



CITY OF SOUTH MIAMI
 Department of Planning & Zoning
 6130 Sunset Drive, South Miami, Florida 33143
 Phone: (305) 663-6326 Fax: (305) 666-4591

APPLICATION FOR OUTDOOR SEATING / DINING

Restaurant Name: _____ Restaurant Tel. No: _____

Restaurant's South Miami Address: _____

Name of Restaurant Owner or, if a legal entity,
 Name of Authorized Representative of Owner: _____

Owner or Representative's Tel. No: _____

Date of Execution: _____

Signature of Owner/Authorized Representative

Address of Owner if different from Restaurant Address: _____

Print Property Owner's Name (Name must match property record)

Date of Execution: _____

Property Owner's signature

NOTICE

This permit is not transferable in any manner, and is strictly a conditional use permit issued for a period of one year, renewable automatically at time of annual occupational license renewal, provided the appropriate fee is paid for the new year, the conditions under which the original permit has not changed, the ownership of the property and of the restaurant has not changed, and all insurance policies, including the declaration page, and all endorsements to the policies are delivered to the City and all of the City's insurance requirements have been met. All of the standards and regulations set forth in the Land Development Code, including but not limited to Section 20-3.3(E), shall be applicable to an outdoor seating/dining area. All references in this application form to "City" shall mean the City Manager unless specifically stated otherwise. [Should this be revised since "city" is used in a different context throughout the document?]

Any violation of the regulations and standard set forth in Land Development Code, including Section 20-3.3(E) shall constitute a separate incident of violation and shall result in a fine for each day of continued violation.

FEES

The City of South Miami will charge an annual fee for the following conditions:

- A fee for each available individual seating capacity of the furniture that is located on the public rights-of-way. The number of seating and other furniture that occupies the public right of way shall be set forth in this application and any furniture that is not listed but found to be on the public right of way shall result in a daily fine for each unauthorized piece of furniture.
- A fee shall be charged for any stand alone table top with no seating which is used for consumption of beverages or food which is located on public rights-of-way.
- A fee shall be charged for all outdoor dining/seating use permits using private property.

APPLICANT MUST PROVIDE THE FOLLOWING INFORMATION:	
Location of the Outdoor Seating/Dining: <input type="checkbox"/> Private Property <input type="checkbox"/> Public Property <input type="checkbox"/> Both	
Required Materials to be submitted and attached hereto:	
<input type="checkbox"/> Property/Boundary Survey	<input type="checkbox"/> Indemnity Agreement
<input type="checkbox"/> Outdoor Seating Plan/Dining Area Plan*	<input type="checkbox"/> Proof of Insurance
<input type="checkbox"/> Number of Indoor Seats: _____	
<input type="checkbox"/> Number of Proposed Outdoor Seats within Public Right-of-Way: _____	
<input type="checkbox"/> Number of Proposed Outdoor Seats within Private Property: _____	
<input type="checkbox"/> Number of Proposed Table Tops: _____	
<input type="checkbox"/> Hours of Operation ***: _____	
<input type="checkbox"/> Date & Time of Cleanup/Maintenance ***: _____	
Additional materials to be submitted and attached hereto (if applicable):	
<input type="checkbox"/> Adjacent property used for seating/dining area: (Adjacent Property Owner Consent Form)	Address: _____
<input type="checkbox"/> Amplified Sound Agreement**	

EXHIBIT 1

CITY OF SOUTH MIAMI OUTDOOR SEATING AGREEMENT

This Agreement made this day of _____ 20__ by and between the City of South Miami through its City Manager (“City”) and _____ (“APPLICANT”) whose address is _____.

WITNESSETH

1. City hereby permits APPLICANT to use the City sidewalk located on and in front of the property that is described on the attached **Exhibit 4** and hereinafter referred to as the “Premises”, commencing on _____ 20__ for the following day(s) of the week _____, beginning at _____ a.m./p.m. and ending at _____ a.m./p.m. each day in consideration for the promises made in the outdoor seating application, to which this Agreement is attached, and the payment as set forth in said application.

2. Use: APPLICANT shall use the premised solely for the purpose of: _____

3. Indemnification Clause:

A. The APPLICANT accepts and voluntarily incurs all risks of any injuries, damages, or harm which might arise during the work or event that is occurring on the CITY's property due to the negligence or other fault of the APPLICANT or anyone acting through or on behalf of the APPLICANT.

