

11-852

AGREEMENT CONCERNING OUTDOOR DINING PERMIT

(436 -- MAIN Street)

THIS AGREEMENT is made this 16 day of December, 2011, between the CITY OF PLEASANTON, a municipal corporation of the State of California ("City"), and Mortez Co. / Chiantis Ristorante ("Permittee").

RECITALS

- A. Permittee is the owner and operator of a restaurant commonly known as CHIANTIS RESTORANTE, located at 436 Main Street, Pleasanton, California.
- B. Permittee has obtained an outdoor dining permit from City (Case No. PDIN-___), which is attached and incorporated as Exhibit "A," and City is willing to permit Permittee to use public property located adjacent to Permittee's restaurant ("Property") for outdoor dining purposes, subject to the terms below.

NOW, THEREFORE, the parties agree as follows:

1. Permission to use City Property. City permits Permittee to use the Property exclusively for providing an outdoor seating area consistent with Permittee's restaurant use and all other conditions of Planning Department Case No. PDIN-___. Permittee shall comply with Section 13.04.435 of the Pleasanton Municipal Code, as it may be amended, which is attached and incorporated as Exhibit B.
2. Alcoholic Beverages. *[one box to be checked]*
 - ☐ Permittee shall not serve or permit the consumption of alcoholic beverages on the Property.
 - ☒ Permittee may serve or permit the consumption of alcoholic beverages on the Property if the appropriate permit is obtained from the Department of Alcoholic Beverage Control.
3. Term. This Agreement shall begin on 12/16/2011 and shall terminate as provided in this Agreement.
4. Repairs, Maintenance and Alternations. The Property is in an "as is" condition and Permittee shall assume all risk of any deficiencies that may exist. Permittee shall keep the Property, including the sidewalks and any tree wells or grates located within the sidewalks, in a clean and safe and good condition for customers, pedestrians, and passersby at Permittee's own expense. No substantial repairs, improvements or alterations of the Property shall be made without prior written consent of the City. Permittee shall not commit any waste upon the Property, or commit or permit any nuisance or act on the Property that may disturb the quiet enjoyment of any public use of the adjacent sidewalk or other public uses.
5. Compliance with Laws. Permittee shall comply with all laws, statutes, regulations, ordinances and requirements now in force, or which may come into force, pertaining to the Property.

6. Liability. Permittee shall indemnify, hold harmless and defend City, its officers, employees and agents against any and all claims for liability, for any injury to or death of any person, or damage to any property whatsoever caused by, created by or in any way connected with this Agreement or Permittee's use or maintenance of the Property.

7. Insurance. Permittee shall obtain and maintain for the duration of this Agreement commercial general liability insurance with at least \$1,000,000 combined limit for bodily injury and property damage. Permittee shall provide a Certificate of Insurance and an additional insured endorsement naming the City, its officers, employees and agents, in a form satisfactory to the City Attorney. The policy shall provide for at least ten (10) days' written notice to City prior to cancellation. Permittee shall also obtain Workers' Compensation Insurance as required by law.

8. Termination. Either party may terminate this Agreement at any time for any reason by providing written notice to the other party. The Liability requirements in section 6 shall survive termination of this Agreement. Upon Permittee sending or receiving such notice, Permittee shall immediately cease the use of the Property and shall immediately restore the Property to the condition it was in prior to commencement of this Agreement. Permittee shall repair or pay for all repairs necessary to restore the Property.

9. Attorneys' Fees. If a legal action is brought to enforce the terms of this Agreement or that arises out of Permittee's use of the Property, the prevailing party shall be entitled to all costs, including reasonable attorneys' fees.

10. Waiver. No failure of City to enforce any term of this Agreement shall be deemed to be a waiver.

11. Notices. Any notice that either party may or is required to give, shall be given by mail, postage prepaid, at the addresses shown below, or at such other places designated by the parties from time to time as follows:

Permittee:

City:

City Manager,
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566

THIS AGREEMENT is executed as of the date first written above.

City of Pleasanton:

Permittee:

By: _____

Nelson Fialho, City Manager

By: Mohammad Kabiry

Name of Corporate Entity:

ATTEST:

Karen Diaz
Karen Diaz, City Clerk

Mortez co. (chianti's)

Title: President

APPROVED AS TO FORM:

Jonathan Lowell
Jonathan Lowell, City Attorney