

LICENSE AGREEMENT

This License Agreement (the "Agreement") is made on this [REDACTED] day of [REDACTED], 20[REDACTED] between Sienna Plantation Community Association, Inc. ("Licensor"), a Texas Non-Profit Corporation doing business as Sienna Community Association, and _____ a _____ ("Licensee") and is as follows:

Recitals:

Licensor is the owner of the Sawmill Lake Pavilion within Sienna (the "Common Area"). Licensee desires to utilize a portion of the Common Area for its food truck sales;

The parties agree that the Common Area should be utilized by the Licensee under the terms and conditions contained herein; and

In consideration of the mutual covenants herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. License.

1.1 **Grant of License.** Subject to the terms, conditions and limitations contained in this Agreement, Licensor hereby grants Licensee the non-exclusive right to use the Common Area for the Permitted Use defined below, during the term of this Agreement, and any extensions thereof, as set forth herein. Specifically, Licensor authorizes Licensee to utilize the Common Area as follows:

1.2 **Permitted Use by Licensee.** Licensee will have the non-exclusive right to use the Common Area for food truck services on the dates and at the times listed on Exhibit A hereto. If necessary, Licensor and Licensee will negotiate changes to the proposed Licensee schedule of the food truck based on Common Area availability. Once finalized, the proposed schedule and food truck location will supplement and take the place of the prior Exhibit A.

1.3 Operation.

- a. Licensee shall not use the Common Area on any date or at any time not listed in Exhibit A hereto without the prior approval of Licensor's General Manager (the "General Manager").
- b. Licensor will identify a specific location within the Common Area for Licensee to park and operate Licensee's food truck. Such location is subject to change on a case-by-case basis.
- c. Licensee and its employees must maintain and leave the Common Area and facilities in a neat and orderly condition after each period of use. Licensee will be responsible for any damage or increased costs that result from misuse, failure to comply with Licensor's rules and policies, or vandalism by Licensee clients or staff during its periods of use of the Common Area. In addition, if Licensor is required to incur any costs to clean the Common Area or other facilities as a result of Licensee's failure to maintain and leave the Common Area and facilities in a neat and orderly condition after each period of use, Licensee will be responsible for payment of a fee of \$50 per incident and any other costs or expenses Licensor incurred, which will be due and payable within fifteen (15)

days of demand for payment by Licensor. Licensee is not responsible for other persons use or misuse of the Common Area and facilities.

- d. Licensee may not store equipment and supplies at the Common Area or facilities at any time other than the scheduled time set forth on Exhibit A. Licensor will have no liability for loss of or damage to Licensee's supplies and equipment used or stored at the Common Area. Licensee agrees to bear the sole risk of loss of these items, and to obtain any insurance that it may require protecting its interests.
- e. The General Manager is authorized to close the Common Area for any reason, including but not limited to maintenance, repairs, inclement weather, or other safety considerations. Licensee will comply with any Common Area closure implemented.

2. Termination.

2.2 Either party may terminate this Agreement, with or without cause, upon fifteen (15) days written notice to the other party. The termination date for a termination of this Agreement will be the fifteenth day after the date the termination notice is mailed by Licensor or Licensee.

3. **License Fee.** The License Fee is \$ per day, which must be paid in full prior to use of the Common Area on any such day. In the event Licensor closes the Common Area in accordance with Section 1.3(e) hereto, Licensee will not be required to pay the License Fee for the day on which the Common Area was closed.

4. Indemnification

4.1. Definitions.

- a. "Licensor Parties" means, collectively, Licensor, Sienna Plantation Community Association, Inc., Toll-GTIS Property Owner, LLC, The Johnson Development Corp., and any of their respective Related Parties.
- b. "Licensee Parties" means, collectively, the Licensee and its Related Parties.
- c. "Related Parties" means with respect to a person or entity, collectively, such person's or entity's current and former shareholders, partners, members, directors, committees, managers, officers, employees, agents, insurers, reinsurers, parent companies, subsidiaries, affiliates, predecessors, successors, and assigns.
- d. "Indemnified Parties" means, collectively, the Licensor Parties and its Related Parties.
- e. "Adverse Consequences" means any and all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, causes of action, demands, liens, attachments, similar legal process, injunctions, judgments, orders, decrees, rulings, damages, injuries (including personal or bodily injuries), deaths, losses (including losses to real or personal property and loss of use of real or personal property), penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, liens, expenses, and fees, including court costs and attorney's fees.