B. The APPLICANT agrees to indemnify, defend, save and hold CITY, its officers, affiliates, employees, successors and assigns, harmless from any and all damages, claims, liability, losses, claims, demands, suits, fines, judgments or cost and expenses, including reasonable attorney's fees incidental there to, which may be suffered by, or accrued against, charged to or recoverable from the City of South Miami, its officers, affiliates, employees, successors and assigns, by reason of any causes of actions or claim of any kind or nature, including claims for injury to, or death of any person or persons and for the loss or damage to any property arising out of a negligent error, omission, misconduct, or any gross negligence, intentional act or harmful conduct of the APPLICANT, its contractor/subcontractor or any of their officers, directors, agents, representatives, employees, or assigns, or anyone acting through or on behalf of any of them, which arises out of or is concerning the use of CITY property or the service, operation or performance of any work that is being performed for the CITY or of any event that is occurring on the CITY's property.

C. The APPLICANT shall pay all losses and expenses of any kind or nature whatsoever, in connection therewith, including the expense or loss of the CITY and/or its affected officers, affiliates, employees, successors and assigns, including their attorney's fees, in the defense of any action in law or equity brought against them.

D. The APPLICANT agrees and recognizes that neither the CITY nor its officers, affiliates, employees, successors and assigns shall be held liable or responsible for any claims, including the costs and expenses of defending such claims which may result from or arise out of actions or omissions of the APPLICANT, its contractor/subcontractor or any of their agents, representatives, employees, or assigns, or anyone acting through or on behalf of the them, and arising out of or concerning the work or event that is occurring on the CITY's property. In reviewing, approving or rejecting any submissions or acts of the APPLICANT, CITY in no way assumes or shares responsibility or liability for the acts or omissions of the APPLICANT, its contractor/subcontractor or any of their agents, representatives, employees, or assigns, or anyone acting through or on behalf of them.

E. The APPLICANT has the duty to provide a defense with an attorney or law firm approved by the City, which approval will not be unreasonably withheld.

4. Ordinances and Regulations: APPLICANT shall comply with all applicable laws, statutes, ordinances, regulations and requirements, as may be amended by the city from time to time. APPLICANT shall not admit to the premises a larger number of persons than the total number designated by the appropriate City Department.

5. Responsibility for Damage: If the Premises, or any portion of the Premises, or any structure, equipment, fixture, or other item on, in, under or attached to the Premises shall be destroyed, damaged, marred, altered, or physically changed in any manner whatsoever, then APPLICANT shall be responsible for restoring the property to its original condition, ordinary wear and tear excepted.

6. Insurance: As a condition precedent to being permitted to use the Premises, APPLICANT shall, at its own expenses, comply with all of the City's insurance requirements as set forth in the attached **Exhibit 2**. Alternative coverage is subject to prior approval of the City Attorney. Additional insurance coverage, as determined the City Attorney, may be required for this Agreement or for any activities permitted on the Premises.

EXHIBIT 2

Insurance and Indemnification for Outdoor Seating and Dining

Insurance Requirements

Without limiting its liability, the restaurant (hereinafter referred to as "FIRM" with regard to Insurance and Indemnification requirements) shall be required to procure and maintain at its own expense during the life of the permit for outdoor seating and dining, insurance of the types and in the minimum amounts stated below as will protect the FIRM and the City, from claims which may arise out of or result from the FIRM's operations, whether such claim is against the City, the FIRM or any sub-contractor, or directly or indirectly against anyone employed by any of them or by anyone for whose acts any of them may be liable.

The FIRM shall purchase insurance from and shall maintain the insurance with a company or companies lawfully authorized to sell insurance in the State of Florida, as will protect the City and the FIRM, at a minimum, from all claims as set forth below which may arise out of or result from the FIRM's operations and for which the City and/or the FIRM may be legally liable, whether such operations be by the FIRM or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the FIRM's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the FIRM's employees; (d) claims for damages normally covered by personal injury liability insurance; (e) claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (g) claims involving contractual liability insurance applicable to the FIRM's obligations under an agreement with the City.

