

## **LICENSE AGREEMENT**

This permission agreement (the "Agreement"), is between the City of Solvang, a chartered municipal corporation ("Licensor") and \_\_\_\_\_(Licensee").

### **RECITALS**

WHEREAS, Licensor is the sole and exclusive owner of the **SOLVANG CENTENNIAL** trademark (the "Property") as set forth in Exhibit A;

WHEREAS, Licensee desires to obtain from Licensor a non-exclusive license to use the Property in the manner set forth herein in connection with the marketing, promotion and advertising of the Licensee.

### **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises and undertakings contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties, each intending to be legally bound, hereby promise and mutually agree as follows:

1. License.

a. Licensor hereby grants to Licensee for the term of this Agreement the non-exclusive, limited, non-transferable right and limited license to use the Property solely as follows:

i. For use by the Licensee for its business purposes as follows: display, publish or otherwise use the Property on stationary, business cards, note cards, press releases, postcards, marketing materials, advertisements, welcome signs, media banners, publications and other similar written material and for use on electronic media uses such as Licensee's website, videos, CDs and DVDs for use solely in connection with the marketing, promotion and advertising of the Licensee, its programs (i.e.).

ii. For use by the Licensee for promotion of the City of Solvang and City's business community as follows: display, publish or otherwise use the Property on brochures published solely by and for use by the Licensee in connection with the marketing and promoting of the City and its business community. Licensee shall not provide the Property for use on brochures published by other entities not in conjunction with Licensee nor shall Licensee provide the Property to third parties for their own use on brochures or other written material published or displayed by those third parties.

b. Licensee represents and warrants that it will not harm or misuse the Property or bring the Property into disrepute.

c. This license shall pertain only to the use of the Property as described in Section 1a above and does not extend to any other trademark, product or service. Licensee shall not use the Property in any other manner or for any other purpose.

d. Licensee shall not modify or change the property without the prior written consent of City.

e. License shall not use any colorable imitation of the Property, or any variant for of the Property.

f. License shall not be entitled to sublicense any of its rights under this Agreement, including the sublicense of the Property to anyone else for any purpose, except as permitted pursuant to the terms of a written agreement between the Licensor and Licensee.

g. Upon termination of this Agreement, Licensee shall discontinue all use of the Property and shall not use it again in any manner whatsoever.

h. Licensee shall not file applications or seek registration with the PTO or anywhere in the world for or use of the Property (or any variant, colorable imitation, translation and/or simulation) in connection with any goods and/or services which are not the subject of a license agreement.

2. Term. This Agreement shall be in full force and effect commencing on the effective date of this Agreement and shall extend for a period of one year (initial term) unless extended or terminated as provided herein. Thirty (30) days prior to the end of the initial term licensee may request that this Agreement be renewed for a successive one-year period. The City Manager, in his sole discretion, shall have the authority to renew this Agreement in one-year increments for up to an additional four years if no revisions are made to the Agreement.

3. Fee. Licensee shall pay, concurrently with the execution of this Agreement, to Licensor, the sum of \$\_\_\_\_\_, as an initial fee for the rights granted herein. In addition, Licensee shall pay a royalty in an amount equal to \_\_\_ percent of the gross revenue received by Licensee for sales of products using the Logo as licensed herein. Licensee shall submit a report containing a true correct and complete statement of gross revenue to City on a quarterly basis, and shall make the royalty payment therewith. Licensee shall maintain books and records in such a manner as to clearly and accurately reflect such revenue. All such books and records shall be kept for a minimum of two years after termination of this License. Licensor shall be entitled, at Licensor's expense, to examine and or audit such records at any time upon reasonable notice.

4. Termination. Licensor shall have the right to terminate this Agreement within thirty (30) days with or without cause upon written notice. In addition, Licensor shall have the right to terminate this Agreement immediately effective upon the telefaxing of written notice to Licensee at the telefax number set forth below, without prejudice to any rights it may have, whether pursuant to the provisions of this Agreement, in law, in equity, or otherwise, upon the occurrence of any one or more of the following events:

a. Licensee fails to perform any of its material obligations provided for in this Agreement and fails to cure any such material breach within ten (10) days of its receipt of written notice regarding said breach from Licensor, provided, however, that once Licensor has provided Licensee with three (3) such notices, it may terminate this Agreement without providing such opportunity to cure; or

b. Licensee is unable to pay its debts when due, or makes any assignment for the benefit of creditors, or files any petition under the bankruptcy or insolvency laws of any jurisdiction, county or place, or has a receiver or trustee appointed for its business or property, or is adjudicated bankrupt or insolvent, or has substantially all of its assets seized or attached or is liquidated or dissolved.

5. Trademark Notice. Licensee warrants that it will provide a legally sufficient trademark notice in connection with each use of the Property authorized by this Agreement by causing the letters <sup>TM</sup> to be imprinted prominently, indelibly, and legibly, directly after the Property each time the Property is used as authorized in Section 1(a) above together with the following statement: "The **SOLVANG CENTENNIAL** is a trademark of the City of Solvang." Upon written notice of Federal registration of the Property by Licensor, the Licensee shall immediately begin to use the ® designation.

