

Date..... April 21, 2008

WHEREAS, the City has received an application from KH of Des Moines, LLC, represented by Karl Alterman, officer, for a Sidewalk Cafe Lease for a portion of the sidewalk adjoining the Dos Rios restaurant at 316 Court Avenue; and,

WHEREAS, the right-of-way adjoining 316 Court Avenue has not been previously vacated; and,

WHEREAS, the affected portion of the public right-of-way must first be vacated before the City may approve the proposed Sidewalk Cafe Lease;

WHEREAS, on April 7, 2008, by Roll Call No. 08- 564, it was duly resolved by the City Council that the proposed vacation and lease of such right-of-way be set down for hearing on April 21, 2008, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of said proposal to vacate and lease public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and lease, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council; NOW, THEREFORE,

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

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and lease of public right-of-way as described below are hereby overruled and the hearing is closed.
2. There is no public need for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of the portion of Court Avenue adjoining 316 Court Avenue, more specifically described as follows:

A 4.0-foot-wide strip on the South side of the Court Avenue Street Right-of-Way (R.O.W.), as presently established, adjacent to Lots 1 and 2 in Block 25, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, more particularly described as follows:

COMMENCING at the Northwest Corner of said Lot 1; THENCE North 74°(degrees) 13'(minutes) 01"(seconds) East, along said South R.O.W. line of

( continued )

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Court Avenue, a distance of 2.00 feet, to the POINT OF BEGINNING; THENCE North 15°(degrees) 46'(minutes) 59"(seconds) West, 4.00 feet; THENCE North 74°(degrees) 13'(minutes) 01"(seconds) East, along a line parallel with said South R.O.W. line of Court Avenue, a distance of 115.33 feet; THENCE South 15°(degrees) 46'(minutes) 59"(seconds) East, 4.00 feet, to a point on said South R.O.W. line of Court Avenue; THENCE South 74°(degrees) 13'(minutes) 01"(seconds) West, along said South R.O.W. line of Court Avenue, a distance of 115.33 feet, to the POINT OF BEGINNING, containing 461.3 sq.ft., more or less.

- Subject to final passage and publication of the ordinance vacating such right-of-way, the lease of such vacated right-of-way to KH of Des Moines, LLC, for a sidewalk cafe is hereby approved, and the Permit and Development Center Administrator is hereby authorized and directed to sign a Sidewalk Cafe Lease with KH of Des Moines, LLC, in the approved standard form.

( Council Communication No. 08- 218 )

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

FORM APPROVED:

*Roger K. Brown*  
 Roger K. Brown  
 Assistant City Attorney

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

**For City use only:**

City ID No.: \_\_\_\_\_  
Received on: \_\_\_\_\_  
Annual Rent \$ \_\_\_\_\_  
Approved by City Council on \_\_\_\_\_

Premises Address: \_\_\_\_\_  
Term Expires: \_\_\_\_\_  
First Year Rental: \$ \_\_\_\_\_  
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": DOE PICS CANTINA  
Print name of individual(s) or business entity

Lessee's authorized representative: KARL ALTELMAN  
Mailing address: 101 2nd AV # 203 DES MOINES IA 50309  
Phone Number: 561 809 2756

Address of business location for sidewalk cafe: 316 COURT AV, 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 460 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. \$2,070.00

3. **CONSIDERATION.** Lessee shall pay to the City a rental in the amount of \$441.00 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. Any equipment used for cooking must be within an approved enclosure to prevent inadvertent contact by the public with hot surfaces. Alcohol may be sold or consumed on the Leased Premises only if the business holds a valid liquor license or a beer or wine permit which covers the Leased Premises.

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

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.

