

.....  
Date..... June 19, 2006

RESOLUTION APPROVING THE PROPOSED  
CITY OF DES MOINES SIDEWALK CAFE PROGRAM

WHEREAS, the City of Des Moines has received increased requests for sidewalk cafes, both traditional sidewalk cafes upon the vacated sidewalk enclosed by a wrought iron fence and more temporary sidewalk cafes where the tables and chairs are removed every night; and,

WHEREAS, the City Manager has established a team of City staff to review the City's regulation of sidewalk cafes and to identify how to expedite the process for approval of new sidewalk cafes; and,

WHEREAS, the City Manager recommends adoption of the proposed City of Des Moines Sidewalk Cafe Program, as set forth in the document of that name now on file and available for public inspection in the office of the City Clerk; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The proposed City of Des Moines Sidewalk Cafe Program, exclusive of the proposed Design Standards for Sidewalk Cafe Leases, is hereby approved, subject to enactment of the necessary amendments to the Des Moines Municipal Code to allow the program to be implemented.
2. The proposed forms of Lease Agreement for Sidewalk Cafe and License Agreement for Sidewalk Cafe contained in the City of Des Moines Sidewalk Cafe Program are hereby approved, subject to such minor changes and additions that may be required by the City Manager and approved by the Legal Department to address new or unique issues relative to each particular site.

( continued )

Date June 19, 2006

3. The proposed Design Standards for Sidewalk Cafe Leases are hereby referred to the Plan and Zoning Commission for its review and recommendation. The Plan and Zoning Commission is requested to make its recommendation prior to the City Council meeting on July 10, 2006, whereupon the City Council shall consider approval the proposed design standards and any amendments thereto recommended by the Commission.

( Council Communication No. 06- 377 )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

*Roger K Brown*  
 Roger K. Brown  
 Assistant City Attorney  
 C:\Rog\Vacate\Cafe\RC Approve Program.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

.....Mayor

..... City Clerk

Draft

**City of Des Moines Sidewalk Café Program**

Date \_\_\_\_\_  
Agenda Item 68  
Roll Call # \_\_\_\_\_

**Step-by-Step Guide**

- I. Introduction and Overview
- II. Rules for Operation
- III. Requirements and Process
  - a. Sidewalk Café Design Standard
  - b. Submittal Requirements
  - c. Fees
  - d. Appeal Process
  - e. Process Flow Chart
- IV. Attachments
  - a. Adjoining Property Owner Consent Form
  - b. Application Form/Lease
  - c. Application Form/License

## **Introduction and Overview**

The City of Des Moines is pleased to offer a revised process for the utilization of public right of way for private sidewalk café use. The goals of this program are to ensure that the public use of the right of way is unimpeded, that the process is straightforward, simple and efficient, and that the café is safe and compliant with city standards.

In order to meet these goals, it will be necessary for the owner or applicant to prepare certain documents for review and approval. It is important that this application packet be completed accurately, and drawings and other documents are accurate and complete.

Staff from Community Development and Engineering Departments will review these materials. If compliance with standards is demonstrated, the application and lease will be approved by staff, and forwarded on to City Council for approval.

If you have questions regarding this material, please contact the Permit and Development Center at 515-283-4200.

Completed applications should be presented to:

City of Des Moines  
Permit and Development Center  
602 Robert D. Ray Dr.  
Des Moines, IA 50309

We look forward in assisting you with your sidewalk café application, and wish you success in your endeavor.

Sincerely  
City of Des Moines

## Rules of Operation

- 1) Sidewalk cafés located on City Right of Way must be *licensed* or *leased* from the City. Sidewalk café leases are for 3 calendar years, ending on December 31 of the third year. A sidewalk café license or lease is valid from the date of issuance up to and including December 31<sup>st</sup>.

Permanent improvements or sale or consumption of alcohol are authorized under a *lease*. Occupancy of the Right of Way without sale of alcohol or installation of permanent improvements is authorized under a *license*.

- 2) A permanent physical barrier and tables and chairs may remain in place during the period of *lease*, but the barrier must be removable, and may be removed from the right of way upon expiration of the lease, or upon order by the city.

Temporary installation of ropes, barriers, tables, chairs and other café elements erected under a *license* must be removed from the Right of Way at the end of each business day.

Any sidewalk café in operation without a valid sidewalk café permit is subject to removal, with costs incurred by the city in its removal assessed to the property owner.

- 3) Sidewalk Café shall not operate earlier than 6:00 AM, nor later than 11:00 PM.
- 4) All sidewalk café employees shall be subject to and comply with applicable state, local standards for a retail food establishment.
  - a) Patrons must wear shoes and shirt at all times.
  - b) All sidewalk cafes must have openings for entrance and egress at all times. Required building and sidewalk cafe exits must not be obstructed.
  - c) All sidewalk cafes must adhere to the size, design, and specifications that were approved by City Council at all times.
  - d) Strict adherence to hours of operation, clear space for pedestrians, enclosure barriers, and lighting and sound limitations is mandatory.
- 5) If alcoholic beverages are served at the sidewalk café, the operator must be validly licensed under state code for such sales. Alcoholic beverages supplied by any person other than the permittee will not be allowed at sidewalk cafes. Sidewalk cafes offering service of alcoholic beverages must be located immediately adjacent to, and contiguous with the licensed establishment. Alcohol service licenses and dram shop insurance must cover the sidewalk café area.
- 6) The operator of a sidewalk café *lease* shall install and maintain a physical boundary that meets the Sidewalk Café Design Standards specified in this packet. The boundary shall separate the sidewalk café from the remainder of the public way. The boundary may be a partition, fence, planters, railing fence, or combination of the above, and shall have a minimum height of 36 inches, nor more than 42 inches in height. No portion of the sidewalk café shall be elevated in the style of a deck or platform, unless the owner secures a bond conditioned on the removal of the construction. The boundary must be of such configuration that it will not topple over due to wind or incidental contact with patrons or pedestrians. The boundary must be maintained in place at all times that the

outdoor seating area is open to the public. No portion of the boundary shall be placed on or extend over the public way outside the permitted sidewalk café *lease* area. Where there city has installed a permanent structure such as a parking meter, planter, fire hydrant, light pole, traffic controls, or other device, the operator of the sidewalk café shall make accommodation for the required clearance for usage and pedestrian passage. The boundary must be set as to leave at least six feet of clear and unobstructed sidewalk space to allow pedestrian passage. Sidewalk café operators shall be mindful of the rights of pedestrians traveling past their sidewalk café at all during the operation of the café.

