

**COMMUNITY DEVELOPMENT**

**MEMORANDUM**

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

**To:** Mayor and City Council Members  
**Cc:** Gregg Mandsager, City Administrator  
Dave Gobin, Community Development Director  
**From:** Andrew Fangman, City Planner  
**Date:** April 6, 2017  
**Re:** Resolution Approving Sidewalk or Street Café Easement Agreements for Avenue Subs and Boonies on the Avenue

**INTRODUCTION:** Avenue Subs, 113 Iowa Avenue, and Boonies on the Avenue, 214 Iowa Avenue, have applied to use public right-of-way for the purposes of outdoor dining under the provisions of Section 3-1-6 of City Code.

**BACKGROUND:** Avenue Subs is proposing four tables on the sidewalk in front of its restaurant at 113 Iowa Avenue. This outdoor dining structure has been placed in the same location as in prior years.

Boonies on the Avenue is proposing dining on a raised platform on two on-street parking spaces directly in front of its restaurant. This will be identical to the outdoor dining that occurred at this location last year.

In July of 2015, the pilot program was made permanent with the addition of Section 3-1-6 to City Code. This new section governs the process for approving and the operational conditions for outdoor dining in the public right of way. The attached easement agreement reflects all the requirements of this Section of City Code.

As specified by Section 3-1-6, the easement agreement is only good for one year, with on street dining be allowed to occur between April 1<sup>st</sup> and October 15<sup>th</sup>. To operate in future years the applicant will be required to obtain a new easement agreement on a annual basis.

**RECOMMENDATION/RATIONALE:** Staff recommends approval of this resolution.

**BACKUP INFORMATION:**

1. Resolution
2. Easement Agreements
3. Site Plans

**RESOLUTION NO. \_\_\_\_\_**

**ACCEPTANCE OF SIDEWALK OR STREET CAFÉ**  
**EASEMENT AGREEMENTS**

**WHEREAS**, these SIDEWALK OR STREET CAFÉ EASEMENT AGREEMENTS (the "Agreements") are entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "Grantor") and **Boonie's On the Avenue and Avenue Subs**, (hereinafter referred to as "Grantees"; and

**WHEREAS**, Grantor is the owner of certain real estate located in the right-of-way adjacent to the Grantees' properties, more particularly described in Exhibits "A" and "B" attached hereto and made a part hereof by this reference (the "Properties"). Grantees desire to operate outdoor seating areas for the purpose of serving food and drinks on the Properties. Grantor is willing to grant Grantees nonpermanent easements for said purpose, under the provisions of Section 3-1-6 of the City Code of Muscatine, Iowa, subject to the terms of these agreements and City Code;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council for the City of Muscatine, that the City of Muscatine, Iowa approve the sidewalk café easement right-of-way easement agreements attached as Exhibits A and B.

**PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of April, 2017.**

**BY THE CITY COUNCIL OF THE  
CITY OF MUSCATINE, IOWA**

\_\_\_\_\_  
**Diana L. Broderson, Mayor**

**Attest:**

\_\_\_\_\_  
**Gregg Mandsager, City Clerk**

## **Exhibit A**

### **SIDEWALK OR STREET CAFÉ EASEMENT AGREEMENT**

This SIDEWALK OR STREET CAFÉ EASEMENT AGREEMENT (the "Agreement") is entered into by and between, the City of Muscatine, Iowa, an Iowa municipal corporation, (hereinafter referred to as "Grantor") and Boonie's On the Avenue, (hereinafter referred to as "Grantee").

1. **Property and Purpose.** Grantor is the owner of certain real estate located in the right-of-way adjacent to the Grantee's property, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to operate an outdoor seating area for purposes of serving food and drinks on the Property. Grantor is willing to grant Grantee a nonpermanent easement for said purpose, under the provisions of Section 3-1-6 of the City Code of Muscatine, Iowa, subject to the terms of this agreement and City Code.

