

.....
Date January 28, 2013

**PUBLIC HEARING ON ASSESSMENT OF A \$1,500.00 PENALTY AND A 30-DAY
SUSPENSION OF LIQUOR LICENSE TO NAT FOOD MART LOCATED AT 1443 2ND AVE FOR
VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS**

WHEREAS, an employee of Nat Food Mart located at 1443 2nd Avenue sold an alcoholic beverage to a person under legal age at the place of business in violation of Des Moines Municipal Code Section 10-6(9) on 8/31/12, and was convicted of the charge by a guilty plea; and

WHEREAS, Iowa Code Section 123.39 permits a local authority (city council) to suspend, revoke, or impose a civil penalty upon license/permit holders who violate the alcoholic beverage laws; and

WHEREAS, Iowa Administrative Rule 185-4.8 (123) provides that violations of the alcoholic beverage laws by any employee, agent, or servant of a license or permit holder shall be deemed the act of the licensee or permittee and subject the license or permit holder to civil penalty, suspension or revocation; and

WHEREAS, the violation of Municipal Code section 10-6(9) is the second violation for selling to a person under legal age within 2 years; An employee of Nat Food Mart at 1443 2nd Avenue was previously convicted of making an illegal sale of an alcoholic beverage to a person under legal age which offense occurred on 5/4/12; and

WHEREAS, Iowa Code Section 123.50(3) and Des Moines Municipal Code section 10-13(C)(2) provide that for a second conviction of a sale to a person under legal age under either Iowa Code section 123.49(2)(h) or Des Moines Municipal Code section 10-6(9) in a two-year period a civil penalty in the amount of \$1,500.00 and a thirty (30) day suspension of license/permit shall be imposed; and

WHEREAS, Iowa law provides that the local authority shall retain the civil penalties where the proceeding to impose the penalty is conducted by the local authority;

Date January 28, 2013


(2)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that:

1. Nat Food Mart located at 1443 2nd Avenue is assessed a \$1,500.00 civil penalty and a thirty (30) day suspension of its License Nos. LE0002079 and BC0027098 for sale of alcoholic beverages to a person under legal age for a second time in a two-year period.
2. The suspension will commence at 6:00 a.m. Thursday February 28, 2013 and end at 6:00 a.m. Saturday March 30, 2013.
3. The City Clerk is directed to notify the permit holder by sending through ordinary mail a copy of this resolution as soon as possible.
4. Nat Food Mart shall pay the \$1,500.00 civil penalty to the City of Des Moines at the City Clerk's Office.
5. This City Council action may be appealed within thirty (30) days to the Alcoholic Beverages Division of the Iowa Department of Commerce. 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

MOVED BY _____ TO ADOPT.

FORM APPROVED:


Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

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.

City Clerk

51-B

PARRISH KRUIDENIER DUNN BOLES GRIBBLE
PARRISH GENTRY & FISHER L.L.P.
LAWYERS

ALFREDO PARRISH
ELIZABETH KRUIDENIER
ANDREW J. DUNN
MATTHEW M. BOLES
CHARLES E. GRIBBLE
ERIC KENYATTA PARRISH
TAMMY WESTHOFF GENTRY
THOMAS G. FISHER JR.
MARGARET R. STUART

BRANDON BROWN
JENNIFER OETKER
BENJAMIN D. BERGMANN
ADAM C. WITOSKY
LUKE M. DESMET*
ROBERT P. MONTGOMERY
OF COUNSEL
*ALSO LICENSED IN ILLINOIS

2910 GRAND AVENUE • DES MOINES, IOWA 50312-4205
(515) 284-5737 • (800) 532-1405 • FAX (515) 284-1704 • PARRISHLAW.COM

January 17, 2013

Honorable Frank Cownie
Mayor
Des Moines City Council
400 Robert D Ray Drive
Des Moines, IA 50309

City Councilman Halley Griess
City Councilman Robert Mahaffey
City Councilwoman Christine Hensley
City Councilman Brian Meyer
At Large City Councilman Christopher Coleman
At Large City Councilman Skip Moore

RE: Nat Food Mart, 1443 2nd Avenue, Des Moines, Iowa
Agenda Item Number 25-1(B)

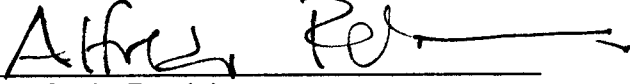
Dear Honorable Mayor Cownie and City Council Members:

Please find enclosed our Application to Reconsider Proposed Suspension, or alternatively, the Dates of Suspension, on behalf of Nat Food Mart. The proposed suspension is set for public hearing on January 28, 2013. Thank you for your consideration and we look forward to having this matter placed before the City Council.

