

OUTDOOR DINING and
ENCROACHMENT PERMIT
(SMC Chapter 5.77)

1. PARTIES AND PREMISES:

Permitter: City of Sparks
431 Prater Way
Sparks, Nevada 89432
Phone: (775) 353-4080

Permittee: Mummer's, LLC
Justin Mumm
906 Victorian Avenue
Sparks, Nevada 89431
Phone: (775) 224-0559

Encroachment area:

An area extending 15 feet onto the sidewalk area directly in front of the western 20 feet of the southern frontage of 906 Victorian Avenue, Sparks, Nevada (approximately 300 Square Feet).

2. RECITALS

Permittee operates a restaurant as defined by 5.77.020 immediately adjacent to the Premises and desires to obtain a revocable Outdoor Dining Permit from the Sparks City Council and an Encroachment Permit from the City Engineer under Sparks Municipal Code Chapter 5.77 (Sidewalk Cafes") to operate a sidewalk café on the Premises.

Under SMC 5.77.100, the City Council for the City of Sparks desires to issue a revocable Outdoor Dining Permit, and the City Engineer desires to issue a revocable Encroachment Permit to allow the sidewalk café to encroach on the public right of way, subject to certain terms and conditions.

3. TERM

Rent: Yearly rent of TWO HUNDRED AND SIXTY-SEVEN DOLLARS (\$267.00) payable no later than June 30, 2015 to the Finance Department, Revenue Division, 431 Prater Way, Sparks, Nevada 89431. Rent does not

include and Permittee is responsible for payment of all utilities, maintenance, repairs, taxes (if any) and insurance on the Premises.

Commencement Date: **July 1, 2015.**

Subject to the approval of the Sparks City Council and the City Engineer the Outdoor Dining Permit and the Encroachment Permit commence on July 1, 2015, and terminate at close of business on the Expiration Date stated below. If Permittee fails to pay the yearly rent amount in full and provide proof of required insurance on or before Commencement Date the Outdoor Dining Permit and the Encroachment Permit shall not be issued.

Termination Date: **June 30, 2016**

Renewal: The parties agree to meet each April to review the terms and conditions of this permit, and if an agreement is reached, and if the Permittee is in compliance with terms and conditions this permit, a renewal Permit may be issued upon payment of the rent, proof of insurance, and approval by the City Engineer (Encroachment Permit) and the City Council (Outdoor Dining Permit.)

City Notice Address: 431 Prater Way
 Sparks, Nevada 89431
 ATTN: City Engineer

Permittee Notice Address: 906 Victorian Ave.
 Sparks, Nevada
 ATTN: Justin Mumm

Liability Insurance: \$1,000,000 combined single limit per occurrence.

Policy minimum: See Section 6.02.

4. **OUTDOOR DINING PERMIT**

4.01 Grant. The City Council hereby grants to Permittee a revocable Outdoor Dining Permit commencing on the date stated above and continuing annually until the Termination Date.

4.02 Conditions for Permit. Permittee agrees to the following conditions for this revocable Outdoor Dining Permit:

.01 Compliance with law. Permittee shall comply at all times with the provisions of SMC Chapter 5.77 (a copy of which is attached as Exhibit A) and with all other applicable ordinances, statues, regulations, and laws of the City of Sparks, County of Washoe, State of Nevada and the United States.

.02 Limitations on use of Premises. Permittee shall use the Premises only for the purpose of on-premises consumption of food and beverage as outlined in SMC Chapter 5.77 and for no other purposes.

.03 Aesthetics; prior approvals. The Premises lies in a redevelopment area for the City. Pursuant to SMC 5.77.100, before opening the sidewalk café, Permittee shall obtain the approval of the City Engineer for the design of the permitted area.

.04 Hours of operation; coordination with Special Events. As provided in SMC 5.77.080, the hours of operation of the outdoor dining area shall be limited to 7:00 a.m. to 11:00 p.m. However, the City Manager or his designated representative may direct the shortening or elimination of hours of operation on certain days based on conflict with a Special Event held in the Victorian Square area as defined in SMC 9.34 and 9.35 or to protect the public health, safety or welfare. Notice of any required reduction in the daily hours will be given as far in advance as is practical under the circumstances to minimize the disruption to the business and its employees.

.05 Music, noise. Outdoor music will be permitted so long as the sound is not disturbing outside the subject premises.

.06 Cleanliness of Premises. Permittee shall maintain the Premises and the immediately surrounding plaza in a clean, safe and attractive condition. Permittee shall repair or replace any damage to paved surfaces and City owned property at Permittee's sole cost and expense. The outdoor tables and Premises must be kept neat and clean. Permittee shall dispose of all trash and garbage in its

own garbage receptacle, not those belonging to the City. Permittee shall empty any City-owned garbage receptacle which is within the Premises.

.07 Nondiscrimination; accessibility. Permittee shall not refuse or provide less service to or otherwise discriminate against any person because of race, religious creed, color, age, sex, disability, national origin or ancestry, or familial status. The outdoor dining area must be accessible to the physically disabled in compliance with all standards under the Americans with Disability Act and related legislation and implementing regulations, and Permittee must comply with NRS 651.050 through 651.120 regarding equal accommodation to the Premises.