4.2. **Indemnification. LICENSEE SHALL INDEMNIFY, PROTECT, DEFEND (ON DEMAND), AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND**

AGAINST ANY AND ALL ADVERSE CONSEQUENCES ARISING OUT OF OR RELATING TO (OR ALLEGED TO ARISE OUT OF OR RELATE TO) ANY OF THE FOLLOWING: (A) THE INACCURACY, UNTRUTH, OR BREACH OF ANY REPRESENTATION OR WARRANTY MADE BY LICENSEE UNDER THIS AGREEMENT; (B) ANY BREACH OR NONPERFORMANCE OF, FAILURE TO COMPLY WITH, OR DEFAULT UNDER, ANY COVENANT, OBLIGATION, OR UNDERTAKING OF LICENSEE UNDER THIS AGREEMENT; (C) LICENSEE'S PRESENCE IN SIENNA, INCLUDING BUT NOT LIMITED TO THE COMMON AREA; OR (D) ANY ACTS OR OMISSIONS OF LICENSEE UNDER THIS AGREEMENT.

BY WAY OF EXAMPLE AND NOT OF LIMITATION, THE INDEMNITY OWED BY LICENSEE AS SET FORTH IN THIS SECTION 4 INCLUDES CLAIMS ARISING OUT OF OR RELATING TO (I) LICENSEE'S NEGLIGENCE; (II) BODILY OR PERSONAL INJURY OR DEATH, OR LOSS OF PROPERTY OR LOSS OF USE OF PROPERTY, ARISING OUT OF OR RELATING TO LICENSEE'S PRESENCE IN SIENNA, INCLUDING BUT NOT LIMITED TO THE COMMON AREA; AND (III) ANY CLAIMS FOR WAGES, COMPENSATION, OR BENEFITS ASSERTED BY ANY EMPLOYEE OF LICENSEE.

4.3. Causes or Reasons Immaterial. EXCEPT AS PROVIDED IN SECTION 4.4, THE INDEMNITY OWED BY LICENSEE AS SET FORTH IN SECTION 4.2 IS WITHOUT REGARD TO THE CAUSE(S) OR REASON(S) FOR THE ADVERSE CONSEQUENCES INDEMNIFIED AGAINST. LICENSEE SHALL INDEMNIFY THE INDEMNIFIED PARTIES AS REQUIRED HEREIN, EVEN IF THE ADVERSE CONSEQUENCES ARE CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING CONDITION OR LATENT OR PATENT DEFECT, OR BY THE SOLE, JOINT, COMPARATIVE, ACTIVE, PASSIVE, CONCURRENT OR CONTRIBUTORY NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF THE INDEMNIFIED PARTIES. EXCEPT AS PROVIDED IN SECTION 4.4, THE INDEMNITY OWED BY LICENSEE AS SET FORTH IN SECTION 4.2 IS SPECIFICALLY INTENDED TO INCLUDE ADVERSE CONSEQUENCES CAUSED, OR ALLEGED TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE INDEMNIFIED PARTIES' OWN NEGLIGENCE.

4.4. Limitations on Indemnification. Notwithstanding anything to the contrary in Sections 4.2 and 4.3 hereto, Licensee will not be required to indemnify, protect, defend, or hold harmless the Indemnified Parties from or against Adverse Consequences to the extent such Adverse Consequences are finally determined by a court of competent jurisdiction (after the full exhaustion of any appellate remedies) to be solely caused by:

(a) Licensee's obedience to the written instruction of an authorized representative of Licensor with respect to Licensee's use of the Common Area, if such instruction is given to Licensee after, and in contravention of, Licensee's written advice to Licensor to the effect that the action instructed would, in Licensee's opinion, be inadvisable and that Licensee recommends against taking such action instructed;

(b) A defect in or on the Common Area is Licensee has obtained knowledge of the defect, Licensee has advised Licensor in writing of the defect, and Licensor has not begun to take reasonable measures to remedy the defect within a reasonable time; or

(c) The gross negligence of Licensor.

4.5. **Survival.** The allocations of responsibility, indemnity obligations, and exclusions and limitations of damages set forth in this Agreement that apply to an incident or condition that occurs during the performance of this Agreement shall survive and not be affected by the expiration or termination of this Agreement.

5. **Insurance**

5.1. **Licensee's Insurance.** Licensee will procure, secure, and maintain valid and collectible insurance to cover and protect Licensee and Licensor against any and all claims for damage or loss of property or personal or bodily injury and/or death arising out of and/or directly or indirectly related to the activities performed by Licensee. All insurance coverage will be written through insurance companies authorized to do business in the State of Texas and shall for the duration of this Agreement.

5.2. For the purposes of this Section 5, "Indemnified Parties" will have the meaning ascribed to it in Section 4.1(d) above.

5.3. **General Liability Insurance**

5.3.1. **Generally.** Licensee will procure, secure, and maintain general liability insurance in accordance with this Agreement, covering liability imposed by law or assumed by written contract, including liability for loss; loss of use, damage, or destruction of the Licensor's property or Licensee's property; and personal or bodily injury, sickness, or death.