We would be more than happy to answer any questions you may have with regard to this issue.

Sincerely,

PARRISH KRUIDENIER DUNN BOLES
GRIBBLE PARRISH GENTRY & FISHER L.L.P.

BY: 
Alfredo Parrish
aparrish@parrishlaw.com

FILED
2013 JAN 28 PM 12:09
CITY CLERK
DES MOINES, IA

PARRISH KRUIDENIER DUNN BOLES GRIBBLE
PARRISH GENTRY & FISHER L.L.P.
LAWYERS

Mayor Frank Cownie
City Council Members
Page Two
January 17, 2013

AP:aw

Enclosures: Application with Exhibits

Copies to: Douglas P. Philip
Nat Food Mart

BEFORE THE CITY COUNCIL OF THE CITY OF DES MOINES

IN THE MATTER CONCERNING:

NAT FOOD MART
1443 2nd Avenue
Des Moines, IA 50314

License Nos: LE0002079 & BC0002798

APPLICATION TO RECONSIDER
PROPOSED SUSPENSION, OR
ALTERNATIVELY, THE DATES OF
SUSPENSION

2013 JAN 28 PM 12:09
CITY CLERK
DES MOINES IA

FILED

COMES NOW, the Licensee, Nat Food Mart, by and through its undersigned counsel, and in support of its Application to Reconsider Proposed Suspension, or alternatively, the Dates of Suspension, respectfully states:

1. Licensee, a minority owned business, has been located at 1443 2nd Avenue for nearly thirteen years, having opened its doors in 2000.
2. Licensee has held a Class C License, No. BC002798, practically since it opened, having been approved to sell beer since February 14, 2000. Renewal of this license, which is set to expire February 13, 2013, has been timely applied for.
3. Additionally, the business has a Class E License, No. LE0002079, which was approved on January 24, 2012. Renewal of this license, which is set to expire January 23, 2012, has been timely applied for.
4. The matter of the proposed license suspension is to be heard by the Council at public hearing on January 28, 2013.
5. Prior to the present matter, neither license has been subject to suspension.
6. The owner of Licensee was not involved in either violation, nor were any of Licensee's managers.
7. Since learning of the City Council resolution on January 14, 2013,

Licensee's owner and employees have taken the online Iowa Program for Alcohol Compliance Training (I-PACT). The individuals completing I-PACT are Benny Nat, Luis Funez, Maria Isedra, and Marta Rodriguez. Copies of the certificates of completion are attached with this application as Exhibits 1 through 4.

8. Licensee now has a better understanding of what is required of both the ownership and its employees. As shown by the I-PACT certification, completed within two (2) days of learning about the resolution, Licensee is taking the necessary steps to prevent any future violations.

9. The violations at issue occurred on May 4, 2012, and August 31, 2012, a period of four (4) months. The employees who committed these violations have been terminated.

10. It is improper for both licenses, No. BC002798 and No. LE0002079, as it is unclear whether either violation asserted involved the sale of liquor to a minor. The complaint for the violation which occurred May 4, 2012, attached as Exhibit 5, states only that a minor was sold "alcohol, while the complaint issued for the August 31, 2012 violation, attached as Exhibit 6, specifically identifies the alcohol sold as wine coolers.

11. The sale of wine coolers is included under Licensee's Class C license, and is not liquor. See Iowa Code §§ 123.3(7); 123.124. The only license which may be subject to a thirty (30) day suspension is No. BC002798. See Iowa Code §123.50(3)(e)(2) ("Suspension shall be limited to the specific license or permit for the premises found in violation.") As there have not been two (2) established violations involving the sale of liquor, license No. LE0002079 may not be suspended.

12. Suspension of license No. BC002798 for thirty (30) days will cause significant financial hardship to Licensee. Licensee has a property tax payment due by March 31, 2013, in an amount of \$5,489.00. Should its licenses be suspended during the time proposed, February 28, 2013 through March 30, 2013, Licensee would be substantially hindered in making this payment.