- 7) The operator's staff must ensure the removal of all wrappings, litter, debris and food. Daily sanitary cleaning is required. Sidewalks must be washed down on a regular basis. Food from the café is not to be disposed of in city containers.
- 8) Amplified sound is not allowed at any time, unless authorized by an appropriate sound permit.
- 9) Inspections of sidewalk café will occur after leases and licenses have been entered into and the café is in operation. Sidewalk café leases need not be displayed, but should be made available upon request.

**The issuance of a sidewalk café permit is a privilege granted by the City Council. The City of Des Moines urges you to comply with all rules and regulations as well as having respect for the community in which your café is located.**

## **Design Standards for Sidewalk Cafe Leases and Licenses**

A request for the lease of City-owned property for use as a sidewalk cafe shall be initiated by filing an application with the Permit and Development Center. The City will negotiate with the applicant upon the terms of a lease or license agreement in conformance with standard City practices and policies. Any such lease must be approved by the City Council. The standard term of such a lease is three years.

Standards. The application for a sidewalk cafe lease must demonstrate that the outdoor service area will substantially conform to the following design standards:

- 1) A 6 feet clear passageway must remain after installation of the sidewalk café for pedestrian traffic.
- 2) The sidewalk café area shall be fully enclosed to a height of at least 36 inches by a wrought iron or fabricated steel fence, elevated planters or other enclosure approved by the City Council. The enclosure must contain exits in accordance with building code. If the enclosure is of a temporary nature (poles with velvet ropes for example), the sidewalk must be cleared and the materials used for the enclosure and all chairs and tables must be stored inside the business each night. If the enclosure is of a more permanent nature, it must have a 6-inch ‘toe kick’ (solid, not recessed) at the base to comply with ADA requirements. If a planter is used to enclose a sidewalk cafe, the plant material shall not encroach within the required 6-foot clear passageway.
- 3) No advertising signs may be placed on the enclosure.
- 4) No lighting may be used that would create a trip hazard or nuisance to patrons, pedestrians or adjacent property owners (no strobe lights, electrical cords, etc.).
- 5) The improvements placed on the sidewalk shall be temporary in nature so as to assure that the sidewalk can be readily restored to its original condition upon the expiration of the lease. If any platforms or other permanent improvements are proposed, the City may require a sufficient bond for the restoration of the sidewalk as a condition of the lease.
- 6) The owner/operator of the sidewalk café must provide insurance conforming to the City's standards.
- 7) The application must include a site plan and legal description of the space to be leased from the City, and an elevation drawing or photographs showing the front of the building and the enclosure materials. This site plan must be coordinated with the right-of-way management section of the Engineering department for review of buried utility impacts.
- 8) The applicant should include a written consent to the sidewalk cafe by the owners of the adjacent property. If such consent is not provided, the City may contact the owners of the adjoining property to solicit their comments.

- 9) If alcohol is sold or consumed in the sidewalk café, Section 10-3 and 10-5 of the code must also be followed (rules about hours of operation, amplified sound, etc.).
- 10) Adequate toilet facilities must be available to accommodate the added seating.
- 11) Applications may be submitted for areas either adjacent to building or across a pedestrian passageway from buildings. However, areas removed from the building would not be allowed to have liquor licenses and proposals must adequately address concerns regarding safety relating to traffic movement and provide adequate space for parking meter usage, passage to and from vehicles parked, swinging vehicle doors, etc.
- 12) Sidewalk cafes should be allowed by lease of the vacated public rights-of-way. Except in unusual circumstances, the City should retain ownership of the land for future public use.

Related requirements:

If the requested area includes any public right-of-way that has not been previously vacated, a copy of the application for *lease* or *license* shall also be filed with the Community Development Department with a separate application to vacate the affected public right-of-way. Applications for the vacation of public right-of-way are reviewed by staff for compliance with standards approved by the Planning and Zoning Commission.

The vacation of public right-of-way requires the publication of a notice, a public hearing before the City Council, and the adoption of an ordinance. The City Council will normally refrain from scheduling the public hearing until the Council has received a lease signed by the applicant in a form recommended by the City Properties Administrator.

If the leased area is to be used for the service of alcoholic beverages, then a separate application for the appropriate liquor, wine and beer license or permit should also be filed with the City Clerk. A business with an existing license or permit must seek to amend that license or permit to add the additional service area. All liquor, wine and beer licenses and permits require approval by the City Council, which may occur concurrently with the approval of the lease agreement and the vacation of public right-of-way.



## **Submittal requirements for Sidewalk Café License:**

1. A simple site plan of the licensed area and adjoining property showing the exact location and dimensions of the space. A base diagram may be obtained using the site plan and aerial photo data from the county assessor's web site. Appropriate information must then be added.
2. A simple floor plan of the adjoining building used in conjunction with the sidewalk cafe. The floor plan must show interior dimensions and area, toilet facilities, exit locations, fire department connections, and building use. The floor plan from the assessor's web site may be used as a base diagram. Appropriate information must then be added.
3. A written description and layout of the proposed license area. Show all intended café elements, such as tables, umbrellas, chairs, barricades and similar features.
4. Signature consent forms from adjacent property owners.
5. Certificate of Insurance. Insurance must meet specified standards referenced in the license agreement.

## **Submittal requirements for Sidewalk Café Lease:**

1. A site plan and legal description of the leased area and adjoining property prepared and certified by a licensed surveyor.
2. A floor plan of the adjoining building used in conjunction with the sidewalk cafe. The floor plan must show interior dimensions and area, toilet facilities, required exits, fire department connections, and building use.
3. An elevation view and detail of the enclosing barrier.
4. Signature consent forms from adjacent property owners.
5. Certificate of Insurance. Insurance must meet specified standards referenced in the lease agreement.