2. **Grant of Easement.** Acting under the under the provisions of Section 3-1-6 of the City Code of Muscatine, Iowa, Grantor hereby grants, the Grantee, a nonpermanent easement to use the Property as an outdoor seating area for purposes of serving food and drinks, subject to the following terms and all applicable provisions of City Code.

- A. Grantee shall at all times comply with all provisions of Section 3-1-6 of City Code which regulates outdoor dining on public right-of-way, as well as all other applicable sections of City Code.
- B. Nothing shall be placed in the public right-of-way before April 1, 2017 and all of the following conditions and criteria have been met:
  - i. This easement agreement is approved by a resolution of City Council.
  - ii. A fully signed copy of this agreement is returned to the City.
  - iii. The Grantee shall provide the City a certificate of insurance that meets the criteria and standards specified in City Code Section 3-1-6(A)(7).
- C. That platform being placed in the public-right-of-way shall me all requirements set for in City Code and be located as indicated in the area set forth in "Exhibit A".
- D. All items must be removed from the public right-of-way no later than October 15, 2017, unless the City Administrator acting under the provision of Section 3-1-6(C)(12) has granted the Grantee permission to occupy the public right-of-way to a specified later date.
- E. The grantee is responsible for trash removal and shall maintain the area and surrounding five feet (5') in a clean and litter free manner during all hours of operation.
- F. All kitchen equipment and refuse containers used to service the sidewalk or street cafés must be located inside the principal building.
- G. No extension cords are allowed across sidewalks.

3. **Use by Grantor.** Grantor retains the right to use the Property. The Property is subject to all matters of record, including all easements of record, the retained rights of Grantor and whatever other easements, rights, licenses or grants that contemporaneous herewith or subsequent hereto, may be granted, or otherwise created by Grantors. This Easement shall revert to Grantor upon release.

4. Grantor's Improvements. Grantee shall replace and restore any and all improvements of Grantor on the Property and Grantor's adjoining land which are disturbed by Grantee's activities, including, but not limited to, curbing, landscaping, paving, irrigation systems, utility infrastructure and/or traffic controls (collectively, "Grantor's Improvements"). Grantee agrees to restore the Property to a condition after construction substantially the same as prior to entry by the Grantee

5. Indemnification. Grantee, with respect to its use of the Property for the Project, agrees to indemnify, protect, defend, and hold harmless Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any act or omission of Grantee, its agents, servants or employees.

6. Termination of Agreement

A. This agreement shall terminate no later than December 31<sup>st</sup> of the year that this agreement is approved.

B. The City Administrator, or designee, shall retain the right to terminate the agreement but only after written notice of violation has been given and the time to cure the violation has expired. Grounds for termination of the agreement shall include, but not be limited to:

i. Violations of state and liquor control laws,

ii. Violations of the agreement,

iii. Creating a safety hazard, health hazard, and/or public nuisance under state or local law, or

iv. Violations of any provision of the City Code.

C. The City Administrator, or designee, retains the right to terminate the easement agreement and direct removal of sidewalk or street café operations if there is a substantial and reasonable need for use of the public right-of-way for a valid public purpose.

D. If the City Administrator, or designee acts to terminate this agreement prior to December 31<sup>st</sup> of the year in which it was approved, the café owner has the right to appeal a decision to terminate the agreement to the City Council.

**IN WITNESS WHEREOF**, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Diana L. Broderson, Mayor

ATTEST:

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Gregg Mandsager, City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DIANA BRODERSON** and **GREGG MANDSAGER**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the \_\_ day of \_\_\_\_\_, 2017, and the said **DIANA BRODERSON** and **GREGG MANDSAGER** acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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Notary Public in and for the State of Iowa

Grantee

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF IOWA, MUSCATINE COUNTY, ss:**

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is \_\_\_\_\_ of Grantee, that the seal affixed to the foregoing instrument to which this is attached is the corporate seal; that the instrument was signed and sealed on behalf of Grantee by authority of its Board of Directors, and that \_\_\_\_\_, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of Grantee, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa



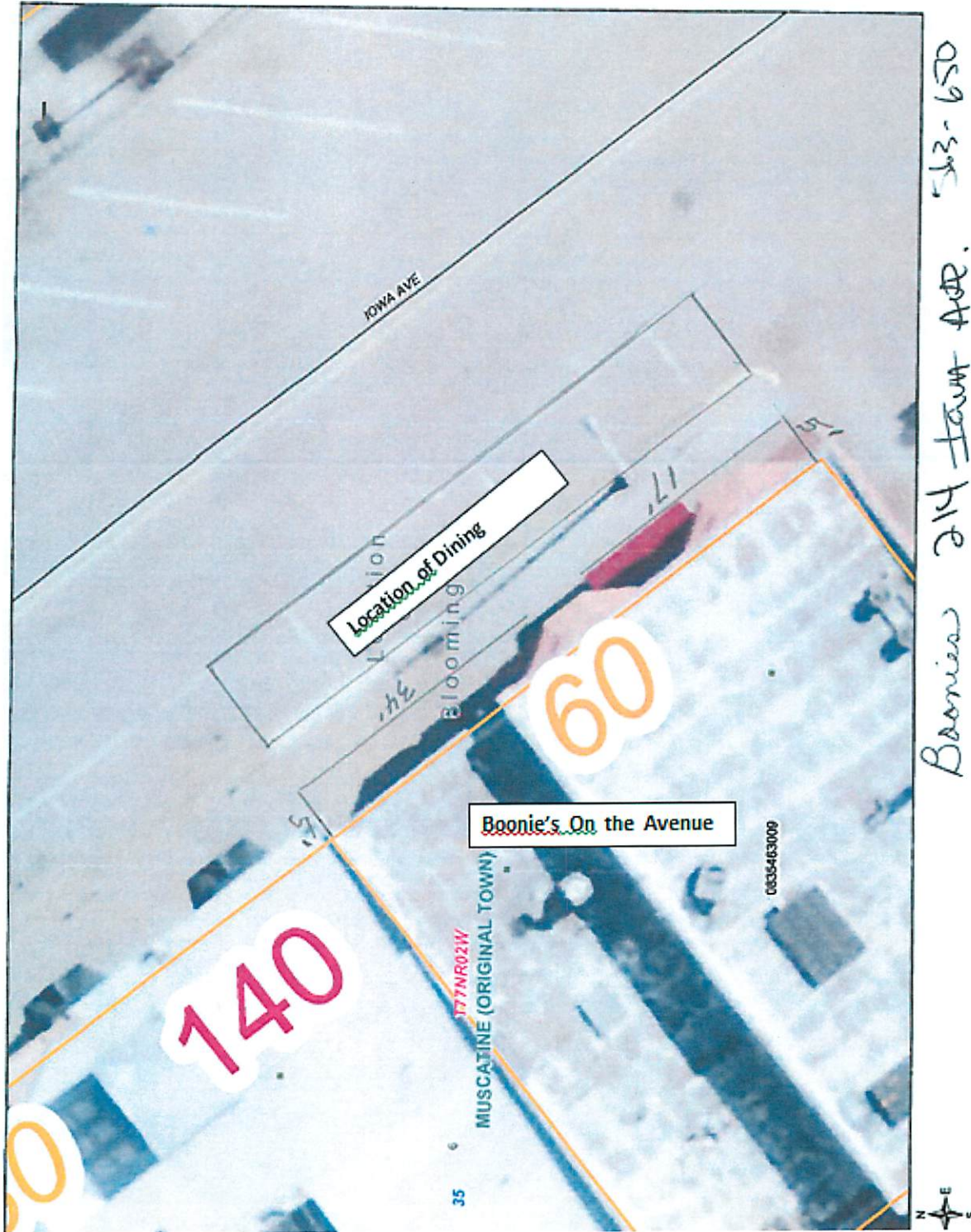


Exhibit A

## **Exhibit B**

### **SIDEWALK OR STREET CAFÉ EASEMENT AGREEMENT**

This SIDEWALK OR STREET CAFÉ EASEMENT AGREEMENT (the "Agreement") is entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "Grantor") and **Avenue Subs**, (hereinafter referred to as "Grantee").