Firm's Insurance Generally. The FIRM shall provide and maintain in full force and effect until all the FIRM's operations have ended and the FIRM has vacated the premise (or for such duration as is otherwise specified hereinafter), the insurance coverage as set forth below:

Workers' Compensation insurance at the statutory amount as to all employees in compliance with the "Workers' Compensation Law" of the State of Florida including Chapter 440, Florida Statutes, as presently written or hereafter amended, and all applicable federal laws. In addition, the policy (ies) must include: Employers' Liability at the statutory coverage amount. The FIRM shall further insure that all of its Subcontractors maintain appropriate levels of Worker's Compensation Insurance.

Commercial Comprehensive General Liability insurance with broad form endorsement, as well as contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate, including:

- Personal Injury: \$1,000,000;
- Medical Insurance: \$5,000 per person;
- Property Damage: \$500,000 each occurrence;

Liquor Liability insurance shall be required if liquor is being served and it shall include coverage for contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate. The City must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement to cover liability applicable to outdoor seating/dining and or sidewalk cafés as described in this ordinance. The coverage shall include the following:

- Personal Injury: \$1,000,000;
- Medical Insurance: \$5,000 per person;
- Property Damage: \$500,000 each occurrence;

Subcontracts: The FIRM agrees that if any part of its operations are sublet, the subcontract shall contain the same insurance provision as required by the FIRM, and substituting the word Subcontractor for the word FIRM and substituting the word FIRM for CITY where applicable.

Miscellaneous:

If any notice of cancellation of insurance or change in coverage is issued by the insurance company or should any insurance have an expiration date that will occur during the period of this contract, the FIRM shall be responsible for securing other acceptable insurance prior to such cancellation, change, or expiration so as to provide continuous coverage as specified in this section and so as to maintain coverage during its operations.

All deductibles must be declared by the FIRM and must be approved by the CITY. At the option of the CITY, either the FIRM shall eliminate or reduce such deductible or the FIRM shall procure a Bond, in a form satisfactory to the CITY covering the same.

The CITY reserves the right at any time to request a "certified copy" of the Policy for review including the declaration page and all applicable endorsements and provide the name, address and telephone number of the insurance agent or broker through whom the policy was obtained. All policies shall contain a contractual liability provision covering the Contractors duty to indemnify the City as provided in any agreement with the City.

Before starting its operations, the FIRM shall deliver to the CITY a certificate of such insurance, acceptable to the CITY and the City shall be named as an additional insured on this policy and an endorsement must be issued as part of the policy reflecting compliance with this requirement to cover liability applicable to outdoor seating/dining and or sidewalk cafés as described in this ordinance.

All policies must be issued by companies authorized to do business in Florida and rated A- VIII or better per Best's Key Rating Guide, latest edition. The City Manager may increase these insurance requirements provided such requirements are applied to all parties similarly situated.

Proof of insurance shall be provided to the City as a requirement of the permit. If such proof is a nonbinding certificate, the applicant/permittee's insurance agent or carrier shall annually advise the City in writing, on a form acceptable to the City Manager under penalty of perjury, of the insurance coverage being provided, the term of the coverage and verifying that the outdoor seating/dining area and the City are covered by the required insurance. Such affidavit/declaration shall include the policy number, company name and company contact information and the form numbers of the policy and all of the endorsements to the policy. City administrative staff shall contact the permittee's insurance company ~~monthly~~ periodically to verify the existence and continuance of such insurance; however, this in no way relieves the insurance agent of the agent's duty to provide truthful information to the City. Unless the owner or operator of the outdoor seating/dining area provides the City with a binding certificate of insurance and an endorsement to provide the City with at least 10 days advanced notice of intent to cancel the policy, the owner or operator shall pay the City a fee of \$25.00 each time the City contacts the insurance company, to cover the cost to verify existence of coverage. Failure to comply with these requirements shall be deemed to be operating without a valid permit and, upon a finding by the City Manager that such failure has occurred, shall cause an immediate suspension of the permit and the assessment of a daily fine as set forth in the City's Schedule of Fees and Fines until the permit is revoked or the requirements are met. Applications for permits shall include an indemnification of the City for any and all liability associated with the permittee's operation of the sidewalk café/outdoor seating and dining area.

All insurance policies must remain in full force and effect for the duration of the period of operations.

Indemnification Requirement

A. The FIRM accepts and voluntarily incurs all risks of any injuries, damages, or harm which might arise during the work or event that is occurring on the CITY's property due to the negligence or other fault of the FIRM or anyone acting through or on behalf of the FIRM.