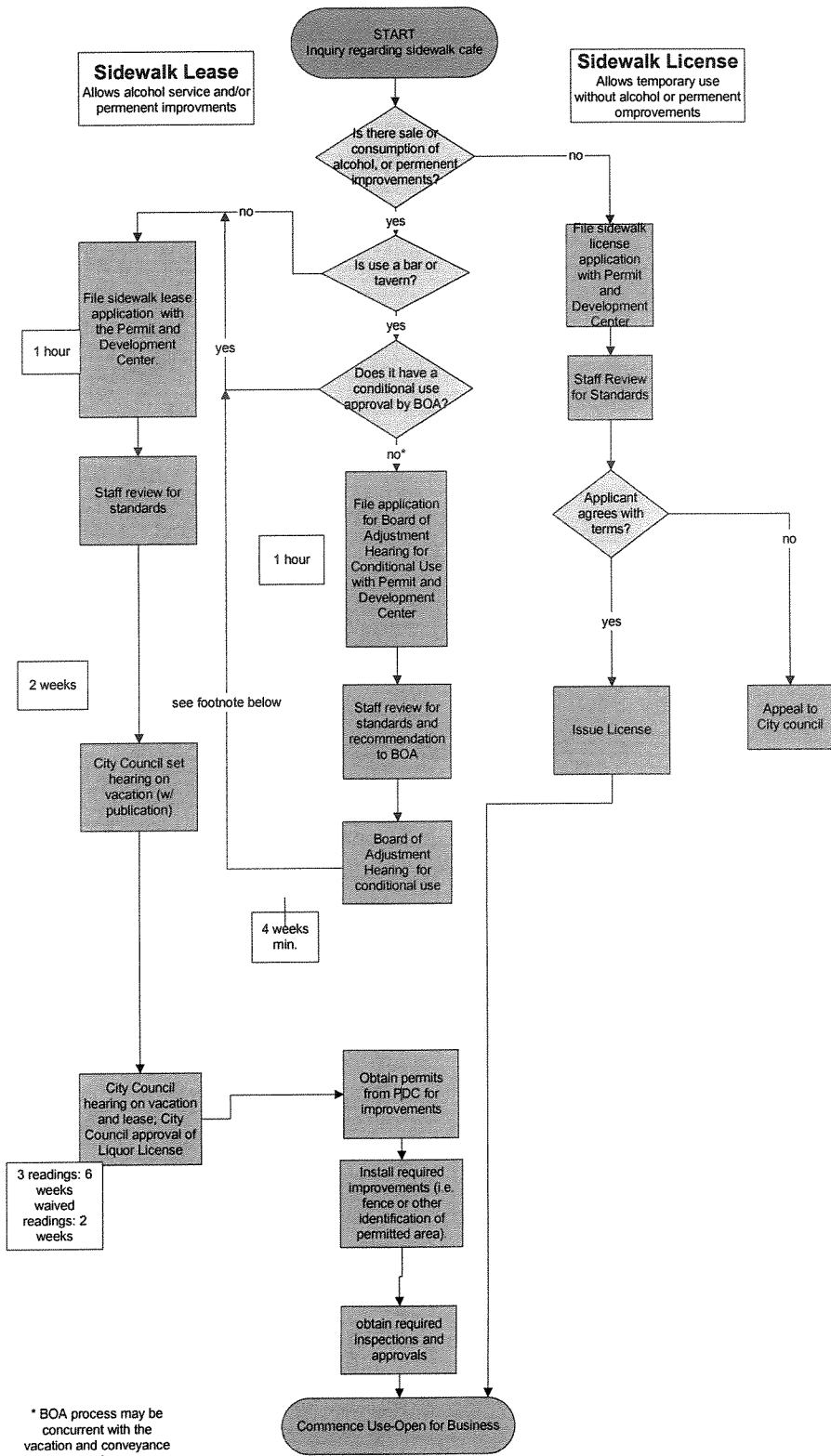
## **Fees**

1. License or Lease Application Fee, per 3 year period: \$100.00
2. Rental Fee per 3 year period: \$4.50 per square foot  
After July 1<sup>st</sup> of the first year: \$3.50 per square foot

## **Appeal Process**

Any property owner or tenant that feels aggrieved by a decision made by staff regarding a Sidewalk License or Lease may appeal that determination to City Council in accordance with applicable city code provisions. Appeals must be made in writing within 30 days of the decision, and shall clearly state the ruling being appealed, the nature and underlying reasoning supporting their appeal. The appeal will be scheduled at the next available City Council meeting.

<b>Sidewalk Cafes Process Flow</b>	
	6/12/06



\* BOA process may be concurrent with the vacation and conveyance track .

# Consent Form from Adjoining Property Owners

## Consent to Allow Sidewalk Café

**REGARDING:** the East/ West North/ South right of way in the block bounded by the following streets:

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**Legal Description of the Property:**

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**Specific dimensions of the proposed sidewalk cafe described below:**

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**Located in proximity to and associated with the following place of business:**

**Business Name:**

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(Proposed Street Café Business Name)

**Business Address:**

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(Proposed Street Café Address)

**The undersigned owners hereby consent** to the City of Des Moines vacating (closing) the right of way described above and to the city allowing such right of way to be licensed or leased for purposes of allowing a sidewalk café lease or license.

**Date:** \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

**Address of Adjoining Property:**

\_\_\_\_\_  
Des Moines, Iowa \_\_\_\_\_  
(Zip Code)

\_\_\_\_\_  
(Signature of 2<sup>nd</sup> owner)

\_\_\_\_\_  
(Printed Name)

**Mailing Address-** if different

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

## **Application for Sidewalk Cafe Lease**

(Required for sale of alcohol on the sidewalk area.)

**Instructions:** Any person or business seeking permission to operate a sidewalk cafe upon the public sidewalks owned by the City of Des Moines shall obtain a Sidewalk Cafe Lease or License. A Sidewalk Cafe Lease is required when the leased premises are to be used for the sale of alcoholic beverages, or when improvements are to be left on the leased premises after business hours. A Sidewalk Cafe License allows the placement of tables, chairs and a temporary barrier in the licensed premises only during the hours that the business is open to the public, and DOES NOT allow the licensed premises to be used for the sale of alcohol. A Sidewalk Cafe License can be issued by City staff within 5 business days, while the issuance of a Sidewalk Cafe Lease must be approved by the City Council and may require two weeks to more than 60 days depending upon whether the affected public sidewalk has already been vacated (officially closed).

To apply for a Sidewalk Cafe Lease, please complete the following Lease Agreement. The completed Lease Agreement and the required application fee should be delivered to the Permit and Development Center, in the Armory Building, 602 Robert Ray Drive, Des Moines, IA 50310. A completed Lease Agreement with the required exhibits and which conforms with City policies will be presented for approval by the City Council. Upon approval by the City Council, receipt of the required rental, and execution by the Permit and Development Center Administrator, the Lease Agreement shall become effective and shall govern the applicant's use of the leased property.

The applicant is responsible for providing the following exhibits to the Lease Agreement:

*Exhibit "A"* - Plat of survey of the Leased Premises prepared by a Land Surveyor or Professional Engineer. See section 1 of Lease Agreement.

