

Town of Corte Madera
Temporary Use Permit for Outdoor Commercial Business Use of Private Property

This Temporary Outdoor Use Permit (“TOU”) is entered into on _____, 2020, between the Town of Corte Madera, a municipal corporation, hereinafter referred to as "Town" and _____ of _____, hereinafter referred to as “Permittee” located at _____, cumulatively, (“the Parties”) and is made with reference to the following facts:

RECITALS

A. Permittee operates a business consisting of a dining establishment or other permitted commercial business. Permittee has certified that it is allowed to operate under the State and County regulations applicable at the time this Permit is issued.

B. The Permittee desires to use private property to expand its temporary outdoor dining or commercial business use and has submitted an Application for such use.

C. Town agrees to permit on a temporary basis said use upon the terms and conditions expressed herein below and in Ordinance No. 996 which is incorporated herein by reference and the site plan and such other materials as the Director of Building and Planning or Designee may require to demonstrate compliance with the Ordinance.

D. Use of Shared Parking Space. If the Permittee intends to use a shared private parking lot or other private area for expanded outdoor dining seating or other permitted commercial business activity, the applicant must obtain written consent from the property owner(s) of the private parking lot or area with whom the parking lot or other private area is shared, that the Permittee is allowed to utilize such private parking lot or other private areas in accordance with the site plan and other materials submitted to and approved by the Town in accordance with paragraph C of the agreement, and such consent shall be provided to Town prior to approval of this Permit. Permittee shall also provide property owner consent and any site plan and other materials submitted to the Town to other tenants of shared private parking lots or other private areas prior to approval of this permit.

E. Use of Unshared Parking Space. If the Permittee intends to use a private parking lot or other private area that it does not share and owns or leases for expanded outdoor dining seating or other permitted commercial business activity, the applicant must obtain written consent from the property owner(s) of the private parking lot or area, and such consent shall be provided to Town prior to approval of this Permit.

AGREEMENT

1. Term. This TOU permit is valid until the earliest of the following: (a) Expiration of Ordinance No. 996 as that Ordinance may be extended by further ordinance of the Town Council, (b) the date the Permit is terminated in accordance with Section 11, or (c) 10 days after Ordinance No. 996 is rescinded by Resolution of the Town Council.
2. Cost. There shall be no charge to Permittee for the original Term of this Permit. Extensions of Term or other modifications to this agreement shall be by amendment in writing and may require payment of a Fee by Permittee as determined by the Town.
3. Modifications. Any modifications to the site plan or use regulations for the outdoor area shall be submitted to Town prior to implementation of any modifications.
4. Safety Barrier. For seating or other business operations located in a parking lot or immediately adjacent to a public roadway, or sidewalk, a physical barrier may be required between patrons and vehicles. If a barrier is required, it must be approved by the Town prior to the area being made available to the public and remain in place while the outdoor area is in use.
5. Outdoor Seating and Area Maintenance for Dining or Business Use. Outdoor seating that conforms to all legal requirements may be placed on private property as approved in advance by Town. The Permittee is responsible for complying with all legal requirements for operating outdoor dining spaces including but not limited to compliance with the Marin County Health Order, applicable building and fire codes, or the Vehicle Code, American with Disability Act (ADA) requirements, and applicable environmental health regulations. Seating and other business use items may not be placed in Americans with Disabilities Act (ADA) accessible parking spaces, loading zones, or 30 minute parking spaces (green zone).
6. Enforcement. Any outdoor business not in compliance with the terms and conditions of this agreement, including any approved site plans or operations plans, shall be in violation of this Agreement and Municipal Code. Town may take any and all enforcement actions legally available including but not limited to immediate revocation of the permit.
7. Outdoor Seating or other Business Use Layout. The outdoor seating or other business use layout shall be established, and remain consistent with, the approved TOU permit (see attachment A). At no time shall the entry/exit to any tenant space, nor any public sidewalk, nor any path of travel providing emergency ingress or egress, be blocked by outdoor seating or other business use.
8. Use Regulations. Music (live or amplified), and lighting, is NOT permitted. Temporary signage of any type is not permitted unless approved in writing by the Town. Consumption of alcoholic beverages is NOT permitted unless permitted by Alcoholic Beverage Control (ABC); verification of ABC approval shall be submitted to Town in advance. Hours of operation and non-permanent items (e.g. tables, chairs, umbrellas, canopies) shall be as stated and approved in Attachment A. Permittee shall not be allowed to permanently alter, construct or place any structure or other improvement on the property except as specifically provided in Attachment A.
9. Public Infrastructure. Permanent attachments to public infrastructure including, but not limited to, streets, sidewalks, curbs, trash cans, light poles, traffic signs, trees, bike racks, fire hydrants,

