

**REAL PROPERTY LEASE AGREEMENT
SANTIAGO'S SIDEWALK**

THIS LEASE AGREEMENT (also referred to herein as "Agreement" or "Lease") is made between **the CITY OF BISBEE**, a municipal corporation of the State of Arizona, hereinafter called "LESSOR," and **Bisbee Hospitality Group, LLC**, hereinafter referred to as "LESSEE."

In consideration of the mutual covenants contained herein, the parties agree as follows:

I. THE LEASED PREMISES

The LESSOR will lease to the LESSEE; the following described real property (the "Leased Premises") consisting of that portion of the sidewalk owned by the City adjacent to the restaurant currently operated as Santiago's, located at 1 Howell Street, Bisbee, Arizona. A survey of the Leased Premises, together with a legal description, is attached hereto.

II. USE OF LEASED PREMISES

The LESSEE shall occupy and use the Leased Premises only for outdoor restaurant seating.

III. CONSIDERATION

The LESSEE shall pay the LESSOR rent in the total amount of \$3,346.47, payable within thirty-five days after City Council approval of the Ordinance authorizing this Lease.

IV. UTILITIES

LESSEE shall be solely responsible for obtaining and paying for all necessary utility services on the Leased Premises, if any, and all applications and connections shall be made in the LESSEE's name only.

V. TERM AND EFFECTIVE DATE

The term of this Lease shall commence thirty (30) days after final approval of the Ordinance approving this Lease, and shall remain in effect for ten (10) years thereafter.

VI. ALTERATIONS, ADDITIONS, IMPROVEMENTS

(a) The Leased Premises are accepted by the LESSEE in their present condition. Lessee shall make no physical alterations of the Leased Premises. The Leased Premises are provided "AS IS". LESSOR makes no warranty as to their condition. LESSOR EXPRESSLY

DISCLAIMS ANY WARRANTY OF HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

(b) Repairs and Maintenance - LESSEE shall, at all times during the Lease, and at its own expense, repair, and maintain the Leased Premises in a good, safe and substantial condition. At the end of the term of this Lease, LESSEE shall return the Leased Premises to LESSOR in the same condition as when this Lease commenced.

VII. LIENS

LESSEE shall keep the Leased Premises and all improvements erected thereon free and clear of any and all mechanics, material men and other liens arising out of LESSEE's use and occupancy of the Leased Premises. Filing of a lien against the Leased Premises shall constitute a default of this Lease Agreement.

VIII. TAXES AND ASSESSMENTS

LESSEE shall pay all taxes, assessments and charges including, without limiting the generality of the foregoing, personal and real property taxes and utility charges, which may be taxed or charged to the LESSEE or upon the Leased Premises in connection with LESSEE's use and occupancy of the Leased Premises.

IX. ASSIGNMENT, SUBLEASE OR LICENSE

LESSEE shall not assign, mortgage or encumber the premises, or any other right or privilege connected therewith, or allow any other person except agents and employees of LESSEE to occupy the Leased Premises or any part thereof without first obtaining the written consent of the LESSOR for each instance. An unauthorized assignment, sublease or license to occupy by the LESSEE shall be void and shall terminate the Lease at the option of the LESSOR.

X. COMPLIANCE WITH LAWS AND REGULATIONS

LESSEE shall comply with all federal, state and county laws, rules and regulations, controlling or in any manner affecting the use or occupancy of the Leased Premises.

XI. ENTRY TO PROPERTY

LESSOR may enter the Leased Premises at any time in the case of fire or an emergency.

XII. INDEMNIFICATION

To the fullest extent permitted by law, LESSOR and LESSEE shall defend, indemnify, and hold harmless the other and its departments, officers, officials, agents, and employees (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim

processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Indemnitees or any of its departments, officers, officials, agents, and employees. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of LESSOR or LESSEE to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that each party shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the other party, be indemnified by the other party from and against any and all claims. It is agreed that each party will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Lease, both the LESSOR and the LESSEE agree to waive all rights of subrogation against the other, its departments, officers, officials, agents, and employees.

XIII. INSURANCE

1. For the term of this Lease Agreement, LESSEE shall procure and maintain insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the LESSEE, its agents, representatives, or employees.
2. The Insurance Requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. LESSOR in no way warrants that the minimum limits contained herein are sufficient to protect the LESSEE from liabilities that arise out of the performance of the work under this Lease by the LESSEE, its agents, representatives, employees or subcontractors, and the LESSEE is free to purchase additional insurance.

2.1 Minimum Scope and Limits of Insurance

LESSEE shall provide coverage with limits of liability not less than those stated below.

2.2 Commercial General Liability (CGL) – Occurrence Form Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products-Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the LESSOR as additional insureds with respect to liability arising out of the activities performed by or on behalf of the LESSEE.

- 2.11 All such certificates of insurance and policy endorsements must be received by the LESSOR before commencement of this Lease and every year thereafter for the duration of this Lease. The LESSOR'S receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 2.12 LESSEE shall require its subcontractors to obtain and maintain all insurance requirements as expressed or stated above.
- 2.13 Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of this Lease Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.
- 2.14 All certificates required by this Agreement shall be sent directly to the LESSOR.