### 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:

SW 4th (East) / Court Avenue (North)

**Legal Description of the Property:**

Garage G11 4th and Court Avenue Condominiums

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

4' north/south x 115'-6" east/west

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

**Business Name:**

Dos Rios Mexican Restaurant

(Proposed Street Café Business Name)

**Business Address:**

316 Court Avenue

(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:** 8-7-07

Shelly Stokes  
(Signature)

Shelly Stokes  
(Printed Name)

**Address of Adjoining Property:**

310 Court Ave  
Des Moines, Iowa 50309  
(Zip Code)

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

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

**Mailing Address- if different**

1105 Howard St.  
Omaha, NE 68102

**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.

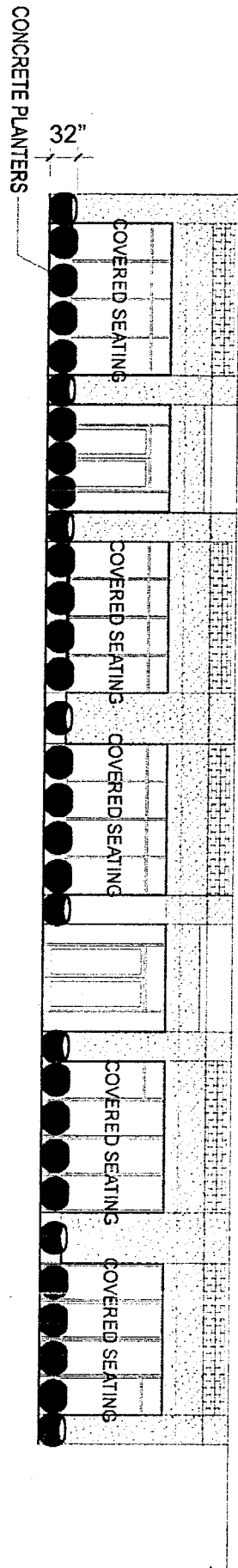
**Note: If any Special Provisions are required by the City, a replacement Attachment "B" will be prepared by the City for signature by the applicant.**

**Acceptance of Special Provisions.**

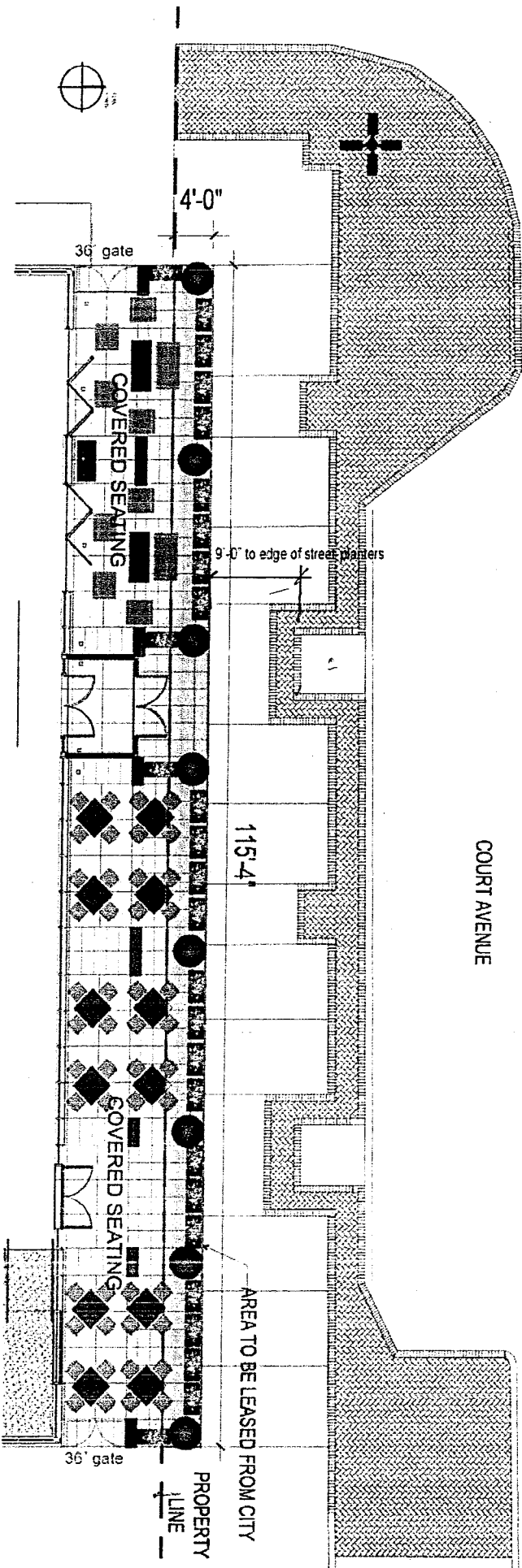
DOS RIOS RESTAURANT? CANTINA  
*Business name if Lessee is not an individual*

By: [Signature]  
Signature of individual or authorized agent of business

Date signed: 8/2/07 2006.