etc. are NOT permitted. Damage to public infrastructure as a result of the outdoor dining or other business use may result in revocation of the permit.

10. Other Permits and Approvals. It is the Permittee's responsibility to secure any applicable permits or approvals from other agencies including, but not limited to, Alcoholic Beverage Control (ABC), Marin County Health Department, and/or other public or private landowners.

11. Permit Revocation. The Town Manager reserves the right to revoke the TOU permit at any time in its sole discretion. Upon revocation, the operation of the outdoor business must cease and any temporary improvements made pursuant to the TOU must be removed within 48 hours, unless the Town Manager or designee determines that the revocation is necessary for the immediate protection of public health and safety, in which case business operations must cease and any temporary improvements made pursuant to the TOU must be removed immediately. If Ordinance No. 996 is terminated by Resolution of the Council prior to its expiration date, Permittee's permit shall be revoked and Permittee shall have 10 days to restore the permitted area to its pre-permit state.

12. Indemnification. The Permittee agrees, at its sole expense, to defend, indemnify, and hold harmless the Town, its public officials, officers, employees, volunteers and assigns, from any liability including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Permittee's negligence, recklessness or willful misconduct in the performance of this Agreement. In addition, Permittee shall reimburse the Town for any expense incurred resulting from Permittee's use of the private areas related to this permit. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul this permit or use private property. The Town shall promptly notify the Permittee of any legal proceeding, and shall cooperate fully in the defense. The Town may, at its sole discretion, participate in any such legal action, but participation shall not relieve the Permittee of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Marin, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.

13. Notices. Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by email or personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail. Any notice or other communication provided for or required by this Agreement to be in writing shall be deemed received upon the earlier of actual receipt or three business days after proper to the following addresses:

If Town, to:	Town of Corte Madera
	Adam Wolff
	Director, Planning and Building

240 Tamal Vista Blvd., Ste. 110
Corte Madera, CA 94925
AWolff@tcmmail.org

If to Permittee, to: _____

14. Waiver. The waiver by the Town of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

15. Authority of Parties. Each individual executing this agreement on behalf of a corporation or other private entity shall represent and warrant and that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to the Town, along with the executed original of this agreement.

16. Assignment. This agreement may not be assigned without prior written approval of the Town.

Attachment A

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first written above.

TOWN OF CORTE MADERA

Date: _____

By _____

Adam Wolff, Director, Planning & Building

Date: _____

By _____

Permittee: _____

ATTACHMENT A – Insert listed items as Appropriate

Application Including the following:

- Statement of Intended Use describing proposed area of use, outdoor use, food and beverage service, hours of operation, use of tables, chairs, umbrellas, canopies, etc. heaters or other non-permanent items.
- Type of operation (i) expanded use of adjacent private spaces (e.g., private parking lots), (ii) use of other private areas.
- Town Business License.
- ABC License (if alcohol is served) and evidence of adequate liquor liability insurance for proposed operations.
- Written Consent of Property Owner/Tenants Sharing Space (shared private property owners).
- Site Plan Diagram (minimum size 8.5”x11”).
- Photographs (proposed location).
 - Other materials as determined by the Director of Planning and Building or his/her Designee.
 - Statement of Approved Use by the Town Manager or Designee if approval differs from Statement of Intended Use.
- All documents required for approval of this Permit may be submitted and signed electronically.