

**RESTAURANT
ENCROACHMENT AND OR MALL LEASE AGREEMENT**

THIS LEASE AGREEMENT made _____, 2014, at Aspen, Pitkin County Colorado, by and between THE CITY OF ASPEN, COLORADO, a municipal corporation, as Lessor (hereinafter "City"), and Lessee (hereinafter "Lessee") Corporate name

Address of business _____
DBA _____ **Phone number** _____

W I T N E S S E T H:

WHEREAS, the City of Aspen, Colorado, by its Ordinance No. 20 (Series of 1973) established a Pedestrian Mall on those city streets designated therein; and

WHEREAS, the City Council of the City of Aspen is desirous of leasing portions of said Mall to abutting land owners and/or lessees who wish to use such areas for restaurant and/or liquor sales; and

WHEREAS, the Commercial Core and Lodging Commission is supportive of promoting the use of pedestrian mall space,

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, it is agreed as follows:

1. The City does hereby lease to Lessee approximately _____ square feet of the said Pedestrian Mall, being that portion of the **Mall abutting the business structure** or otherwise designated herein and lot area owned and/or managed by Lessee. Encroachments are not to be considered to be part of such building and/or lot. The term of this lease shall be for the period of time beginning on **May 17, 2014** and terminating on **October 12, 2014**. Rent shall be calculated at **\$3.00** per square foot per month. As rent for such area and term, Lessee hereby agrees to pay City the total sum _____ which sum shall be payable in advance on or before **July 1, 2014** at the offices of the City Clerk, Aspen City Hall, 130 S. Galena Street, Aspen, Colorado 81611.

If the rent payment is not paid in full when due, a penalty in the amount of ten percent (10%) shall be assessed on the arrears and, in addition, interest on the arrears shall accrue at the rate of two percent (2%) per month.

2. Lessee agrees to use such area for the sole purpose of selling and dispensing food or beverages to the public. Such area shall be open to the public at least seven (7) hours

per day between the hours of 9:00 a.m. and 10:30 p.m. Food shall be available in the leased area during all hours it is open to the public. Lessee further agrees to use the premises for no purpose prohibited by the laws of the United States, the State of Colorado, or ordinances of the City of Aspen. Further, lessee agrees to comply with all reasonable recommendations by the City of Aspen relating to the use of the leased premises.

3. Lessee shall remove any fences, furniture, planters on the leased premises promptly upon expiration of this lease. Failure to remove them within ten (10) days of said expiration shall result in ownership therein transferring to the City of Aspen.

4. Lessee agrees to keep said premises in repair and free from all litter, dirt and debris and in a clean and sanitary condition; to neither permit nor suffer any disorderly conduct or nuisance whatever about said premises which would annoy or damage, either proximate or remote, occurring through or caused by any alteration to said leased premises, or by any injury of accident occurring thereon. Further, Lessee does, by execution of this agreement, indemnify and agree to save harmless the City of Aspen its employees, elected and appointed officials, against any and all claims for damages or personal injuries arising from the use of the premises as herein above described. Further, Lessee agrees to furnish City with **certificate(s) of insurance naming the City of Aspen** as an additional insured as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the leasing, use, occupancy, maintenance, and operation of location of the leased premises. The insurance shall be procured from a company authorized to do business in the State of Colorado and be satisfactory to the City. The amount of this insurance, without co-insurance clauses, shall not be less than the maximum liability that can be imposed upon the City of Aspen under the laws of the State of Colorado found at C.R.S. Section 24-10-101, et seq. as amended. Lessee shall name the City as co-insured on all insurance policies and such policies shall include a provision that written notice of any non-renewal, cancellation or material change in a policy by the insurer shall be delivered to the City no less than ten (10) days in advance of the effective date.

5. No portion of the Lessee's fixtures shall extend beyond the boundaries of the City-leased premises; this shall be construed to include planters, host podiums, umbrellas while closed or open, any type of lighting fixtures, and any other fixtures of the Lessee. Flower pots are to be attached to the inside of the fence. Umbrellas with signage other than business name are permitted.

