

SIDEWALK/PUBLIC RIGHT-OF-WAY USE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ 2023, by and between the City of Indianola, Iowa (hereinafter called the "City"), whose address is 110 N 1st Street, Indianola, Iowa 50125, and _____ (hereinafter called the "Business Owner"), whose address is _____, Indianola, Iowa 50125.

WITNESSETH THAT:

1. PREMISES AND TERM. The City, in consideration of the agreements and conditions herein contained, on the part of the Business Owner to be kept and performed, grants the right unto the Business Owner to place tables, chairs, displays and bike racks upon the sidewalk and bike racks on the public right-of-way that currently does not allow parking adjacent to the following described real estate, situated in Warren County, Iowa, to wit:

which, more particularly, includes the space and premises as may be shown on "Exhibit A", if and as may be attached hereto, for a term commencing at midnight of the day previous to the first day of the term, which shall be on the _____ day of _____ 2023, and ending at midnight on the last day of the term, which shall be on the 31st day of December, 2023, upon the condition that the Business Owner performs as in this Agreement provided.

2. PERMIT FEE. Business Owner agrees to pay to City a permit fee as follows:

- (a) \$.50 per square foot of occupied space or \$25 for sidewalk sign.
- (b) _____ total square feet
- (c) _____ permit fee due upon execution of this Agreement.

All sums shall be paid at the address of City, as above designated.

3. POSSESSION. Business Owner shall be entitled to possession on the first day of the term and shall yield possession to the City at the time and date of the close of the term, except as herein otherwise expressly provided.

4. USE OF PREMISES. Business Owner shall use the premises as an _____,

during business hours only. The use is permitted provided there remains a free walking path with a minimum walking surface on the sidewalk of five (5) feet in width, four (4) feet which must be ADA-compliant.

5. FENCING. As part of a sidewalk use agreement or any other outdoor seating area, all fencing shall be subject to the approval of the Downtown Square Commission. Fences not exceeding four (4) feet in height are permitted, and shall be constructed of wrought iron, aluminum, wood, or polyvinyl chloride (PVC). Wood fences should be constructed of treated lumber, cedar, redwood, or similar types of wood that are resistant to decay. The frame of a fence, including posts, rails, and supports shall be placed on the inside of the fence. Decorative features such as individual posts, brick or stone columns, and similar features constructed as part of a fence or wall shall be allowed to exceed the maximum fence height by no more than twelve (12) inches. The use of materials such as corrugated or sheet metal, chicken wire, woven wire, temporary construction fencing, snow fencing, or similar materials shall not be permitted. Business owner agrees that no fencing shall be placed in the street. Business Owner agrees that upon the termination of this Agreement Business Owner shall remove any and all fencing and shall restore the premises to its preexisting condition.

6. ASSIGNMENT. This Agreement shall not be assigned, or any part thereof, without the written consent of the City.

7. CARE AND MAINTENANCE OF PREMISES.

(a) Business Owner accepts said property in its present condition. Business Owner shall, after taking possession of said premises and until the termination of this Agreement, at its own expense, care for and maintain said premises in a reasonably safe and serviceable condition. Business Owner will not permit or allow said premises to be damaged or depreciated in value by any act or negligence of the Business Owner, its agents or employees.

(b) Business Owner will be responsible for maintaining the sidewalk/public right-of-way and shall keep the same free from ice, snow and other debris. Business Owner shall further not allow trash of any kind of accumulate on said premises.

8. SURRENDER OF PREMISES AT END OF TERM. Business Owner agrees that upon the termination of this Agreement Business Owner shall surrender, yield up and deliver the premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Business Owner.

9. INDEMNITY AND LIABILITY INSURANCE. Business Owner shall protect, indemnify and save harmless the City from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about the premises, or due directly or indirectly to the use or occupancy thereof, or any part thereof, by the Business Owner or any person claiming through or under the Business Owner. The Business Owner further covenants and agrees that Business Owner shall at Business Owner's expense procure and maintain casualty and liability insurance in a responsible company or companies authorized to do business in the State of Iowa, in amounts not less than \$1,000,000.00 for any one person injured, and \$1,000,000 for any

one accident, and with the limits of \$100,000 for property damage, protecting the City against such claim, damages, costs or expenses on account of injury to any person or persons, or to any property belonging to any person or persons, by reason of such casualty, accident or other happening on or about the demised premises during the term of this Agreement.

Certificates or copies of the policies, naming the City, and providing for thirty (30) days' notice to City before cancellation shall be delivered to the City within twenty (20) days from the date of the commencement of the term.

10. CHANGES TO BE IN WRITING. None of the covenants, provisions, terms or conditions of this Agreement to be kept or performed by City or Business Owner shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the parties and delivered to the City and Business Owner. This Agreement contains the whole agreement of the parties.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in the day and year first above written.

The City of Indianola, Iowa, City	_____
By: _____	By: _____
Attest:	
By: _____ Jackie Raffety, City Clerk	