13. Licensee requests the Counsel not suspend licenses its licenses for thirty (30) days. Should the Counsel order such a suspension, Licensee requests this suspension be served during a period other than that proposed.

14. Suspension during this time period will work an even greater hardship than during another time period. In addition to the property tax payment stated above, Licensee anticipates increased sales during this time period. As an example, Licensee is preparing for the 2013 NCAA Wrestling Championships which will be taking place in downtown Des Moines from March 20-23, 2013, one (1) mile from Licensee's location. A Google Map showing Licensee's proximity to the site of the championship is attached as Exhibit 7. To prepare for this event, Licensee must order additional stock well ahead of the event itself.

15. Licensee is additionally beginning preparations for the Drake Relays, which are to be held April 24-27, 2013. This event draws thousands of visitors to Des Moines, and should its licenses be suspended during this time period, Licensee will not only suffer an increased financial loss, but will also be placed at an unfair disadvantage in business competition. As with the wrestling championships, Licensee must order additional stock to prepare for this event.

16. Licensee requests, if the Counsel orders license No. BC002798

suspended for thirty (30) days, the time of this suspension be moved to October 2013.

WHEREFORE, the Licensee, Nat Food Mart, requests this Council to not impose a thirty (30) days suspension of license No. BC002798, or alternatively, the time period of the suspension be moved from February 28, 2013 through March 30, 2013, to be served in October 2013.

**PARRISH KRUIDENIER DUNN BOLES
GRIBBLE PARRISH GENTRY & FISHER,
L.L.P.**

BY: 

Alfredo Parrish AT0006051
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
Facsimile: (515) 284-1704
Email: aparrish@parrishlaw.com
ATTORNEY FOR LICENSEE

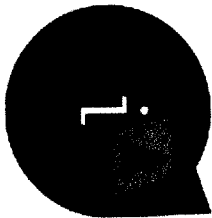
Original to:

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At Large City Councilman Christopher Coleman
At Large City Councilman Skip Moore

Douglas P. Philiph
Assistant City Attorney
25 E. 1st Street
Des Moines, IA 50309
(515)283-4800 (phone)
(515)237-1665 (fax)
Email: dpphiliph@dmgov.org



Certificate of Completion

Awarded to:
bunny nat

For completion of:
Iowa Program for Alcohol Compliance Training

Date of completion: *Jan 15, 2013*
Expires on: *Jan 15, 2015*
Certificate No. *11216*

Thank you for participating in the Iowa Program for Alcohol Compliance Training and for partnering with the Iowa Alcoholic Beverages Division to not sell alcohol to Iowa's minors.

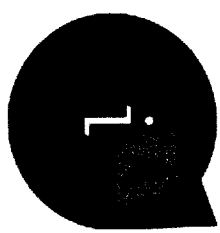
State of Iowa
Alcoholic Beverages Division
1918 SE Hulsizer Road,
Ankeny, IA 50021



**ALCOHOLIC
BEVERAGES
DIVISION**
State of Iowa

Stephen Larson
Stephen Larson
Administrator

tabbles®
EXHIBIT
1



Certificate of Completion

Awarded to:

Luis Funez

For completion of:

Iowa Program for Alcohol Compliance Training

Date of completion: Jan 16, 2013

Expires on: Jan 16, 2015

Certificate No. 11232

Thank you for participating in the Iowa Program for Alcohol Compliance Training and for partnering with the Iowa Alcoholic Beverages Division to not sell alcohol to Iowa's minors.

State of Iowa
Alcoholic Beverages Division
1918 SE Hulsizer Road,
Ankeny, IA 50021



**ALCOHOLIC
BEVERAGES
DIVISION**
State of Iowa

Stephen Larson
Stephen Larson
Administrator



Certificate of Completion

Awarded to:

Maria Isedra

For completion of:

Iowa Program for Alcohol Compliance Training

Date of completion: Jan 15, 2013

Expires on: Jan 15, 2015


Certificate No. 11231

Thank you for participating in the Iowa Program for Alcohol Compliance Training and for partnering with the Iowa Alcoholic Beverages Division to not sell alcohol to Iowa's minors.