1. **Property and Purpose.** Grantor is the owner of certain real estate located in the right-of-way adjacent to the Grantee's property, 113 Iowa Avenue, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to operate an outdoor seating area for purposes of serving food and drinks on the Property. Grantor is willing to grant Grantee a nonpermanent easement for said purpose, under the provisions of Section 3-1-6 of the City Code of Muscatine, Iowa, subject to the terms of this agreement and City Code.

2. **Grant of Easement.** Acting under the under the provisions of Section 3-1-6 of the City Code of Muscatine, Iowa, Grantor hereby grants, the Grantee, a nonpermanent easement to use the Property as an outdoor seating area for purposes of serving food and drinks, subject to the following terms and all applicable provisions of City Code.

- A. Grantee shall at all times comply with all provisions of Section 3-1-6 of City Code which regulates outdoor dining on public right-of-way, as well as all other applicable sections of City Code.
- B. Nothing shall be placed in the public right-of-way before April 1, 2017 and all of the following conditions and criteria have been met:
  - i. This easement agreement is approved by a resolution of City Council.
  - ii. A fully signed copy of this agreement is returned to the City.
  - iii. The Grantee shall provide the City a certificate of insurance that meets the criteria and standards specified in City Code Section 3-1-6(A)(7).
- C. Items being placed in the public-right-of-way shall me all requirements set for in City Code and be located as indicated in the area set forth in "Exhibit A".
- D. All items must be removed from the public right-of-way no later than October 15, 2017, unless the City Administrator acting under the provision of Section 3-1-6(C)(12) has granted the Grantee permission to occupy the public right-of-way to a specified later date.
- E. The grantee is responsible for trash removal and shall maintain the area and surrounding five feet (5') in a clean and litter free manner during all hours of operation.
- F. All kitchen equipment and refuse containers used to service the sidewalk or street cafés must be located inside the principal building.
- G. No extension cords are allowed across sidewalks.

3. **Use by Grantor.** Grantor retains the right to use the Property. The Property is subject to all matters of record, including all easements of record, the retained rights of Grantor and whatever other easements, rights, licenses or grants that contemporaneous herewith or subsequent hereto, may be granted, or otherwise created by Grantors. This Easement shall revert to Grantor upon release.



4. Grantor's Improvements. Grantee shall replace and restore any and all improvements of Grantor on the Property and Grantor's adjoining land which are disturbed by Grantee's activities, including, but not limited to, curbing, landscaping, paving, irrigation systems, utility infrastructure and/or traffic controls (collectively, "Grantor's Improvements"). Grantee agrees to restore the Property to a condition after construction substantially the same as prior to entry by the Grantee

5. Indemnification. Grantee, with respect to its use of the Property for the Project, agrees to indemnify, protect, defend, and hold harmless Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any act or omission of Grantee, its agents, servants or employees.

6. Termination of Agreement

A. This agreement shall terminate no later than December 31<sup>st</sup> of the year that this agreement is approved.

B. The City Administrator, or designee, shall retain the right to terminate the agreement but only after written notice of violation has been given and the time to cure the violation has expired. Grounds for termination of the agreement shall include, but not be limited to:

- i. Violations of state and liquor control laws,
- ii. Violations of the agreement,
- iii. Creating a safety hazard, health hazard, and/or public nuisance under state or local law, or
- iv. Violations of any provision of the City Code.

C. The City Administrator, or designee, retains the right to terminate the easement agreement and direct removal of sidewalk or street café operations if there is a substantial and reasonable need for use of the public right-of-way for a valid public purpose.

D. If the City Administrator, or designee acts to terminate this agreement prior to December 31<sup>st</sup> of the year in which it was approved, the café owner has the right to appeal a decision to terminate the agreement to the City Council.

