

21.9 Patio Area

- (a) So long as there is continuing compliance with the conditions and subject to the terms and conditions herein, landlord, only insofar as landlord has the right to do so, will permit tenant to place outdoor seating in an area located directly in front of the premises containing approximately two hundred and seventy (270) square feet, as substantially shown on schedule "A" attached hereto (the "Patio Area 1") and six hundred (600) square feet on the east side (the "Patio Area 2"). Prior to opening the Patio Areas for business to the public, tenant shall obtain, and shall thereafter at all times maintain, all at its sole cost and expense, all required regulatory and governmental approvals and permits, in addition to all other permissions as may be applicable from time to time, for the use and occupation of the Patio Areas (with proof of all the foregoing, to landlord's sole and unfettered satisfaction, to be provided forthwith by tenant to landlord, upon demand).
- (b) The tenant agrees to design and furnish the Patio Area prior to the commencement date (subject to weather permitting conditions), all in conformance with applicable laws and landlord's approval. Prior to the commencement of tenant's work (furnishings) on the Patio Areas, tenant will obtain landlord's written approval of its plans and specifications for the Patio Areas (including furnishings). This shall include the possible future addition of an awning, providing a weather covering for patio 2. The cost for construction and maintenance of the Patio Area and fence shall be borne solely by the tenant, other than the landlord's work noted within. The appearance of the awning is important to the landlord. The landlord has to approve the awning using its own unfettered discretion.
- (c) The tenant shall be solely responsible for all costs and expenses in relation to the maintenance of the Patio Areas, including without limitation, (a) the maintenance of the Patio Areas and fence in a first class manner; and (b) utilities relating to, or used in connection with, the Patio Areas. Tenant agrees that, notwithstanding that the Patio Areas does not form a part of the premises, all of tenant's obligations under the lease applicable to the premises shall apply mutatis mutandis to tenant's use of the Patio Areas. However, tenant will pay \$500.00 plus GST per month to use the patio for years one to five (1-5) and \$600.00 per month for years six to ten (6-10).
- (d) With respect to the Patio Areas, tenant shall: (a) ensure the Patio Areas does not impede pedestrians from moving freely and easily to and from the premises and to and from other parts of the property; (b) at all times keep the Patio Areas: (i) in good repair, order and condition; (ii) in a neat, clean and tidy state; and

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(iii) clear of snow and ice; (c) not permit smoking on the Patio Areas; (d) ensure that no refuse, litter, garbage or loose or objectionable material accumulates on the Patio Areas or any other portion of the property; (e) refrain from installing any fixtures or making any improvements of a permanent nature in or on the Patio Areas without the prior written consent of the landlord, which consent not to be unreasonably withheld; observe and comply with the rules and regulations, as from time to time exist; and (g) at the expiration or sooner termination of the Lease, at its costs: (i) remove all of Tenant's outdoor seating located on the Patio Areas; and (ii) leave the Patio Areas in good repair, order and condition.

- (f) The tenant agrees to carry on its business activities in the Patio Areas in a lawful manner and with the utmost good taste and shall, at all times, conduct its business in the Patio Areas in a manner consistent with the best interests of the property, as a whole. Without limiting the generality of the foregoing sentence, tenant shall not use the Patio Areas, for uses which, in landlord's sole and unfettered opinion: (a) constitute, cause, contribute to, or result in a nuisance (including without limitation, litter, excessive noise, odor, steam, water, vibrations, or other undesirable effects); (b) result in waste upon or damage to the Patio Areas or any other portion of the property; or (c) create a fire hazard. If tenant is in default of any of the foregoing, landlord shall have the right to inform tenant or tenant's manager (either in writing or orally) of such default, and tenant shall forthwith take all such steps necessary to cure any such default, and thereafter shall cure such default to landlord's satisfaction, failing which landlord may terminate tenant's rights of use in respect to the Patio Areas.
- (g) The tenant will indemnify landlord and save it harmless from and against all loss, claims, actions, damages, costs, liability and expense in connection with loss of life, personal injury, damage to property (including any portion of the property and its equipment, machinery, services and improvements) or any other loss or injury whatsoever arising from or out of any occurrence in the Patio Areas, or tenant's use or occupancy of the Patio Area, or occasioned wholly or in part by any act or omission of tenant or by anyone permitted to be in the Patio Areas by tenant, and such indemnity shall survive the expiration or sooner termination of the lease.
- (h) The tenant will, at its expense, take out and maintain insurance in respect of the Patio Areas in accordance with the provisions of the lease, or as otherwise may be required by landlord, and without limiting the indemnities in the previous paragraph, and all provisions of the lease in respect of the premises shall apply mutatis mutandis to the Patio Areas.
- (i) The tenant's use of the Patio Areas under this section shall at all times be subject to such Patio Areas not constituting gross leasable area for the purposes of calculating site coverage for the total permitted gross leasable area in the property.