*Exhibit "B"* - Site plan showing the improvements and furnishings to be placed upon the Leased Premises. The site plan shall include pictures and drawings sufficient to show how the Leased Premises and adjoining building will look, and the design and materials to be used for any fence or other enclosure upon the Leased Premises. The Site Plan must conform to the City of Des Moines Sidewalk Cafe Design Standards attached as Attachment "C". See section 4 of Lease Agreement.

*Exhibit "C"* - Certificate of Insurance. See section 10 of Lease Agreement.

*Exhibit "D"* - Bond, if required for the removal of any improvements of a permanent nature to be placed upon the Leased Premises. Fixtures which can be unbolted and removed, leaving the Leased Premises in substantially its prior condition are not considered to be of a permanent nature. See section 13 of Lease Agreement.

The required application fee for a Sidewalk Cafe Lease is \$100.00, to be paid upon submission of the proposed lease to City. The required rental for a Sidewalk Cafe Lease is a single payment of \$4.50 per square foot for 3 calendar years. If the term commences on or after July 1st, the rental is \$3.75 per square foot for the remainder of the 3 calendar years. If the term commences before July 1st, no reduction shall be allowed in the rental. Please insert the amount of the rental in Section 3 of the Lease Agreement.

To expedite the review and approval of the application, applicants are encouraged to provide a written consent to the proposed sidewalk cafe from the owners of the adjoining properties. If such consents are not provided, the review of the proposed lease may be delayed while City staff contacts the owners of the adjoining properties to solicit their comments.

**For further information regarding the lease of City property for a sidewalk cafe, contact the Permit and Development Center Administrator at 515/283-4200.**

If the Leased Premises is part of a street or alley that has not been previously vacated, the applicant must also file an separate Application to Vacate Right-of-way with the Community Development Department. **For further information regarding the Application to vacate Right-of-way contact the Community Development Department at 515/283-4182.**

If the Leased Premises are to be used for the sale of alcoholic beverages, the applicant must also file a separate application for liquor, beer or wine permit with the City Clerk. **For further information regarding the sale of alcoholic beverages contact the City Clerk's office at 515/237-1388**

**NOTE:** All normal building permit requirements apply to improvements placed within the leased area. The applicant is responsible for obtaining all necessary building permits.

**For City use only:**

City ID No.: \_\_\_\_\_

Premises Address: \_\_\_\_\_

Received on: \_\_\_\_\_

Term Expires: \_\_\_\_\_

Annual Rent \$ \_\_\_\_\_

First Year Rental:

\$ \_\_\_\_\_

Approved by City Council on \_\_\_\_\_ by Roll Call No. \_\_\_\_\_

**LEASE AGREEMENT FOR SIDEWALK CAFE**

**Lessee:** The following business or individual(s) (hereinafter referred to as the "Lessee") hereby make(s) application to the City of Des Moines for a lease to operate a sidewalk cafe upon the Leased Property identified below, for the term and rental, and subject to the conditions and limitations identified below.

Name of the "Lessee":

\_\_\_\_\_

Print name of individual(s) or business entity

Lessee's authorized representative:

\_\_\_\_\_

Mailing address:

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Address of business location for sidewalk cafe: \_\_\_\_\_, Des Moines, IA

1. **LEASED PREMISES.** The City leases unto Lessee and Lessee leases from the City certain real property located in the City of Des Moines, Polk County, Iowa, hereinafter referred to as the "Leased Premises," and more particularly described in Exhibit "A" attached hereto, and containing \_\_\_\_\_ square feet.

2. **TERM.** The term of this Lease Agreement shall commence on the date this Lease Agreement is approved by the City Council and signed by the City Permit and Development Center Administrator, or the Administrator's designee, and shall end on December 31, 2009. The term of this Lease Agreement is further subject to the requirement that the Lessee remain the tenant in possession of the adjoining property. At the City's discretion, the term of this Lease Agreement shall end immediately in the event Lessee ceases for any reason to be in possession of the adjoining property. The City may allow Lessee to sublet all or portions of the Leased Premises for the remainder of the term with the prior written approval of the Permit and Development Center Administrator. The covenants, conditions and terms of this Lease Agreement shall be binding on Lessee's successors and assigns.

3. **CONSIDERATION.** Lessee shall pay to the City a rental in the amount of \$ \_\_\_\_\_, for the use of the Leased Premises for the term of this Lease. This rental shall be paid by Lessee and collected by City at the time City executes this Lease.

4. **USE OF PREMISES.** Lessee may use the Leased Premises for purposes of a patio and sidewalk cafe. Lessee shall, at Lessee's sole expense, cause the Leased Premises to be improved

and maintained in compliance with the City of Des Moines Sidewalk Cafe Design Standards attached as Attachment "C", and in substantial conformance with the Site Plan attached as Exhibit "B". In the event of any conflict between the Design Standards and the Site Plan, the requirements of the Design Standards shall control. Lessee shall not use or knowingly permit any part of the Leased Premises to be used for any unlawful purpose.

5. DUTY TO MAINTAIN AND RIGHT TO INSPECT. Lessee has inspected the Leased Premises and leases same "as is." Lessee shall have the duty, at Lessee's sole expense, to maintain and repair the Leased Premises and keep same in as good a condition as when Lessee took possession thereof, except for the effects of ordinary wear and tear and depreciation arising from lapse of time or damage without fault or liability of Lessee; to remove any ice, snow and debris from the Leased Premises; to cut or mow any grass or weeds, and trim any trees growing on the Leased Premises, and to immediately provide City with notice of any damage to the Leased Premises or of the development of any dangerous condition on the Leased Premises. City shall have the right to reasonably enter and inspect the Leased Premises.

6. TAXES. During the Lease term, Lessee shall be responsible for payment of all personal property taxes on property located on the Leased Premises, and for any real estate taxes assessed against the Leased Premises.

7. COVENANT OF QUIET ENJOYMENT. Lessee, upon payment of the rental herein reserved and upon performance of all of the terms of this Lease Agreement, shall at all times during the term of this Lease Agreement and during any extension thereof peaceably and quietly enjoy the Leased Premises without any unreasonable disturbance from City, its agents or employees.

8. COMPLIANCE WITH LAW. Lessee at its sole expense shall comply with all laws, orders and regulations of federal, state and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon the City or Lessee with respect to the Leased Premises. Lessee, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Lease Agreement, or for the making of repairs, alterations, improvements or additions.

9. UTILITIES AND OTHER SERVICES. Lessee shall pay all charges for gas, electricity, light, heat and power, and telephone and other communication service used, rendered, or supplied upon or in connection with the Leased Premises, and shall indemnify the City against any liability or damages on such account.