IN WITNESS WHEREOF, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Diana L. Broderson, Mayor

ATTEST:

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Gregg Mandsager, City Clerk

**STATE OF IOWA, COUNTY OF MUSCATINE, ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DIANA BRODERSON** and **GREGG MANDSAGER**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the \_\_ day of \_\_\_\_\_, 2017, and the said **DIANA BRODERSON** and **GREGG MANDSAGER** acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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Notary Public in and for the State of Iowa

Grantee

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

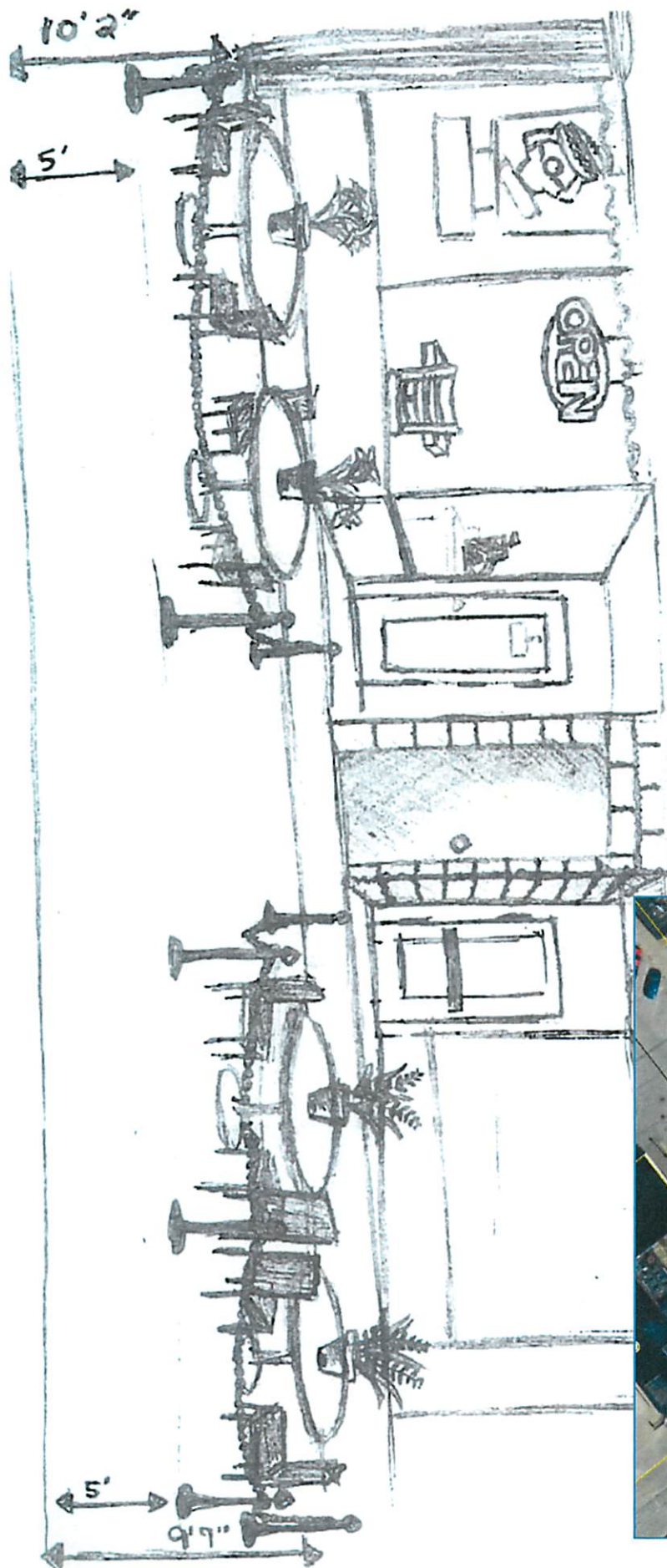
Name: \_\_\_\_\_

Title: \_\_\_\_\_

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On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is \_\_\_\_\_ of **Grantee**, that the seal affixed to the foregoing instrument to which this is attached is the corporate seal; that the instrument was signed and sealed on behalf of **Grantee** by authority of its Board of Directors, and that \_\_\_\_\_, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of **Grantee**, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa



*Armed Subs*



113 Iowa Avenue