State of Iowa
Alcoholic Beverages Division
1918 SE Hulsizer Road,
Ankeny, IA 50021



**ALCOHOLIC
BEVERAGES
DIVISION**
State of Iowa


Stephen Larson
Administrator

tabbles®

EXHIBIT

3



Certificate of Completion

Awarded to:

Marta E Rodriguez

For completion of:

Iowa Program for Alcohol Compliance Training

Date of completion: *Jan 15, 2013*

Expires on: *Jan 15, 2015*

Certificate No. *11226*

Thank you for participating in the Iowa Program for Alcohol Compliance Training and for partnering with the Iowa Alcoholic Beverages Division to not sell alcohol to Iowa's minors.

State of Iowa
Alcoholic Beverages Division
1918 SE Hulsizer Road,
Ankeny, IA 50021



**ALCOHOLIC
BEVERAGES
DIVISION**
State of Iowa

Stephen Larson
Stephen Larson
Administrator

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EXHIBIT

4

PK 3843097

51B

IN THE IOWA DISTRICT COURT FOR POLK COUNTY
COMPLAINT AND PROBABLE CAUSE STATEMENT

CITY OF DES MOINES

COURT CASE NO. SMAC329624

VS.

DMPD. CASE NO. 12-13354

ALEJANDRO REYES
(DEFENDANT)

IA0770300

SOC. SEC. NO. N/A

1233 19th
(ADDRESS)

DATE OF BIRTH 4-5-94

Des Moines, IA
(CITY & STATE)

DESCRIPTION	<u>H</u>	<u>M</u>	<u>5'8</u>	<u>150</u>
RACE		SEX	HGT	WGT
EYES	<u>Blue</u>	HAIR	<u>Black</u>	MARKS

THE DEFENDANT IS ACCUSED OF THE CRIME(S) OF: SELLING ALCOHOL TO A MINOR.

AT: 1443 2nd DSM
(ADDRESS OR LOCATION)

IN VIOLATION OF SECTION(S): 10-09(a)
OF THE MUNICIPAL CODE OF THE CITY OF DES MOINES, 2012. COMMITTED ON OR ABOUT
THE 4 DAY OF MAY, 2012 IN THE CITY OF DES MOINES, POLK COUNTY, IOWA.
SIGNED AND SWORN TO ON THIS 4 DAY OF MAY, 2012

HOELSCHER #4944
FILING COMPLAINANT

CHRIS HARDY
Commission Number 757890
(NOTARY PUBLIC, POLK COUNTY, IOWA) MAGISTRATE
April 16, 2012

BASIS OF PROBABLE CAUSE

- THE DEFENDANT WAS:
- CAUGHT IN THE ACT
 - IDENTIFIED BY PRINTS
 - NAMED BY WITNESSES
 - HAD PROPERTY ASSOCIATED WITH CRIME
 - ARRESTED FOLLOWING INVESTIGATION
 - WEAPON INVOLVED CRIME

- IDENTIFIED IN PERSON
- CONFESSED TO CRIME
- ACCUSED BY CO-DEFENDANT
- VICTIM INJURED
- IDENTIFIED BY PHOTO
- ARRESTED AT SCENE
- OTHER (SPECIFY BELOW)
- PROPERTY / MONEY TAKEN

VALUE OF PROPERTY TAKEN \$ _____ DAMAGE EST. VALUE \$ _____

OTHER FACTS IMPORTANT TO PROBABLE CAUSE AND BAIL: DEFENDANT SERVED ALCOHOL TO A MINOR AT
STAR GAS STATION

DR. HOELSCHER #4944
SIGNATURE OF ARRESTING OFFICER NO.

5/4/12
(DATE OF ARREST)

DATED: 5/4/12

WITNESS INFORMATION

NAME	ADDRESS	HM PHONE	WK PHONE
<u>SCARLETT #4937</u>	<u>DMPD</u>		
<u>Stuber</u>	<u>126 P 2801</u>		

BOND AMOUNT \$ _____ CASH ONLY () CASH OR SURETY ()

OTHER CONDITIONS IMPOSED WITH BAIL: _____

EXHIBIT
5

[Signature] 5/8/12
(JUDGE, ASSOCIATE JUDGE OR MAGISTRATE)
CITY ATTORNEY PINK • DEFENDANT OR DEFENDANT ATTORNEY

5/14
DMPD (88-362)

WHIT

FILED
 POLK COUNTY, IA
 2012 MAY -8 AM 9:12
 CLERK DISTRICT COURT

IN THE IOWA DISTRICT COURT FOR POLK COUNTY
COMPLAINT AND PROBABLE CAUSE STATEMENT

PK4111468

CITY OF DES MOINES

COURT CASE NO. SMAC332746

VS.