10. INDEMNIFICATION AND INSURANCE. Lessee shall defend, pay on behalf of, indemnify and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers, and others working on behalf of the City, as provided for in Attachment "A". Lessee shall obtain and maintain in continuous effect during the term of this Lease Agreement with the City and while any of its obligation remain unsatisfied, the insurance coverages, limits and endorsements set forth in Attachment "A". A certificate of insurance demonstrating compliance with these requirements is attached as Exhibit "C".

11. TERMINATION OF LEASE AND DEFAULTS OF LESSEE. This Lease Agreement shall terminate upon expiration of the lease term as provided in section 2. Upon default of payment of rental or upon any other default of Lessee in accordance with the terms and provisions of this Lease Agreement, this Lease Agreement may, at the option of City, be canceled and forfeited; provided, however, before any such cancellation and forfeiture, the City shall give Lessee written notice specifying the default, or defaults, and stating that this Lease Agreement will be canceled and forfeited ten (10) days after the giving of such notice, unless

such default, or defaults are remedied within such grace period. In addition, the City shall have the right to terminate or cancel this Lease Agreement prior to the expiration of the lease term upon a determination by the Des Moines City Council that the Leased Premises are required for a public purpose and upon giving Lessee at least thirty (30) days written notice stating the intent to so terminate or cancel this Lease Agreement. If the City so terminates or cancels this Lease Agreement by giving thirty (30) days written notice, there shall be no damages except for prepaid rents, if any, which shall be refunded by the City upon request by Lessee on a pro rata basis.

12. SURRENDER OF PREMISES AT TERMINATION. Lessee agrees that upon termination of this Lease Agreement, Lessee shall surrender and deliver the Leased Premises in good and clean condition, except for the effects of ordinary wear and tear and depreciation arising from lapse of time or damage without fault or liability of Lessee.

13. REMOVAL OF FIXTURES AND RAILINGS AND RESTORATION OF PREMISES. Lessee shall have the right at termination of this Lease Agreement, if Lessee is not in default thereof, to remove any fixtures or equipment which Lessee has installed in the Leased Premises other than fixtures installed to replace those which were in the Leased Premises immediately prior to commencement of the term of this Lease Agreement, providing Lessee fully repairs any and all damages caused by removal. Any such fixtures or improvements which remain on the Leased Premises after the date of termination shall be considered abandoned and thereafter may be removed and disposed of at the discretion of the City without the City incurring any liability therefor. However, at the termination of this Lease Agreement, if the City so directs in writing, the Lessee shall restore the Leased Premises to a good and safe condition consistent with the original use of the Leased Premises as a public sidewalk.

Check if applicable. Lessee intends to install a platform, curbing or other improvements of a permanent nature upon the Leased Premises. Attached as Exhibit "D" is a bond given as security for the estimated cost of removal of such improvements.

14. NOTICES. Notices as provided for in this Lease Agreement to the City, shall be deemed sufficient if delivered or sent by certified mail with return receipt to the Permit and Development Center Administrator, 602 Robert Ray Drive, Des Moines, Iowa 50310. Notices as provided for in this Lease Agreement to Lessee shall be deemed sufficient if delivered or sent by certified mail with return receipt requested to the Lessee at the mailing address for Lessee's representative identified above.

15. SPECIAL PROVISIONS. This Lease Agreement is subject to the special provisions set forth in Attachment "B".

16. CHOICE OF LAWS. This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

17. DISPLAY OF LEASE CERTIFICATE. The City will issue a Lease Certificate contemporaneous with the execution of this Lease Agreement. The Lease Certificate shall be displayed by Lessee in a conspicuous place in the Lessee's business adjoining the Leased Premises and at all times shall be subject to inspection.

**Execution by Lessee:**

The undersigned Lessee hereby agrees to lease the Leased Premises from the City of Des Moines upon the terms and conditions identified above.



\_\_\_\_\_  
*Business name if Lessee is not an individual*

By: \_\_\_\_\_  
\_\_\_\_\_, 2006.

Date signed:

Signature of individual or authorized agent of business

**Execution by City:**

The City of Des Moines hereby agrees to lease the Leased Premises to the Lessee upon the terms and conditions identified above. The undersigned representative of the City of Des Moines was authorized to sign this Lease Agreement on behalf of the City by Resolution and Roll Call No. 06-\_\_\_\_\_ passed by the Des Moines City Council on \_\_\_\_\_, 2006.

City of Des Moines, Iowa

By: \_\_\_\_\_  
2006.

Date signed: \_\_\_\_\_,

Phil Delafield, Permit and Development Center Administrator

**ATTACHMENT "A"**  
**STANDARD INSURANCE & INDEMNIFICATION REQUIREMENTS**  
(Sidewalk Lease)

**1. GENERAL**

The Lessee shall purchase and maintain insurance to protect the Lessee and the City of Des Moines, Iowa throughout the duration of the Lease. Said insurance shall be provided by an insurance company(ies), "admitted" and "nonadmitted" to do business in the State of Iowa, having no less than an A.M. Best Rating of "B+". All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to Lease execution or commencement of work and/or services.

**2. INSURANCE REQUIREMENTS**

A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: The Lessee shall procure and maintain during the life of this Lease, Worker's Compensation Insurance, including *Employer's Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, the Lessee is not required to carry Workers Compensation Insurance.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Lessee shall procure and maintain during the life of this Lease, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or any subsequent ISO equivalent or a non-ISO equivalent form). A list of any additional exclusions shall be submitted with the Certificate of Insurance and shall be subject to the review and approval of the City.

C. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

D. LIQUOR LIABILITY INSURANCE: The Lessee shall procure and maintain during the life of this Lease, Commercial Liquor Liability Insurance and General Liability Insurance, each with limits of not less than \$1,000,000 per occurrence. If liquor license is held by Lessee, the General Liability Insurance required above will meet the General Liability portion of this requirement.

E. SUBLESSEES: The Lessee shall require that any of its agents and sublessees who perform work and/or services pursuant to the provisions of this Lease meet the same insurance requirements as are required of the Lessee.

F. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY: Except for Workers Compensation, the insurance policies providing the coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are attached.

G. CANCELLATION & MATERIAL CHANGE ENDORSEMENT: The insurance policies providing the coverages specified in A, B, C, and D above shall include the City of Des Moines, Iowa Cancellation & Material Change Endorsement. A copy of this endorsement is attached.

