

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 )

63

Date April 21, 2008

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.

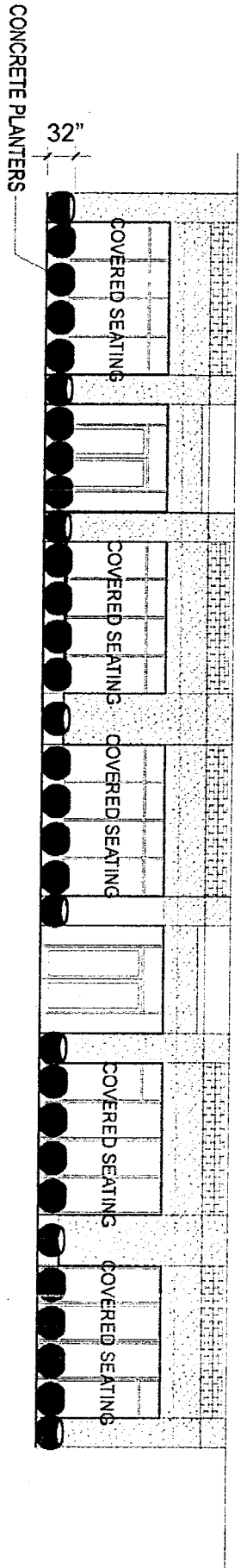
**Note: If any Special Provisions are required by the City, a replacement Attachment "B" will be prepared by the City for signature by the applicant.**

**Acceptance of Special Provisions.**

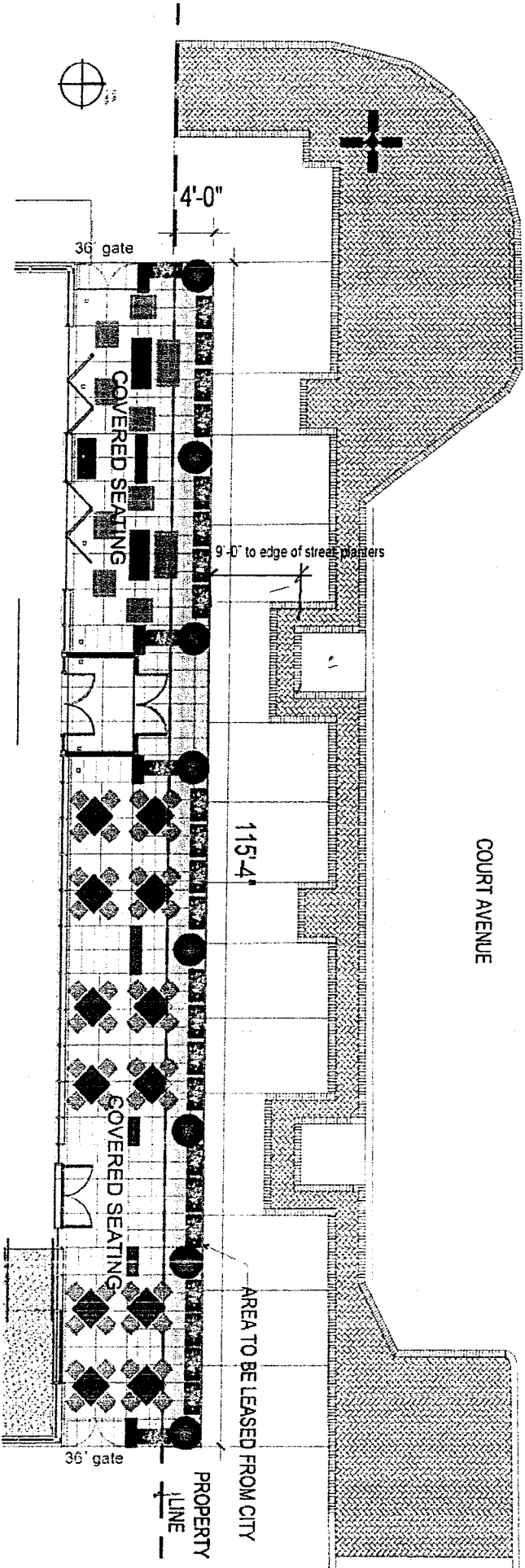
DOS RIOS RESTAURANT? CANTINA  
*Business name if Lessee is not an individual*

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

Date signed: 8/2/07 2006.