DMPD. CASE NO. 12-27424

SOC. SEC. NO. _____

DATE OF BIRTH 06-29-1991

DESCRIPTION U M S-L 150
RACE SEX HGT WGT
BRN BRK SLEKED SHORT W
EYES HAIR MARKS

JAGAT BAHADUR BHANDARI IA0770300
(DEFENDANT)
3939 E 23RD #10
(ADDRESS)
DSM IA
(CITY & STATE)

THE DEFENDANT IS ACCUSED OF THE CRIME(S) OF: SELLING AN ALCOHOLIC BEVERAGE TO A MINOR

AT: 1429 7TH AVE ('STAR' STORE) DSM, POLK, IA
(ADDRESS OR LOCATION)

IN VIOLATION OF SECTION(S): 10-6(9)
OF THE MUNICIPAL CODE OF THE CITY OF DES MOINES, 20 12. COMMITTED ON OR ABOUT
THE 31 DAY OF August, 20 12 IN THE CITY OF DES MOINES, POLK COUNTY, IOWA.
SIGNED AND SWORN TO ON THIS 31 DAY OF August

Sgt C. Hardy #4601
FILING COMPLAINANT

BRETT HARRIS
Commission Number 728164
My Commission Expires October 2012
(NOTARY PUBLIC, ASSOCIATED JUDGE, MAGISTRATE)

BASIS OF PROBABLE CAUSE

- CAUGHT IN THE ACT
- IDENTIFIED BY PRINTS
- NAMED BY WITNESSES
- HAD PROPERTY ASSOCIATED WITH CRIME
- ARRESTED FOLLOWING INVESTIGATION (Crime)
- WEAPON INVOLVED CRIME

- IDENTIFIED IN PERSON
- CONFESSED TO CRIME
- ACCUSED BY CO-DEFENDANT
- VICTIM INJURED

- IDENTIFIED BY PHOTO
- ARRESTED AT SCENE
- OTHER (SPECIFY BELOW)
- PROPERTY / MONEY TAKEN

VALUE OF PROPERTY TAKEN \$ _____ DAMAGE EST. VALUE \$ _____

OTHER FACTS IMPORTANT TO PROBABLE CAUSE AND BAIL JAGAT DID SELL A 4 PK OF 'SEAGRAM'S WINE COOLERS TO AN UNDER AGE INFORMANT DURING AN ALCOHOL COMPLIANCE CHECK @ THE STORE HE WAS WORKING AS A CASHIER @.

Sgt C. Hardy #4601
SIGNATURE OF ARRESTING OFFICER NO.

31 / Aug / 12
(DATE OF ARREST) UTED:

DATED: 31 / Aug 2012

WITNESS INFORMATION

NAME ADDRESS HM PHONE WK PHONE
SPO B. CARNEY DMPD #5067
9-12-12
PH
1003
CUA

RECEIVED
MID SEP - 6 AM 9:30
9-6-12

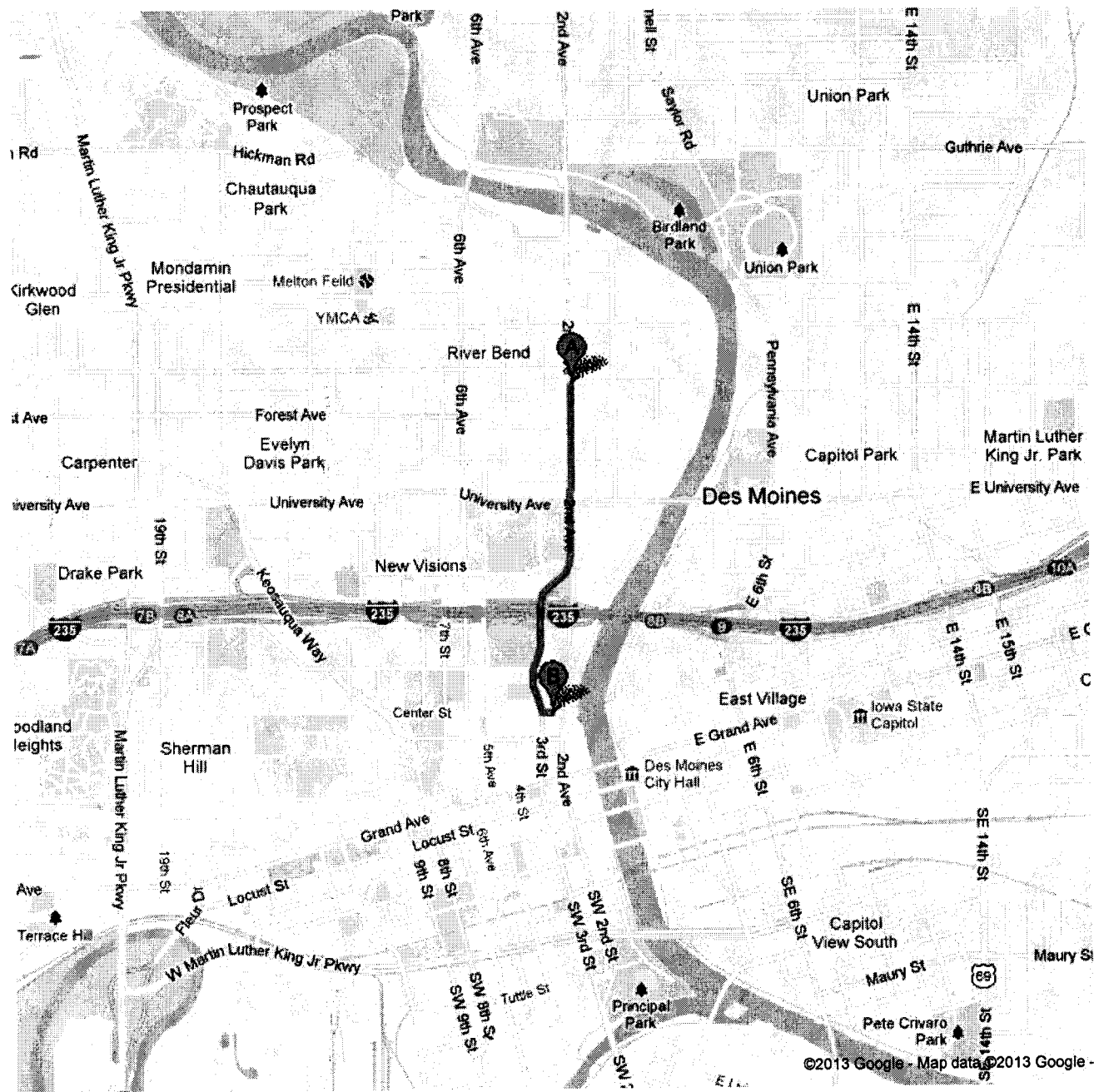
BOND AMOUNT \$ _____
OTHER CONDITIONS IMPOSED WITH BAIL: _____

EXHIBIT
6

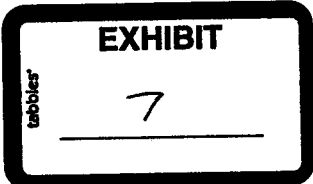
(JUDGE, ASSOCIATE JUDGE OR MAGISTRATE)
ATTORNEY PINK • DEFENDANT OR DEFENDANT ATTORNEY



Directions to Wells Fargo Arena
233 Center Street, Des Moines, IA 50309
1.0 mi – about 4 mins



©2013 Google - Map data ©2013 Google -



51-B

 1443 2nd Ave, Des Moines, IA 50314

1. Head **south** on **2nd Ave** toward **Forest Ave**
About 1 min

go 0.5 mi
total 0.5 mi


2. Continue onto **3rd St**
About 2 mins

go 0.5 mi
total 1.0 mi



3. Turn left onto **Center St**
Destination will be on the left

go 148 ft
total 1.0 mi

 **Wells Fargo Arena**
233 Center Street, Des Moines, IA 50309

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.