5.3.2. **Coverage Limits.** Licensee's general liability insurance must at all times have at least the following minimum limits of liability: (a) Per Occurrence or Accident: \$1,000,000; (b) General Aggregate: \$2,000,000 and be issued on the most recent reasonably available and unmodified Insurance Services Office "ISO") Form CG 00 01.

5.3.3. **Per Location Aggregate Extension.** Licensee's general liability insurance policy must at all times have an amendment or extension amending the general aggregate limit to apply separately to each location owned by or rented to the named insureds.

5.3.4. **Disallowed Limiting Endorsements.** At all times, Licensee's general liability insurance policy must not have any of the following limiting endorsements: (a) CG 21 39 – Contractual Liability Limitation; (b) CG 24 26 – Amendment of Insured Contract; (c) any Punitive, Exemplary or Multiple Damages exclusion or similar exclusion; or (d) any insured versus insured exclusion.

5.4. **Business Auto Liability Insurance.** Licensee will procure, secure, and maintain business auto liability insurance, covering liability covering bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use (1) of any auto, including owned, hired and non-owned autos, and (2) of any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws. Licensee's business auto liability insurance must at all times have at least the following minimum limits of liability: Per Accident or Occurrence: \$2,000,000.

5.5. **Additional Insured Status of Licensor.** Licensee will cause its general liability insurance policy and umbrella insurance policy to include coverage extensions naming the Indemnified Parties as additional insureds under such policies. The extension applicable to the general liability insurance policy must be written on the CG 20 10 10 01 and CG 20 37 10 01 forms without modification, or equivalents of such forms.

5.6. **Waiver of Subrogation.** Licensee will cause its general liability insurance policy, workers compensation insurance policy and umbrella insurance policy to include coverage extensions providing a waiver of subrogation in favor of the Indemnified Parties.

5.7. **Certificates of Insurance.** Prior to using the Common Area and facilities, Licensee will have its insurance provider provide the Licensor with certificate(s) of insurance evidencing the scheduled coverages, and compliance with the additional-insured and waiver-of-subrogation provisions above. **Notwithstanding any other language in this Agreement, Licensor is not obligated to allow Common Area access to Licensee until receipt of such certificate(s) of insurance.**

5.8. **No Waiver.** Any failure of any Indemnified Party to protest an omission in such certificates of insurance or policies from the insurances required under this Agreement will not be deemed a waiver by such Indemnified Party of any of the obligations of Licensee under this Agreement.

5.9. **Notices of Changes or Cancellation.** The insurance policies required by this Agreement must provide 30 days' prior written notice of changes or cancellation to the Licensor.

5.10. **Primary Status.** All insurance coverage required by this Agreement must be primary to any insurance available to the Indemnified Parties, and any insurance available to the Indemnified Parties will be excess secondary, and non-contributing, to the insurance required by this Agreement. Where necessary, Licensee will cause its policies to be endorsed to provide such primary liability.

5.11. **RESPONSIBILITY FOR DEDUCTIBLES AND INDEMNIFICATION.** LICENSEE WILL PAY FOR ALL DEDUCTIBLES ARISING OUT OF THE INSURANCE REQUIRED BY THIS AGREEMENT. IF LICENSEE FAILS TO PROCURE, SECURE, OR MAINTAIN THE INSURANCE COVERAGES REQUIRED BY THE AGREEMENT, LICENSEE WILL BE DEEMED TO BE SELF-INSURED TO THE ENTIRE EXTENT OF ANY DEVIATION FROM STATED COVERAGE AND AMOUNTS THEREOF, AND LICENSEE SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FOR ALL CLAIMS ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, WHICH WOULD OTHERWISE HAVE BEEN INSURED AGAINST HAD LICENSEE PROCURED, SECURED, AND MAINTAINED THE INSURANCE REQUIRED BY THIS AGREEMENT.

6. **Miscellaneous Provisions.**

6.1. **Entire Agreement.** This License constitutes the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this License or to any expressly mentioned exhibits not incorporated in writing in this License.

6.2. **Logo and Name Use.** Licensee shall not use Licensor's name or logo on any marketing materials or otherwise, without the prior written consent of Licensor, which consent may be given or withheld in Licensor's sole and absolute discretion.

6.3. **Notices.** All notices given under this Agreement must be given by hand delivery, by mail, or by email: (i) if to Licensor, to Sienna Plantation Community Association, Inc., Attn: Recreation Director, 9600 Scanlan Trace West, Missouri City, Texas 77459, recreation@clubsienna.com, and (ii) if to Licensee, at the address set forth on signature page hereto. If notice is given by hand personal delivery or email, it is deemed effective at the time of receipt. Notices sent by mail will be deemed to have been given three days after they are properly addressed with postage pre-paid and mailed U.S. Postal Service First Class or its equivalent.

