall be depicted with actual measurements, shall be to scale and shall show all Improvements to be located within the License Area as shown on **Exhibit "B."** The limitations on such Improvements which may be located within the License Area are set forth in **Exhibit "C."** In no event shall any Improvements extend beyond the License Area.

**Section 2. Conditions of License.**

A. City grants this exclusive license to Licensee for Licensee's use of the License Area for a term of five (5) years effective June 7, 2016 until June 6, 2021. This Agreement may be renewed for additional one (1) year terms upon advance written request by Licensee and acceptance by the City. Any request for renewal must be received no later than thirty (30) days' prior to termination of this Agreement, or any renewal term. In no event shall this Agreement be renewed if Licensee has violated any provision of this License or Section 122-181 of the City Code of Ordinances. The Agreement is non-assignable and non-transferable. In consideration of the Agreement, Licensee agrees with City as follows:

1. Licensee shall pay to City the sum of Ten and No/100 Dollars (\$10.00) as rent for the License Area, payable in advance at the office of the Finance Director.
2. Licensee shall pay (in addition to the above-described rents) all water, electrical, security and other costs associated with the use and maintenance of the License Area during the time for which this Agreement is granted.
3. Upon acceptance of the Improvements constructed by Licensee, Licensee shall certify it has examined and knows the condition of the License Area and has received it in good order and repair, and will keep the License Area in good repair during the term of this Agreement at Licensee's own expense. Upon termination of this Agreement, Licensee will yield up the License Area to the City in good condition and repair.

B. Licensee expressly understands and agrees that it is a violation of the City's Code of Ordinances for any person to consume alcoholic beverages in public streets or alleys in the City, and that the sale of alcohol in the City is permitted only by properly licensed permittees of the Texas Alcoholic Beverage Commission ("TABC"). With respect to Licensee's Use of the License Area, Licensee has the responsibility for and shall ensure that all applicable TABC permits and City permits are secured and that all City ordinances, specifically including, but not limited to Sections 14-21 and 122-181 of the City Code of Ordinances, are complied with.

C. Licensee shall provide a signed copy of an approval letter from the McKinney Town Center Development Coordinator and/or the City's Historic Preservation Officer indicating issuance of a Letter of Suitability and/or Certificate of Appropriateness, respectively, for all proposed Improvements specifically including, but not limited to the installation of the fence required in Section 122-181 of the City's Code of Ordinances. The approval letter shall be attached to this Agreement as **Exhibit "D."**

D. Licensee expressly understands and agrees that this Agreement may be revoked by the City without notice if the City determines in its sole discretion that Licensee has violated any City ordinance or TABC regulation in conjunction with Licensee's Use of the Premises, the License Area or the City-Owned Future Sidewalk or its provision of Services.

**Section 3. City Ordinances.** Licensee expressly acknowledges that by entering into this Agreement, Licensee, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits as waiving any of the requirements of the City's Zoning Ordinance or Subdivision Ordinance or any other applicable ordinances of the City. Licensee shall strictly conform to all provisions of the City's Code of Ordinances and Licensee shall obtain all such permits as may be required to place the Improvements in the License Area.

**Section 4. Hold Harmless.** Licensee agrees to hold the City harmless from and against (a) any financial responsibility for Licensee's Use of the City-Owned Future Sidewalk and/or License Area, and (b) any damage to the City-Owned Future Sidewalk.

**Section 5. Maintenance and Repair of the City-Owned Future Sidewalk.** Licensee hereby agrees at all times to maintain and keep the License Area clean, in good repair and condition and to replace or repair the City-Owned Future Sidewalk to its current condition, or better, upon the termination of this Agreement by either party. The City will provide Licensee ten (10) days written notice of the need to clean, maintain, repair or replace the City-Owned Future Sidewalk. Licensee shall have five (5) days from the date it is provided such written notice to clean, maintain, repair or replace the City-Owned Future Sidewalk.

**Section 6. INDEMNIFICATION. LICENSEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR AND AGREES TO FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, JUDGMENTS, DEMANDS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF A PERSON OR DAMAGE TO PROPERTY, ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, LICENSEE'S USE OF THE LICENSE AREA AND/OR THE CITY-OWNED FUTURE SIDEWALK THAT FORMS THE BASIS OF THIS AGREEMENT, SPECIFICALLY INCLUDING BUT NOT LIMITED TO THE CONSTRUCTION, MAINTENANCE AND USE OF THE IMPROVEMENTS IN OR ON THE CITY-OWNED FUTURE SIDEWALK AS WELL AS THE MAINTENANCE, REPAIR AND USE OF THE CITY-OWNED FUTURE SIDEWALK IN CONJUNCTION WITH THE SERVICES. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE**

**PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**Section 7. Notices.** All notices or requests required or authorized hereunder shall be in writing and shall be deemed effective upon receipt (or refusal thereof) when (i) delivered in person, (ii) sent by U.S. Postal Service, postage prepaid, as overnight mail or certified mail, return receipt requested, (iii) delivered by a nationally recognized delivery service for same-day or overnight delivery, or (iv) transmitted by facsimile (with proof of confirmed transmission) to the respective parties hereto as follows:

To Licensee: David Ernest Dorman Revocable Trust  
David Dorman, Manager  
1408 Steepleview Ln.  
McKinney, TX 75069  
Attention: David Dorman

To the City: City Manager  
222 N. Tennessee  
P.O. Box 517  
McKinney, Texas 75070

**Section 8. Termination.** In the event Licensee fails to comply with any material provision of this Agreement, including but not limited to, maintaining a TABC permit and a City alcohol permit or compliance with the requirements of Sections 14-21 and 122-181 of the City’s Code of Ordinances, as amended, the City may terminate this contract with ten (10) days’ written notice. A copy of Licensee’s TABC permit and City alcohol permit are attached hereto as **Exhibit “E.”**

**Section 9. Insurance.**

A. Licensee shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the City of McKinney. Licensee shall furnish to the City of McKinney certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions upon the execution of this Agreement. A copy of the insurance meeting the foregoing requirements is attached hereto as **Exhibit “F.”** Certificates shall reference the special event and be addressed as follows:

City of McKinney  
c/o Ebix BPO  
PO Box 257  
Portland, MI 48875

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate.

Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

2. Liquor Liability Insurance, either endorsed onto the above policy or written on a “stand alone” basis, if any of the following applies:
  - i. The Licensee is in the business of manufacturing, selling, or distributing alcoholic beverages;
  - ii. The Licensee serves or furnishes alcoholic beverages for a charge, whether or not such activity requires a license or is for the purpose of financial gain or livelihood; or
  - iii. The Licensee serves or furnishes alcoholic beverages without a charge, if a license is required for such activity.
3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.

B. With reference to the foregoing required insurance, the Licensee shall endorse applicable insurance policies as follows:

1. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
2. The City of McKinney, its officials, employees and officers shall be named as additional insureds on any required Liquor Liability policy.
3. All insurance policies shall be endorsed to the effect that City of McKinney will receive at least thirty (30) days’ notice prior to cancellation, non-renewal, termination, or material change of the policies.

C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent. Such insurance shall be primary and non-contributory regardless of any other insurance that may be applicable to any loss in question and in a form appropriate to cover Licensee Use of the City-Owned Future Sidewalk.

**Section 10. Binding Effect.** The benefits and burdens of this Agreement shall benefit and bind Licensee and the City and their respective successors, successors-in-title, legal representatives and assigns as provided herein.

**Section 11. Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, there and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be

affected hereby, and the other terms and provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law..

**Section 12. Waiver.** The failure of the City or Licensee to exercise any right given hereunder or to insist upon strict compliance with any term, condition or agreement specified herein, shall not constitute a waiver of either party's right to exercise such right or to demand strict compliance with any such term, condition or agreement under this Agreement.

**Section 13. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Texas. Venue shall be exclusive in Collin County, Texas.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

***CITY OF MCKINNEY***

By: \_\_\_\_\_

TOM MUEHLENBECK  
Interim City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

***LICENSEE***

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**PREPARED IN THE OFFICES OF:**

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

Exhibit "A"  
Location Map of Property  
(to be provided by Licensee)

Exhibit "B"  
Scale Drawing of License Area  
(to be provided by Licensee)

## Exhibit "C"

The following limitations shall hereby apply to the proposed License Area:

- No signage shall be allowed other than the required liquor signage.
- Menus, if posted, shall be posted in a menu stand located within the License Area.
- The display of goods and merchandise shall not be allowed within the License Area.
- Umbrellas, if used, shall be folded and secured after closing hours. Umbrellas shall never interfere with pedestrian traffic or vehicular line-of-site. Umbrella coverings are to be made of canvas or other high-quality material. Unless otherwise approved by the City, plastic or vinyl shall not be allowed.
- Licensee shall not place trash cans within the License Area. Trash shall be promptly removed from the License Area and disposed of within the Premises. Licensee shall not use the permanent public trash cans within the public right-of-way. All tables are to be bused immediately upon patron(s) leaving the License Area.
- Extension cords running from within the Premises out to the License Area shall not be allowed.
- Tables and chairs should reflect the character of the restaurant and shall be constructed of heavyweight, high-quality materials such as metal or wood. Lightweight materials such as plastic and vinyl which may be blown astray by moderate winds shall not be allowed.
- At the end of each working day, Licensee shall clean the License Area. Licensee may not wash or leave debris in the street. The License Area is to be left clean and neat.
- No pets except service pets shall be allowed in the License Area.
- Unless otherwise approved by the City, no heating devices shall be allowed in the License Area.

Exhibit "D"  
Copy of Approved Certificate of Appropriateness and/or Letter of Suitability  
(to be provided by Licensee)

Exhibit "E"  
Copy of TABC permit and City alcohol permit  
(to be provided by Licensee)

Exhibit "F"  
Copy of Insurance Certificates  
(to be provided by Licensee)