H. PROOF OF INSURANCE: The Lessee shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the Lease or permit or license, etc. and (2) the following statement, "*Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached.*" These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

### 3. INDEMNIFICATION REQUIREMENTS

A. INDEMNIFICATION (HOLD HARMLESS) PROVISION: To the fullest extent permitted by law, the Lessee agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arises out of or is in any way connected or associated with Lessee's use or occupancy of the Leased Premises pursuant to the provisions of this Lease. It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by the Lessee, its officers, employees, sublessees, and others affiliated with the Lessee due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by the Lessee pursuant to the provisions of this Lease.

The Lessee expressly assumes full responsibility for any and all damage caused to City of Des Moines, Iowa premises resulting from the activities of the Lessee, its officers, employees, sublessees, and others affiliated with the Lessee.

The Lessee represents that its activities pursuant to the provisions of this Lease will be performed and supervised by adequately trained and qualified personnel, and the Lessee will observe, and cause its officers, employees, sublessees and others affiliated with the Lessee to observe all applicable safety rules.

### 4. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, Lessee hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or

responsibility to the Lessee or anyone claiming through or under the Lessee by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty and for any occupational injury incurred. This provision shall be applicable and in full force and effect only with respect to loss or damage or injury occurring during the time of this Lease. The Lessee's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the Lessee to recover thereunder.

**EXHIBIT \_\_\_\_**

**CITY OF DES MOINES, IOWA  
ADDITIONAL INSURED ENDORSEMENT**

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**CITY OF DES MOINES, IOWA  
GOVERNMENTAL IMMUNITIES ENDORSEMENT  
(For use when including the City as an Additional Insured)**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF DES MOINES, IOWA  
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 East First Street, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

**Attachment "B"**  
**Special Provisions**

Check appropriate line:

- This Lease Agreement for Sidewalk Cafe is subject to no special provisions.  
 This Lease Agreement for Sidewalk Cafe is subject to the following special provisions.

**Note: If any Special Provisions are required by the City, a replacement Attachment "B" will be prepared by the City for signature by the applicant.**

**Acceptance of Special Provisions.**

\_\_\_\_\_  
*Business name if Lessee is not an individual*

By: \_\_\_\_\_

2006.

Signature of individual or authorized agent of business

Date signed: \_\_\_\_\_,

**Attachment "C"**  
**City of Des Moines Sidewalk Cafe Design Standards**

[Attach copy of the approved City of Des Moines Sidewalk Cafe Design Standards.]

**Additional documents to be attached to the Application by the Applicant:**

**Exhibit "A"** - Plat of Survey signed by a licensed land surveyor or a licensed professional engineer.

**Exhibit "B"** - Site plan showing the improvements and furnishings to be placed upon the Leased Premises. The site plan shall include pictures and drawings sufficient to show how the Leased Premises and adjoining building will look, and the design and materials to be used for any fence or other enclosure upon the Leased Premises.

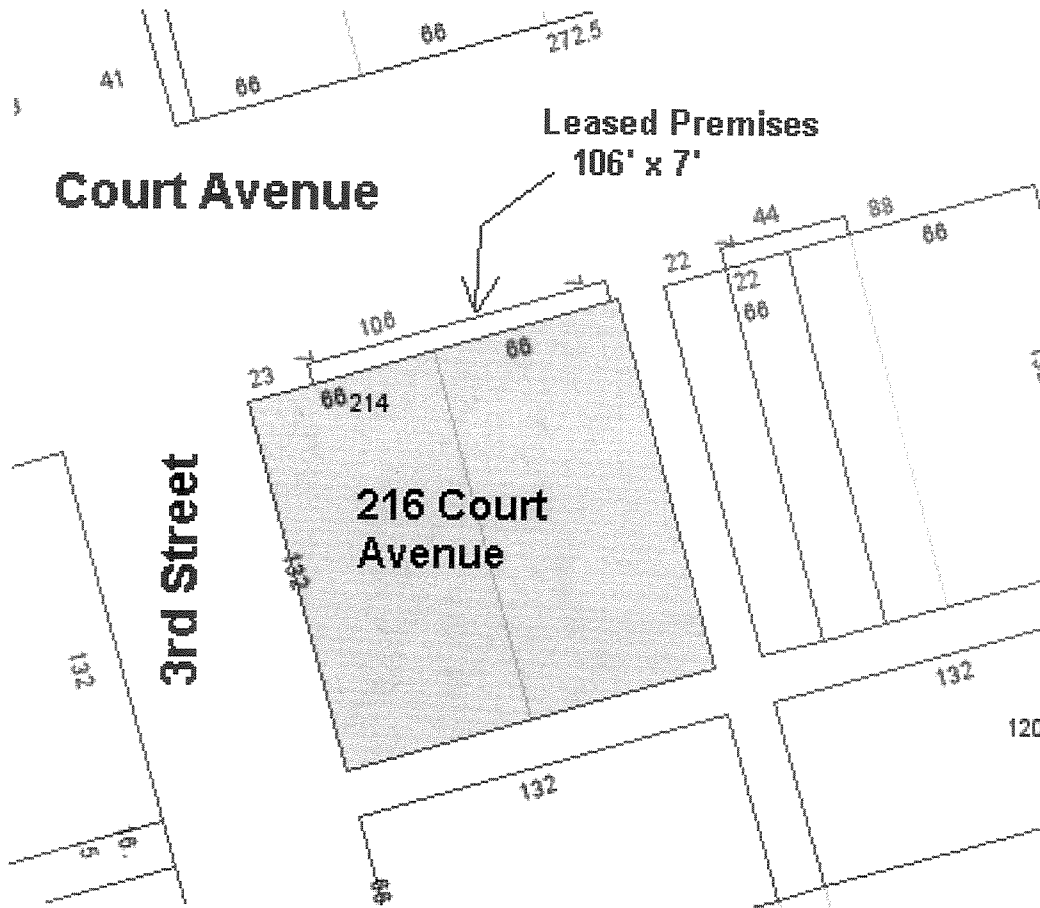
**Exhibit "C"** - Bond, if required for the removal of any improvements of a permanent nature to be placed upon the Leased Premises. Fixtures which can be unbolted and removed, leaving the Leased Premises in substantially its prior condition are not considered to be of a permanent nature.



# Sample of an acceptable Exhibit "A" to a Sidewalk Cafe Lease

## Exhibit "A"

### Site Plan for a Sidewalk Cafe at 216 Court Avenue, in the City of Des Moines, Iowa.



#### Sample Calculation of Rental:

The Leased Premises are 106 feet wide by 7 feet deep.  
Leased Area is: 106' x 7' = 742 square feet

742.0	sq ft
x \$4.50	per square foot rental
\$3,339.00	<b>Total rental for the 3 year term of the Lease Agreement</b>

## **Application for Sidewalk Cafe License**

(Allowing placement of chairs and tables upon the sidewalk during business hours with no sale of alcoholic beverage.)