6.4. **Drugs, Alcohol and Firearms.** Licensor prohibits the use, transportation and possession of firearms, weapons, explosives, drugs, controlled substances, drug paraphernalia and alcoholic beverages on its property. Licensee shall cause its staff to comply with this prohibition. Licensor may elect to carry out reasonable searches of individuals, their personal effects, and vehicles when entering, on, and leaving Licensor's premises. Searches may be initiated by Licensor without prior announcement. Individuals found in violation will be removed from Licensor's premises immediately. Submission to such a search is strictly voluntary; however, refusal may be cause for not allowing that individual on Licensor's premises.

6.5. **Compliance with Law.** Licensor shall at all times comply with all applicable federal, state, and local laws, which are now or may hereafter become applicable to the activities performed under this Agreement. Without limiting the foregoing, (i) Licensor shall obtain and maintain all licenses and permits necessary for the Program. (ii) Licensee shall not employ any person whose employment violates any federal, state, or local laws, (iii) Licensee shall not (and Licensee shall cause its Staff not to) violate any federal, state, or local environmental, health or safety law, statute, ordinance, rule, regulation, guideline, restriction, or requirement, including but not limited to those relating to industrial hygiene, soil and groundwater conditions (collectively, “*Environmental Laws*”); and (iv) Licensee shall not (and Licensee shall cause its Staff not to) use or dispose of Hazardous Materials on, under or about Licensor’s property in violation of Environmental Laws. “*Hazardous Materials*” includes (without limitation) any flammable, corrosive or ignitable materials, any explosives, petroleum or petroleum by-products, any asbestos-containing material, any radioactive materials, wastes or substances, or any toxic substance, and other substances defined as “hazardous substances,” “hazardous wastes,” “extremely hazardous wastes,” “hazardous materials,” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; and/or in the regulations, compliance, and guidance documents promulgated pursuant to such laws and any similar state or local laws. Licensee represents and warrants that the use of any and all tools, equipment, and materials it uses in the Programs does not infringe on any license, copyright, trademark, or patent issued or applied for.

6.6. **Amendment of License.** This License may be amended only by an instrument in writing signed by Licensor and Licensee.

6.7. **Notices.** Any notice required or permitted under this License must be in writing. Any notice required by this License will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this License. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

6.8. **No Third Party Beneficiary.** This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

6.9. **Relationship of the Parties.** Licensor and Licensee acknowledge and agree that the relationship between them is solely that of Licensor and Licensee, and nothing herein shall be construed to constitute the parties as employer/employee, partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its agents, or representatives, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

6.10. **No Waiver of Immunity.** No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained there.

6.11. **Choice of Law and Venue.** This Agreement shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. This Agreement is deemed performable entirely in Travis County, Texas. Any litigation to enforce or interpret any terms of the Agreement or any other litigation arising out of or as a result of the Agreement shall be brought in the State courts of Fort Bend County, Texas.

6.12. **No Assignment.** The District shall not assign all or any portion of this Agreement without the prior written consent of Licensor. Any attempted assignment without Licensor prior written consent shall be voidable.

6.13. **Common Area Use.** Licensor has the right to book the Common Area to any other person or party at any time.

6.14. **Authority of Executing Parties.** Each of the persons executing this Agreement represents and warrants that he or she has the full right and authority to execute this instrument on behalf of Licensor or Licensee, respectively, and to legally bind such party to the fulfillment of all of the provisions hereof. Licensee expressly warrants and represents that no promise, inducement, pledge, or agreement which is not expressed in this Agreement has been made to Licensee in executing this Agreement, and that Licensee is not relying upon any statement or representation, oral or written, of Licensor, or any agent of Licensor (including Licensor's attorneys and insurers), in entering into this Agreement and that Licensee hereby waives any fraudulent-inducement claims and/or claims of reliance.

This Agreement may be executed in multiple original counterparts, each of which shall be deemed to be an original document for all purposes, as of the last date subscribed to the parties' signatures below.

EXECUTED in multiple original counterparts, each of which shall be deemed to be an original document for all purposes, as of the date first written above.

LICENSOR:

SIENNA PLANTATION RESIDENTIAL
ASSOCIATION, INC.,
a Texas non-profit corporation

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

_____,
a _____

By: _____

Name: _____

Title: _____

Date: _____

Physical Address for Notices:

Email Address for Notices:

**LICENSE AGREEMENT
EXHIBIT A**

Subject to Licensor's right to close the Common Area in accordance with the terms of the Agreement, Licensee will have access to the Common Area for the purposes set forth in the Agreement on the following dates and times. Licensor will identify a specific location on the Common Area for Licensee to park and set up on or before each day.

Date	Time