6. The rules of mall lease are:
- Horizontal clear area for pedestrian travel is a minimum of 6'; this clear area will be marked by the engineering department and must be adhered to;
 - If lessee uses city electricity, they will provide a plug in meter device so that usage can be charged to the lessee
 - **No amplified music;**

- No structures, as defined in the City of Aspen Municipal Code, Section “26.104.100 are permitted. **Structure definition:** Anything constructed, installed or erected which requires location on the ground or is attached/supported by something on the ground, inclusive of buildings, signs, roads, walkways, berms, fences and/or walls greater than six feet (6') in height”.
- One menu board is permitted and must either be mounted to the outside of the fence or the outside of the building. Allowable size for each menu board is four square feet;
- Blinking lights are not permitted; exterior lighting must be approved by the community development department;
- Portable wait stations, defined as areas for the storage of service items, i.e. silverware and water pitchers, are permitted within leased premises;
- Wait stations must be taken in at night for wildlife protection;
- No food or ice to be dispensed from wait station;
- Trash receptacles are to be taken in at night;
- NO dumping of drinks;
- Do not use grass areas as ingress and egress for your leased space
- During inclement weather **tents with no sides** are permitted but must be taken down at night.

7. Lessee agrees to permit agents of the City to enter upon the premises at any time to inspect the same and make any necessary repairs or alterations to the sidewalks, curbs, gutters, streets, utility poles, or other public facilities as the City may deem necessary or proper for the safety, improvement, maintenance or preservation thereof. Lessee further agrees that if the City of Aspen shall determine to make major structural changes to the Aspen Pedestrian Mall which may affect any structures placed within the mall by the Lessee that the Lessee, by execution of this agreement, hereby waives any and all right make any claim for damages to the improvements (or to its leasehold interest) and agrees to remove any structures necessary during such construction periods. City agrees to rebate all rents in the event it undertakes major structural changes to the Aspen Pedestrian Mall during the lease period.

8. The City of Aspen by this demise hereby conveys no rights or interest in the public way except the right to the uses on such terms and conditions as are above described, and retains all title thereto.

9. Lessee agrees not to sublet any portion of the leased premises, not to assign this lease without the prior written consent of the City being first obtained.

10. Lessee hereby affirms that Lessee is the owner and/or lessee of the abutting property and agrees that on sale or other transfer of such ownership interest, Lessee will so

notify the City of the transfer in interest, and all right and interest under this lease shall terminate.

11. Lessee agrees to surrender and deliver up the possession of the leased premises promptly upon the expiration of this lease, or upon five (5) days' written notice in the case of the termination of this lease by City by reason of a breach in any provisions hereof.

12. If legal action is taken by either party hereto to enforce any of the provisions of this lease, the prevailing party in any legal action shall be entitled to recover from the other party all of its cost, including reasonable attorney's fees.

13. It is further agreed that no assent, expressed or implied, to any breach of any one or more of the covenants or agreements herein shall be deemed or taken to be a waiver of any succeeding or any other breach.

14. Lessee agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to the leased premises and its use. In performing under the lease, Lessee shall not discriminate against any worker, employee or job applicant, or any member of the public because of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical handicap, status or sexual orientation, family responsibility or political affiliation, or otherwise commit an unfair employment practice.

15. Lessee and City agree that all correspondence concerning the Lease shall be in writing, and either hand delivered or mailed by first class certified mail to the following parties:

City of Aspen
130 South Galena Street
Aspen, Colorado 81611

CITY OF ASPEN, COLORADO

By _____
City Manager, Steve Barwick

Lessee _____

EXAMPLE: The mall lease fee for 2014 is \$3:00 a square foot

Calculation:

$\$3.00 \times 855 \text{ sq.ft.} = \$2,565. \times 12 = \$30,780. \div 365 = \$84.33 \text{ a day} \times 122 \text{ days} =$