

RELEASE AND INDEMNIFICATION AGREEMENT

This Release and Indemnification Agreement (“**Agreement**”) is entered on this _____ day of _____, 20____ (“**Effective Date**”) by _____ (“**Indemnitor**”).

The Indemnitor agrees as follows:

SECTION 1. PURPOSE.

- A. The purpose of this Agreement is for the Indemnitor to use portions of the public right of way as an outdoor dining area pursuant to any requirements established by the City of El Paso (“**Purpose**”).
- B. This Agreement is separate from any other agreements or permits granted by the City of El Paso (“**City**”) to the Indemnitor and does not affect those agreements or permits in any way.
- C. The Indemnitor must obtain separate permission from the City for any other activities on City property other than the Purpose above. For purposes of this Agreement, City property includes any public right of way.

SECTION 3. RELEASE.

- A. The Indemnitor releases the City from all claims of property damage, property loss, personal injury, illness, and death sustained by the Indemnitor while engaging in the Purpose of this Agreement regardless of whether such property damage, property loss, personal injury, illness, or death was caused by the negligence of the City or the City’s officers, employees, and/or agents. Upon signing this Agreement, the Indemnitor acknowledges that his/her successors and assigns releases the City from all claims of property damage, property loss, personal injury, illness, and death sustained by the Indemnitor while engaging in the Purpose of this Agreement regardless of whether such property damage, property loss, personal injury, illness, or death was caused by the negligence of the City or the City’s officers, employees, and/or agents.

SECTION 4. DAMAGE TO CITY PROPERTY.

- A. The Indemnitor is responsible for all damages caused by the Indemnitor to City property. If the Indemnitor damages any City property, then the City may repair such damage to the City’s standards and the City may send an invoice to the Indemnitor for the full costs of the repairs. The Indemnitor will pay in full any invoice sent by the City under this section within 30 calendar days of receipt.

SECTION 5. INDEMINIFICATION.

A. Indemnitor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO the actions of the Indemnitor and/or the Indemnitor's employees, agents, contractors, subcontractors, invitees and/or licensees. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Indemnitor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Indemnitor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Indemnitor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Indemnitor will pay all judgments finally establishing liability of the City in actions defended by Indemnitor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Indemnitor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Indemnitor's property from any cause.

SECTION 6. GENERAL PROVISIONS.

- A. INDEPENDENT CONTRACTOR RELATIONSHIP. This Agreement does not create an employee-employer relationship between the Indemnitor and the City. As such, the City is not subject to the liabilities or obligations the Indemnitor obtains under the Purpose of this Agreement.
- B. NOTICES. For the purpose of this Agreement “**business days**” means Monday through Friday excluding City of El Paso holidays and “**calendar days**” means Monday through Sunday excluding City of El Paso holidays. The City and the Indemnitor (“**Parties**”) will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt

Signed by the Indemnitor on: _____, 20__.

Printed Name: _____