**Instructions:** Any person or business seeking permission to operate a sidewalk cafe upon the public sidewalks owned by the City of Des Moines shall obtain a Sidewalk Cafe Lease or License. A Sidewalk Cafe Lease is required when the leased premises are to be used for the sale of alcoholic beverages, or when improvements are to be left on the leased premises after business hours. A Sidewalk Cafe License allows the placement of tables, chairs and a temporary barrier in the licensed premises only during the hours that the business is open to the public, and DOES NOT allow the licensed premises to be used for the sale of alcohol. A Sidewalk Cafe License can be issued by City staff within 5 business days, while the issuance of a Sidewalk Cafe Lease must be approved by the City Council and may require two weeks to more than 60 days depending upon whether the affected public sidewalk has already been vacated (officially closed).

To apply for a Sidewalk Cafe License, please complete the following License Agreement. The completed License Agreement and the required application fee should be delivered to the Permit and Development Center, in the Armory Building, 602 Robert Ray Drive, Des Moines, IA 50310. A completed License Agreement with the required exhibits and which conforms with City policies will be administratively approved by the Permit and Development Center Administrator. Upon execution by the Permit and Development Center Administrator, the License Agreement shall become effective and shall govern the applicant's use of the licensed property.

The applicant is responsible for providing the following exhibits to the License Agreement:

*Exhibit "A"* - A site plan of the Licensed Premises showing the exact location and dimensions. The location and dimension of the Licensed Premises can be marked on a copy of the aerial photograph of the location available through the Polk County Assessor's web page. See section 1 of License Agreement and the sample Exhibit "A".

*Exhibit "B"* - Certificate of Insurance. See section 7 of License Agreement.

The required application fee for a Sidewalk Cafe License is \$100.00, to be paid upon submission of the proposed license to City. The required license fee for a Sidewalk Cafe License is a single payment of \$4.50 per square foot for 3 calendar years. If the term commences on or after July 1st, the license fee is \$3.75 per square foot for the remainder of the 3 calendar years. If the term commences before July 1st, no reduction shall be allowed in the license fee. Please insert the amount of the license fee in Section 3 of the License Agreement.

To expedite the review and approval of the application, applicants are encouraged to provide a written consent to the proposed sidewalk cafe from the owners of the adjoining properties. If such consents are not provided, the review of the proposed license may be delayed while City staff contacts the owners of the adjoining properties to solicit their comments.

**For further information regarding the license of City property for a sidewalk cafe, contact the Permit and Development Center Administrator at 515/283-4200.**

**NOTE:** A Sidewalk Cafe License allows a business to place tables, chairs and a temporary barrier on the public sidewalk for the service of food and non-alcoholic beverages during those times the business is open to the public. The tables, chairs and barrier must be removed from the sidewalk and the sidewalk must be fully restored for public use whenever the business is not open to the public.

**For City use only:**

City ID No.: \_\_\_\_\_

Received on: \_\_\_\_\_

Annual Fee \$ \_\_\_\_\_

Premises Address: \_\_\_\_\_

Approved on: \_\_\_\_\_

First Year Fee: \$ \_\_\_\_\_

## LICENSE AGREEMENT FOR SIDEWALK CAFE

**Licensee:** The following business or individual(s) (hereinafter referred to as the "Licensee") hereby make(s) application to the City of Des Moines for an annual license to operate a sidewalk cafe upon the Licensed Property identified below, and subject to the conditions and limitations identified below.

Name of the "Licensee":

\_\_\_\_\_

Print name of individual(s) or business entity

Licensee's authorized representative:

\_\_\_\_\_

Mailing address:

\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Address of business location for sidewalk cafe: \_\_\_\_\_, Des Moines, IA

1. **LICENSED PREMISES.** The City licenses unto Licensee and Licensee licenses from the City certain real property located in the City of Des Moines, Polk County, Iowa, hereinafter referred to as the "Licensed Premises," and more particularly described in Exhibit "A" attached hereto, and containing \_\_\_\_\_ square feet.

2. **TERM.** The term of this License Agreement shall commence on the date this License Agreement is approved and signed by the Permit and Development Center Administrator or the Administrator's designee, and shall terminate on December 31, 20\_\_\_\_. The term of this License Agreement is further subject to the requirement that the Licensee remain the tenant in possession of the adjoining property. At the City's discretion, the term of this License Agreement shall end immediately in the event Licensee ceases for any reason to be in possession of the adjoining property. The City may allow Licensee to sublicense all or portions of the Licensed Premises for the remainder of the term with the prior written approval of the Permit and Development Center Administrator. The covenants, conditions and terms of this License Agreement shall be binding on Licensee's successors and assigns.

3. **CONSIDERATION.** Licensee shall pay to the City a license fee in the amount of \$\_\_\_\_\_, for the use of the Licensed Premises for the term of this License. This license fee shall be paid by Licensee and collected by City at the time City executes this License.

4. **USE OF PREMISES.** Licensee may place tables, chairs and a temporary barrier on the Licensed Premises for the service of food and non-alcoholic beverages as a sidewalk cafe during the hours that the sidewalk cafe and adjoining business premises are open to the public. A 6-foot

wide clear passageway must be maintained upon the public sidewalk at all times for pedestrian traffic. All chairs, tables, enclosures and other materials placed by the Licensee shall be removed from the Licensed Premises and the sidewalk shall be restored for public use whenever the sidewalk cafe and adjoining business premises are not open to the public. Licensee shall not use or knowingly permit any part of the Licensed Premises to be used for any unlawful purpose.

5. DUTY TO MAINTAIN AND RIGHT TO INSPECT. Licensee has inspected the Licensed Premises and licenses same "as is." Licensee shall have the duty, at Licensee's sole expense, to maintain and repair the Licensed Premises and keep same in as good a condition as when Licensee first took possession thereof, except for the effects of ordinary wear and tear and depreciation arising from lapse of time or damage without fault or liability of Licensee; to remove any ice, snow and debris from the Licensed Premises; to cut or mow any grass or weeds, and trim any trees growing on the Licensed Premises, and to immediately provide City with notice of any damage to the Licensed Premises or of the development of any dangerous condition on the Licensed Premises. City shall have the right to reasonably enter and inspect the Licensed Premises.

6. COMPLIANCE WITH LAW. Licensee at its sole expense shall comply with all laws, orders and regulations of federal, state and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon the City or Licensee with respect to the Licensed Premises. Licensee, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this License Agreement, or for the making of repairs, alterations, improvements or additions.