2 NORTH ELEVATION  
SCALE: N.T.S.



1 STREETSCAPE PLAN  
SCALE: N.T.S.

Substance

DOS RIOS RESTAURANT STREETSCAPE





SWEET POTATO VINE



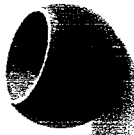
PLANTERS AT SEATING



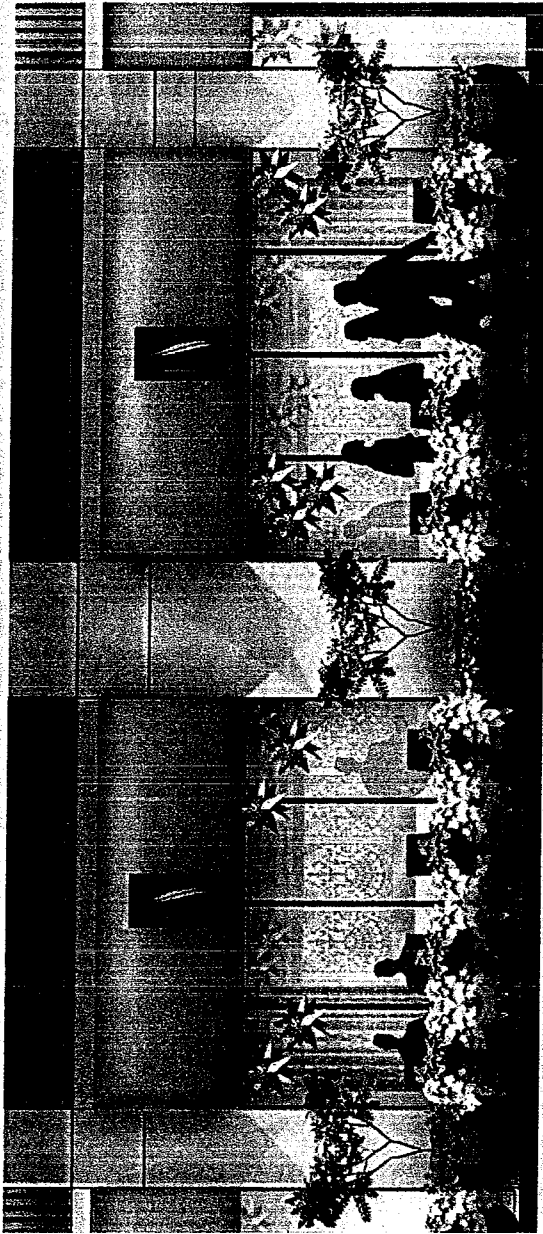
SUMAC FALL



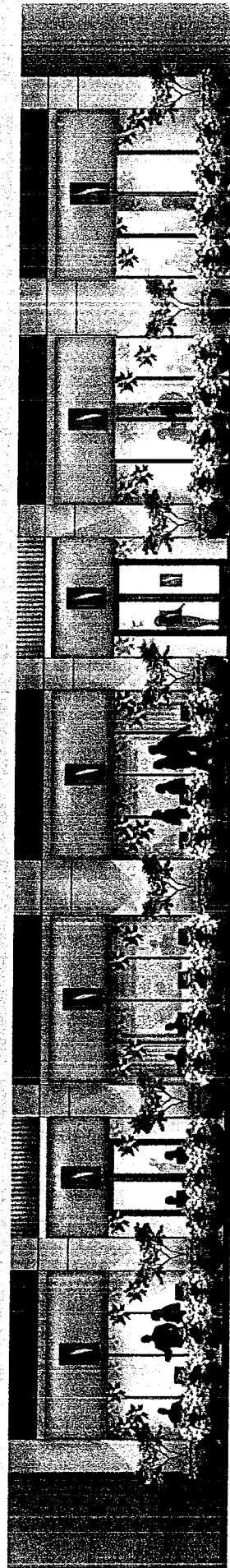
SUMAC - SUMMER



PLANTERS AT COLUMNS



DOS RIOS OUTDOOR SEATING



DOS RIOS COURT AVENUE STREETScape