XIV. FIRE AND CASUALTY DAMAGE

(a) If the Leased Premises shall be damaged by fire or other casualty, but the Leased Premises are either tenantable or if untenable, the Leased Premises can reasonably be expected to be repaired within thirty (30) working days after the commencement of repair work, the Lease shall continue in full force and effect. In such case, the LESSEE may at its own cost, promptly and diligently repair and restore the Leased premises to substantially the same condition existing prior to such damage. Without limiting such obligation on the part of the LESSEE, the proceeds of any insurance covering such damage or destruction shall be made available to the LESSOR for such repair and restoration.

(b) If the Leased Premises shall be totally destroyed by fire or other casualty, or if the Leased Premises should be so badly damaged by fire or other casualty as to become untenable, and such damage cannot reasonably be expected to be repaired within thirty (30) working days after the commencement of repair work, the LESSEE may terminate the Lease, without further obligation, by giving thirty (30) days prior written notice of such election to terminate to the LESSOR. In such event, then all insurance money received or recoverable for the loss of the Leased Premises shall belong to and be paid to LESSOR.

XV. RELEASE AND DISCHARGE

LESSOR shall not be responsible for, and assumes no liability arising from vandalism, fire, smoke, theft, damage or loss to LESSEE'S property unless such vandalism, fire, smoke, theft, damage or loss is solely the fault of LESSOR. LESSEE hereby releases and discharges LESSOR from all claims, damages, losses, liabilities and demands by LESSEE for loss of or damage to LESSEE'S person, employees, property, income or profit.

XVI. DEFAULT OR BREACH

Each of the following events shall constitute a default or breach of this Lease by LESSEE.

(a) Failure to pay rent under this Lease Agreement when due.

(b) Except as otherwise specifically provided in this Lease Agreement, failure to perform any other provision of this Lease Agreement, if the failure to perform is not cured, at the sole discretion of LESSOR, within thirty (30) days after notice of the failure has been given to LESSEE, this Agreement shall terminate without further notice. At the discretion of LESSOR, if the breach or default cannot be reasonably cured within thirty (30) days, LESSEE may not be considered in breach or default of this Agreement if LESSEE commences to cure the breach or default within the thirty (30) day period and diligently and in good faith continues to cure the default.

(c) At the sole discretion of LESSOR, performing any work, services, operations or functions, or a use, not the subject of or intent of this Lease Agreement or within the scope of this Lease Agreement.

(d) At sole discretion of the LESSOR, failure to operate, perform work or services or maintain the premises in a safe and environmentally sound manner.

(e) If LESSEE shall vacate or abandon the Leased Premises.

(f) If this Lease shall be transferred to or shall pass to or dissolve on any other person or party without the prior written consent of the LESSOR.

(g) If LESSEE shall fail to maintain current, required amounts of insurance coverage.

LESSOR, at any time after LESSEE commits a material breach or default of this Lease Agreement, may elect to cure the breach or treat LESSEE as being in default, in either instance at LESSEE's cost. If LESSOR, at any time, by reason of LESSEE's breach or default, pays any sum or does any act that requires the payment of any sum, the sum paid by LESSOR shall be due immediately from LESSEE to LESSOR at the time the sum is paid, and if paid at a later date shall be subject to interest at the rate of ten percent (10%) per month or fraction of a month on such unpaid balance as may be due.

XVII. SUPPLEMENTARY CONDITIONS

(a) The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

(b) It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

(c) In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

(d) The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each subcontractor who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

(e) The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agree that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

(f) Notwithstanding any other provision of the Agreement, the parties understand that LESSOR is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 *et. seq.*

(g) This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

XIII. TERMINATION

(a) In the event of any default or breach by the LESSEE of any provisions of this Lease, and if such default continues for a period of thirty (30) days after written notice of default has been delivered by the LESSOR to the LESSEE, this Lease shall, at the option of the LESSOR, be terminated forthwith upon the LESSEE's receipt of a written notice of termination from the LESSOR. In such event, the LESSEE agrees to deliver peaceful and lawful possession thereof to LESSOR. LESSOR reserves its right to pursue any other legal remedy for damages or otherwise arising out of the default by the LESSEE.

(b) In the event of termination, any property or materials not removed within thirty (30) days of the termination of the Lease shall be deemed to be abandoned and may be disposed of by LESSOR at the LESSEE's expense, as LESSOR deems appropriate.

(c) This agreement may be terminated for conflict of interest, pursuant to A.R.S. §38-511.

XIX. RIGHTS AND REMEDIES

Agreement are null, void and no longer in force and with no effect, and are replaced in total with this Lease Agreement unless otherwise expressly stated in this Lease Agreement. This Lease Agreement shall not be altered, amended, or modified except by a writing signed by authorized representatives of LESSOR and LESSEE.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be signed by their duly authorized representatives.

LESSEE:
By: 
Robert Page
Bisbee Hospitality Group, LLC

Dated: 6 / 10 / 18

LESSOR:
By: 
David Smith, Mayor
City of Bisbee

Dated: 5 / 17 / 18

ATTEST:
By: 
Ashlee Coronado, City of Bisbee

Dated: 5 / 17 / 18

APPROVED AS TO FORM:
By:  for
Britt Hanson
City Attorney

Dated: 5 / 16 / 2018