7. INDEMNIFICATION AND INSURANCE. Licensee shall defend, pay on behalf of, indemnify and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers, and others working on behalf of the City, as provided for in Attachment "A". Licensee shall obtain and maintain in continuous effect during the term of this License Agreement with the City and while any of its obligation remain unsatisfied, the insurance coverages, limits and endorsements set forth in Attachment "A". A certificate of insurance demonstrating compliance with these requirements is attached as Exhibit "C".

8. TERMINATION OF LICENSE AND DEFAULTS OF LICENSEE. This License Agreement shall terminate on December 31st as provided in section 2, above. Upon any default of Licensee in accordance with the terms and provisions of this License Agreement, this License Agreement may, at the option of City, be canceled and forfeited; provided, however, before any such cancellation and forfeiture, the City shall give Licensee written notice specifying the default, or defaults, and stating that this License Agreement will be canceled and forfeited ten (10) days after the giving of such notice, unless such default, or defaults are remedied within such grace period. In addition, the City shall have the right to terminate or cancel this License Agreement prior to the expiration of the license term upon a determination by the Des Moines City Council that the Licensed Premises are required for a public purpose and upon giving Licensee at least thirty (30) days written notice stating the intent to so terminate or cancel this License Agreement. If the City so terminates or cancels this License Agreement by giving thirty (30) days written notice, there shall be no damages except for the license fee, which shall be refunded by the City upon request by Licensee on a pro rata basis.

9. NOTICES. Notices as provided for in this License Agreement to the City, shall be deemed sufficient if delivered or sent by certified mail with return receipt to the City Permit and Development Center Administrator, 602 Robert Ray Drive, Des Moines, Iowa 50310. Notices as provided for in this License Agreement to Licensee shall be deemed sufficient if delivered or

sent by certified mail with return receipt requested to the Licensee at the mailing address for Licensee's authorized representative identified above.

10. SPECIAL PROVISIONS. This License Agreement is subject to the special provisions set forth in Attachment "B".

11. CHOICE OF LAWS. This License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

12. DISPLAY OF LICENSE CERTIFICATE. The City will issue a License Certificate contemporaneous with the execution of this License Agreement. The License Certificate shall be displayed by Licensee in a conspicuous place in the Licensee's business adjoining the Licensed Premises and at all times shall be subject to inspection.

**Execution by Licensee:**

The undersigned Licensee hereby agrees to license the Licensed Premises from the City of Des Moines upon the terms and conditions identified above.

\_\_\_\_\_

*Business name if Licensee is not an individual*

By: \_\_\_\_\_

Date signed:

\_\_\_\_\_, 200\_.

Signature of individual or authorized agent of business

**Execution by City:**

The City of Des Moines hereby agrees to license the Licensed Premises to the Licensee upon the terms and conditions identified above.

City of Des Moines, Iowa

By: \_\_\_\_\_

Date signed: \_\_\_\_\_,

2006.

Phillip Delafield, Permit and Development Center Administrator

**ATTACHMENT "A"**  
**STANDARD INSURANCE & INDEMNIFICATION REQUIREMENTS**  
(Sidewalk License)

**1. GENERAL**

The Licensee shall purchase and maintain insurance to protect the Licensee and the City of Des Moines, Iowa throughout the duration of the License. Said insurance shall be provided by an insurance company(ies), "admitted" and "nonadmitted" to do business in the State of Iowa, having no less than an A.M. Best Rating of "B+". All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to License execution or commencement of work and/or services.

**2. INSURANCE REQUIREMENTS**

A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: The Licensee shall procure and maintain during the life of this License, Worker's Compensation Insurance, including *Employer's Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, the Licensee is not required to carry Workers Compensation Insurance.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Licensee shall procure and maintain during the life of this License, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or any subsequent ISO equivalent or a non-ISO equivalent form). A list of any additional exclusions shall be submitted with the Certificate of Insurance and shall be subject to the review and approval of the City.

C. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

D. LIQUOR LIABILITY INSURANCE: The Licensee shall procure and maintain during the life of this License, Commercial Liquor Liability Insurance and General Liability Insurance, each with limits of not less than \$1,000,000 per occurrence. If liquor license is held by Licensee, the General Liability Insurance required above will meet the General Liability portion of this requirement.

E. SUBLICENSEES: The Licensee shall require that any of its agents and subLicensees who perform work and/or services pursuant to the provisions of this License meet the same insurance requirements as are required of the Licensee.

F. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY: Except for Workers Compensation, the insurance policies providing the coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are attached.

G. CANCELLATION & MATERIAL CHANGE ENDORSEMENT: The insurance policies providing the coverages specified in A, B, C, and D above shall include the City of Des Moines, Iowa Cancellation & Material Change Endorsement. A copy of this endorsement is attached.

H. PROOF OF INSURANCE: The Licensee shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the License or permit or license, etc. and (2) the following statement, "*Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached.*" These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

### **3. INDEMNIFICATION REQUIREMENTS**

A. INDEMNIFICATION (HOLD HARMLESS) PROVISION: To the fullest extent permitted by law, the Licensee agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's use or occupancy of the Licensed Premises pursuant to the provisions of this License. It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by the Licensee, its officers, employees, sublicensees, and others affiliated with the Licensee due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by the Licensee pursuant to the provisions of this License.

The Licensee expressly assumes full responsibility for any and all damage caused to City of Des Moines, Iowa premises resulting from the activities of the Licensee, its officers, employees, subLicensees, and others affiliated with the Licensee.

The Licensee represents that its activities pursuant to the provisions of this License will be performed and supervised by adequately trained and qualified personnel, and the Licensee will observe, and cause its officers, employees, sublicensees and others affiliated with the Licensee to observe all applicable safety rules.

### **4. WAIVER OF SUBROGATION**



A. WAIVER OF SUBROGATION: To the extent permitted by law, Licensee hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or responsibility to the Licensee or anyone claiming through or under the Licensee by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty and for any occupational injury incurred. This provision shall be applicable and in full force and effect only with respect to loss or damage or injury occurring during the time of this License. The Licensee's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the Licensee to recover thereunder.

**EXHIBIT \_\_\_\_**

**CITY OF DES MOINES, IOWA  
ADDITIONAL INSURED ENDORSEMENT**

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**CITY OF DES MOINES, IOWA  
GOVERNMENTAL IMMUNITIES ENDORSEMENT  
(For use when including the City as an Additional Insured)**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF DES MOINES, IOWA  
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 East First Street, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.