B. The FIRM shall indemnify, defend, save and hold CITY, its officers, affiliates, employees, successors and assigns, harmless from any and all damages, claims, liability, losses, claims, demands, suits, fines, judgments or cost and expenses, including reasonable attorney's fees, paralegal fees and investigative costs incidental there to and incurred prior to, during or following any litigation, mediation, arbitration and at all appellate levels, which may be suffered by, or accrued against, charged to or recoverable from the City of South Miami, its officers, affiliates, employees, successors and assigns, by reason of any causes of actions or claim of any kind or nature, including claims for injury to, or death of any person or persons and for the loss or damage to any property arising out of a negligent error, omission, misconduct, or any gross negligence, intentional act or harmful conduct of the FIRM, its contractor/subcontractor or any of their officers, directors, agents, representatives, employees, or assigns, or anyone acting through or on behalf of any of them, arising out of this Agreement, incident to it, or resulting from the performance or non-performance of the FIRM's obligations under this AGREEMENT.

C. The FIRM shall pay all claims, losses and expenses of any kind or nature whatsoever, in connection therewith, including the expense or loss of the CITY and/or its affected officers, affiliates, employees, successors and assigns, including their attorney's fees, in the defense of any action in law or equity brought against them and arising from the negligent error, omission, or act of the FIRM, its Sub-Contractor or any of their agents, representatives, employees, or assigns, and/or arising out of, or incident to, this Agreement, or incident to or resulting from the performance or non-performance of the FIRM's obligations under this AGREEMENT.

D. The FIRM agrees and recognizes that neither the CITY nor its officers, affiliates, employees, successors and assigns shall be held liable or responsible for any claims, including the costs and expenses of defending such claims which may result from or arise out of actions or omissions of the FIRM, its contractor/subcontractor or any of their agents, representatives, employees, or assigns, or anyone acting through or on behalf of the them, and arising out of or concerning the work or event that is occurring on the CITY's property. In reviewing, approving or rejecting any submissions or acts of the FIRM, CITY in no way assumes or shares responsibility or liability for the acts or omissions of the FIRM, its contractor/subcontractor or any of their agents, representatives, employees, or assigns, or anyone acting through or on behalf of them.

E. The FIRM has the duty to provide a defense with an attorney or law firm approved by the City of South Miami, which approval will not be unreasonably withheld.

The undersigned hereby acknowledges receipt of these insurance and indemnification requirements and that the individual or entity who is applying for an outdoor seating permit has agreed to comply with these requirements.

By: _____
Name: _____
Title: _____
(Print the name and title of person signing this acknowledgement)

Exhibit 3



CITY OF SOUTH MIAMI
Department of Planning & Zoning
6130 Sunset Drive, South Miami, Florida 33143
Phone: (305) 663-6326 Fax: (305) 668-7356

AMPLIFIED SOUND AGREEMENT

*Pursuant to the Land Development Code, restaurants who wish to provide outdoor seating/dining uses to their customers must apply for and receive specific approval to provide amplified sound of any kind in the outdoor seating area. In the event the City Manager determines that the amplified sound constitutes a public nuisance, the City manager shall impose additional conditions; in the event of a second offense shall revoke the approval authorizing the use of amplified sound. Sound must be kept at a low volume so as to not disturb neighboring businesses, residences, or to be audible in neighboring residential districts. Plans for amplified sound must be submitted with the site plan. Each establishment must sign an agreement to have amplified music. **Nothing contained herein shall be construed to contradict or modify the provision set forth in the outdoor seating ordinance and the provision of the Land Development Code shall take precedence if there is any conflict.***

I _____, a representative of _____ agree to the conditions of the *amplified sound provision* in the Land Development Code, currently at Section 20-3.3(E) (12), as generally set forth above.

Name of Restaurant

Address of Restaurant

Restaurant Representative's Signature

Date

RECOMMENDATION OF DEPARTMENT HEAD

APPROVED APPROVED AS REVISED/WITH CONDITIONS DISAPPROVED

Planning and Zoning Director's Signature

Date

APPROVED APPROVED AS REVISED/WITH CONDITIONS DISAPPROVED

Code Enforcement Director's Signature

Date

APPROVED APPROVED AS REVISED/WITH CONDITIONS DISAPPROVED

City Manager's Signature

Date

EXHIBIT 4
DESCRIPTION OF PREMISES
AND SITE PLAN

Sample Site Plan

EXHIBIT 4

DESCRIPTION OF PREMISES

AND SITE PLAN