6. No Right to Assign. The license hereby granted is and shall be personal to the Licensee. Neither this Agreement nor any interests herein may be sublicensed, transferred, directly or indirectly, or assigned by Licensee, in whole or in part, by law or otherwise, without the prior written consent of Licensor and any attempt to sublicense, assign or otherwise transfer such rights shall be null and void.

7. Ownership Rights. Any and all rights in and to the Property which are not expressly granted to Licensee are hereby reserved by Licensor. Licensee acknowledges Licensor's exclusive rights in the Property and further acknowledges that the Property is famous, unique and original and that Licensor is the owner thereof. Licensee acknowledges the value, goodwill and rights of Licensor in the Property. Licensee agrees that the Property is, and shall remain, the property of Licensor and that Licensee obtains no right, title, or interest in or to the Property except for the limited rights set forth in this Agreement. Licensee waives all claim to ownership of any rights in the Property and agrees that it shall not at any time dispute or contest, directly or indirectly, Licensor's ownership of the Property, Licensor's exclusive right and title to the Property and right to use the Property, or the validity of the Property, nor shall Licensee assist others in doing so.

8. Indemnification. Licensee will indemnify, defend and hold harmless Licensor, and each of its officers, employees, elected and appointed officials, attorneys, agents, and representatives from and against any and all claims, losses, damages, causes of action, liabilities, costs and expenses (including, without limitation, reasonable legal expenses and attorneys' fees) resulting from, arising from or out of, or in any way related to the use of the Property as set forth

herein (including, but not limited to, any actions based on false or misleading advertising), Licensee's use of the Property in any manner not authorized by this Agreement, and/or any other acts or omissions of Licensee which are not expressly authorized by this Agreement.

9. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all previous negotiations and agreements, oral or written, with respect thereto. No representation, promise, inducement, statement or intention has been made by any parties hereto that is not embodied herein, and no party shall be bound or liable for any alleged representation, promise, inducement, or statement not set forth herein. There are no representations, warranties, promises, covenants or understandings other than those contained herein.

10. Survival. The provisions of Sections 5 and 6 of this Agreement shall survive any expiration or termination of this Agreement.

11. Modifications. This Agreement may be modified, amended, superseded, or cancelled only by a written instrument signed by both of the parties hereto, and any of the terms, covenants, representations, warranties or conditions hereto may be waived only by a written instrument executed by the party to be bound by any such waiver.

12. Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement, the out-of-pocket costs, expenses, and reasonable attorneys' fees of the prevailing party incurred in resolving, settling or litigating the dispute shall be paid by the other party in addition to any other relief or damages to which the prevailing party may be entitled.

13. Jurisdiction and Disputes. This Agreement shall be governed by the laws of the State of California. All disputes under this Agreement shall be resolved by the courts of the County of Santa Barbara, and the parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdiction or venue defenses otherwise available to them.

14. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

15. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given (i) if delivered personally or sent by facsimile transmission (confirmed electronically), on the date given, (ii) if delivered by a courier express delivery service, on the date of delivery, or (iii) if by certified or registered mail, postage prepaid, return receipt requested, seven (7) days after mailing, to the parties addressed as follows, or to

such other addresses as such party may designate by written notice in the manner provided herein:

If to Licensor:

Brad Vidro  
City Manager  
City of Solvang  
1644 Oak Street  
Solvang, California 93463  
FAX: (805) 686-2049

With a copy to:

Roy A. Hanley, Esq.  
City Attorney  
City of Solvang  
8930 Morro Road  
Atascadero, CA 93422  
FAX: (805) 466-4718

If to Licensee:

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16. Non-Waiver. The waiver, express or implied, by any of the parties hereto of any right hereunder or with respect to any failure to perform or breach hereof by the other party hereto, shall not constitute or be deemed a waiver of any other right hereunder or of any other failure to perform or breach hereof by any such other party hereto, whether of a similar or dissimilar nature thereto.

17. No Agency or Joint Venture. The parties hereto understand and agree that this Agreement does not make them an agent or legal representative of each other for any purpose whatsoever, and that no partnership, franchise or joint venture is intended to be created hereby. No party hereto is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party hereto, or to bind the other party hereto in any manner whatsoever.

18. Authority. Each party hereto represents and warrants that its execution, delivery and performance of this Agreement has been duly and validly authorized, and that this Agreement is binding upon and enforceable against such party in accordance with the terms hereof.

19. Effective Date. The effective date of this Agreement is \_\_\_\_\_, 2010.

20. Conflicting Laws. This Agreement shall be construed so as not to conflict with applicable Federal or State law, rules or regulations.

21. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused this Agreement to be signed in its name by a duly authorized officer or representative thereof.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010, in the City of Solvang, California.

CITY OF SOLVANG  
A Municipal Corporation

\_\_\_\_\_  
BRAD VIDRO  
City Manager

ATTEST:

\_\_\_\_\_  
(SEAL)  
MARY ELLEN RIO  
City Clerk

LICENSEE:

\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A

[Depiction of LOGO]