.08 Encroachment Permit. If the Premises are located on a public right of way, public easement, or public land, Permittee shall obtain and at all times have in effect an Encroachment Permit.

.09 Abandonment. Should Permittee vacate or abandon the Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a default hereunder and this permit shall terminate with no further action by the City.

4.03 Revocation. This permit is revocable by the City Council following notice and hearing as provided in SMC 5.77.110.

5. ENCROACHMENT PERMIT

5.01 Grant. Subject to all terms and conditions stated herein, the City Engineer hereby grants to Permittee a revocable non-exclusive license to encroach upon any public right of way, public easement, or public property owned or controlled by the City within the boundaries of and for the use of the Premises in accordance with the Outdoor Dining Permit. Violation of the following terms and conditions may be grounds for termination of the Encroachment Permit by the City Engineer.

5.02. Property Damage. Permittee agrees to pay to City the cost to the City, to repair any damages to the Premises caused by the Permittee or patrons of Permittee (other than normal wear and tear) and to pay the reasonable costs of cleaning the Premises if Permittee fails to do so after notice from the City of the repairs or cleaning being necessary.

5.03 Conditions of Permit.

.01 Outdoor Dining Permit. Permittee must first have obtained and at all times be in compliance with all of the conditions of an Outdoor Dining

Permit. A breach of any condition of an Outdoor Dining Permit shall be a breach of this Permit.

.02 Payment of Rent. Permittee shall not be owing any delinquent amounts of money (ie. rent, business license, fire inspection) to the City of Sparks for any purpose and must maintain the necessary insurance. If Permittee is delinquent in any payments or if insurance is determined to void during the term of the Permits, the Permits may be deemed terminated by the City with no further action by the City.

.03 Alterations and Improvements. Permittee shall not, without City's prior consent, make any alterations, improvements or utility installation in, on or about the Premises. Permittee agrees to remove any such alterations, improvements or utility installation during any seasonal closure and upon the termination of this Agreement. All alterations, additions, improvements and utility installations which are not removed by Permittee within 30 days following termination of this permit become property of the City.

.04 Cleanliness and Condition of Premises. Permittee shall maintain the Premises and the immediately surrounding plaza in a clean, safe and attractive condition. Permittee shall repair or replace any damage to paved surfaces and street furniture. The outdoor tables and Premises must be kept neat and clean. Permittee shall dispose of all trash and garbage in its own garbage receptacle, not those belonging to the City. Permittee shall empty any City-owned garbage receptacle which is within the Premises. A walk-through will be undertaken by Permittee and the City Engineer or designated representative on the day prior to the first day of operation and on a day immediately after the seasonal or permanent cessation of business. Any damage or defacement must be replaced at Permittee's expense. Permittee is solely responsible for the clean-up of all trash which it generates.

6. GENERAL TERMS AND CONDITIONS APPLICABLE TO PERMITTEE

6.01 Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, hold harmless and defend the indemnified parties from and against all liability caused in whole or in part by an act or omission of Permittee or a related party arising out of the use of the Premises, regardless of whether or not the liability is also caused in part by the indemnified party. "Indemnified party" includes City, the Redevelopment Agency for the City of Sparks and their officers, employees, agents and contractors, successors and assigns. "Liability" includes all claims, actions, damages, losses, judgments, injuries, costs and expenses, including but not limited to attorney's fees and costs, including those related to bodily injury, sickness, disease or death or to injury to destruction of

tangible property. “Arising out of the use of” includes construction, maintenance and use of any improvements and landscaping now existing or hereafter constructed on the Premises. The terms “act or omission” includes any act, negligence, or omission. The terms “of Permittee or a related party” includes Permittee and all officers, employees, agents, contractors and subcontractors, successors and assigns of Permittee as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

6.02 General Liability Insurance. Permittee shall at all times during the term of this permit maintain general liability insurance which would cover the premises liability and general liability arising out of the use of the Premises by the general public or business invitees of the Permittee in the form and amount satisfactory to the Risk Manager of the City. Proof of insurance must be provided to the City Clerk at the above address. The policy limit shall be no less than the amount stated above for bodily injury, personal injury and property damage. Any deductibles or self-insured retentions must be declared to and approved by the City Risk Management Division. City reserves the right to request additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retention and prior to executing. Any changes to the deductibles or self-insured retentions made during the term of this Permit must be approved by the City Risk Management Division. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to the Premises. Coverage shall be at least as broad as ISO (Insurance Services Office) Commercial General Liability “occurrence” form CG0001 01/96 or ISO Comprehensive General Liability form GL 0002 Ed 01/73 with the Broad Form Comprehensive General Liability Endorsement. City shall be named via endorsement as an additional insured under the policy, and the insurance coverage shall be endorsed to state the coverage shall not be suspended, voided, cancelled or non-renewed by either party, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to City except for nonpayment of premium.

6.03 Proof of Workman’s Compensation Insurance. Permittee must provide a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210. 30 days prior to yearly renewal, Permittee will provide proof of Workmen’s Compensation as outlined herein prior to renewal of the outdoor Encroachment Permit.

6.04 Abandonment. Permittee agrees not to vacate or abandon the Premises at any time during the term of the permit except for seasonal closure described above. Should Permittee vacate or abandon the Premises or be dispossessed by

process of law or otherwise, such abandonment, vacation or dispossession shall be a default hereunder.

6.05 Breach, notice and right to cure; repayment and interest on funds expended by City. In the event that Permittee breaches any condition for this Encroachment Permit, or the Outdoor Dining Permit, City shall provide notice thereof before exercising any remedies, and shall give the Permittee ten calendar days from the date of notice to cure the breach. If the breach is other than the nonpayment of rent and cannot reasonably be cured within ten days, City shall give such additional time needed, provided however, that Permittee shall diligently pursue its obligations to cure. Upon expiration of the cure period, if the breach is not cured to the satisfaction of the City, in addition to all remedies provided in law and equity, City may terminate this Encroachment Permit or the Outdoor Dining Permit and may immediately enter the Premises and remove all furniture, fixtures and equipment thereon. Additionally, City may apply to the City Council for revocation of the Outdoor Dining Permit. All remedies are cumulative to each other and any other remedies afforded by law and equity.

6.06 Removal of property upon termination. Upon termination of this Encroachment Permit or the Outdoor Dining Permit, Permittee agrees to immediately cease all outdoor dining on the Premises and to remove all property from the Premises and to restore the Premises to its original condition, ordinary wear and tear excepted. Any property not removed within thirty days after termination of this Encroachment Permit or the Outdoor Dining Permit becomes property of the City.

7. GENERAL TERMS APPLICABLE TO BOTH PERMITS.

7.01 Seasonal Closure. The parties contemplate that outdoor dining may not be practical during the winter or other seasons. Permittee may close the outdoor dining facility. Permittee must maintain the area in a clean and responsible manner. Encroachment Permit

7.02 Non-transferrable, non-alienable. Except to successor owners of Permittee's restaurant, (i) no right hereunder may be assigned, divided, transferred, encumbered or granted by Permittee and (ii) Permittee may not sublet, grant a sub-easement or any license or permit any use of the Premises for anything other than to its contractors for the purpose of construction, operation and maintenance of improvements.

7.03 No third Party beneficiary rights. These permits are not intended to nor shall they be construed as creating any rights in any parties except for Permittee and City and their respective officers, employees, agents and contractors.

7.04 Governing Law; choice of jurisdiction. The ordinances of the City of Sparks and Washoe County and the laws of Nevada shall govern this Permit, without regard to conflicts of laws principles. Any action brought to enforce this agreement shall be brought in the Second Judicial District Court for the State of Nevada in and for Washoe County.

7.05 Notices. All notices, demands and correspondence required or provided for under this permit shall be in writing and delivered in person or by courier or mailed, postage prepaid, to the addresses indicated above or any subsequent address provided in writing to the sending party. When delivered in person or by courier, notice will be deemed given when actually delivered to a person at the addresses indicated above, and when mailed, three business days after depositing in the U.S. Mail system.

7.06 Attorney's fees and costs. If any party hereto institutes any action of proceeding (including arbitration, if authorized, or litigation) against the other or others arising out of or relating to this Permit, each party shall pay its own attorney's fees regardless of who prevails. Costs may be allocated between the parties under Nevada law or the rules of such proceedings, but if the law or rules do not provide for allocation of costs, then each party will bear its own costs of the proceeding.

7.07 Modifications. The Outdoor Dining Permit may be modified only with the approval of the Sparks City Council. The Encroachment Permit may be modified by a written agreement between Permittee and the City Engineer of the City of Sparks.

5.08 No waiver. The failure of either party to this permit insist on the performance of any of the terms and conditions of this agreement shall not constitute a waiver unless expressed in writing, and any written waiver shall be limited only to the waiver expressed therein and shall not be construed as or create an implication or expectation that any future waivers will be given.

5.09 Enforcement; Partial Invalidity. This permit shall be enforced only to the extent permitted by law. If any provision herein is deemed invalid or unenforceable, it shall be deemed modified to the extent to bring it within the limits of validity, but if it cannot be so modified, then the offending provision shall be stricken from this permit. In either event, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement or modification of the invalid provision.

EXECUTED on the dates indicated below.

CITY
City of Sparks,
a municipal corporation

OUTDOOR DINING PERMIT

By: _____
Geno Martini, Mayor

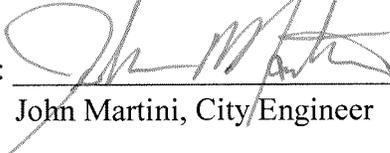
Date: _____

Attest:

By: _____
Teresa Gardner, City Clerk

Date: _____

ENCROACHMENT PERMIT

By:  _____
John Martini, City Engineer

Date: 6-10-15

PERMITTEE

MUMMER'S, LLC

By:  _____
Justin Mumm, Owner

Date: 06/10/15

By:  _____
Owner

Date: 06/10/15

APPROVED AS TO FORM

By _____
Shirle T. Eiting
Chief Assistant City Attorney

Date: _____