2 NORTH ELEVATION  
SCALE: 1/8" = 1'-0"



1 STREETSCAPE PLAN  
SCALE: 1/8" = 1'-0"

substance

DOS RIOS RESTAURANT STREETSCAPE





SWEET POTATO VINE



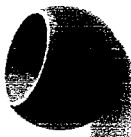
PLANTERS AT SEATING



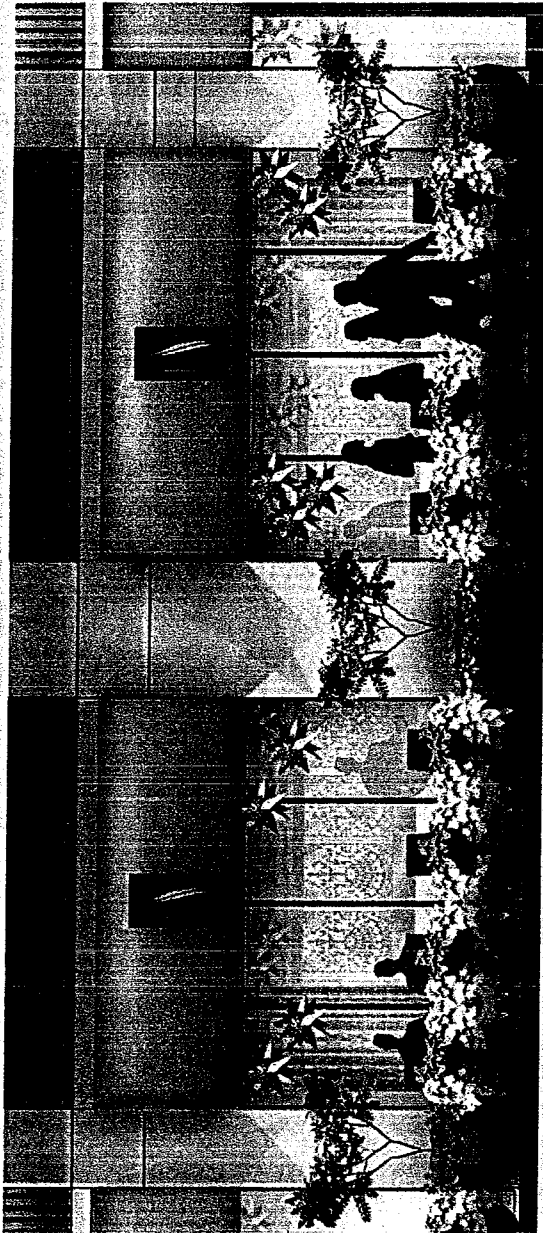
SUMAC FALL



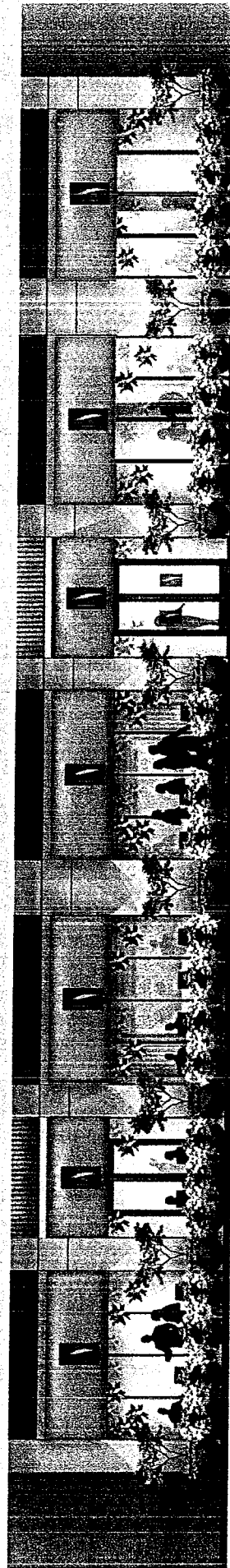
SUMAC - SUMMER



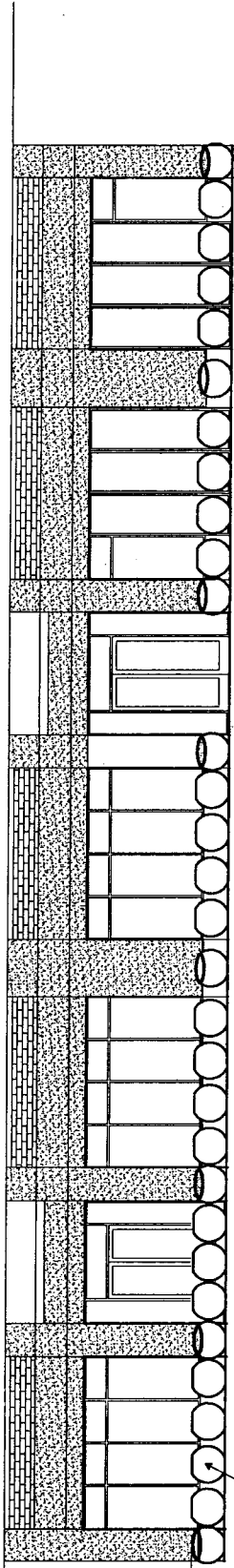
PLANTERS AT COLUMNS



DOS RIOS OUTDOOR SEATING



DOS RIOS COURT AVENUE STREETSCAPE

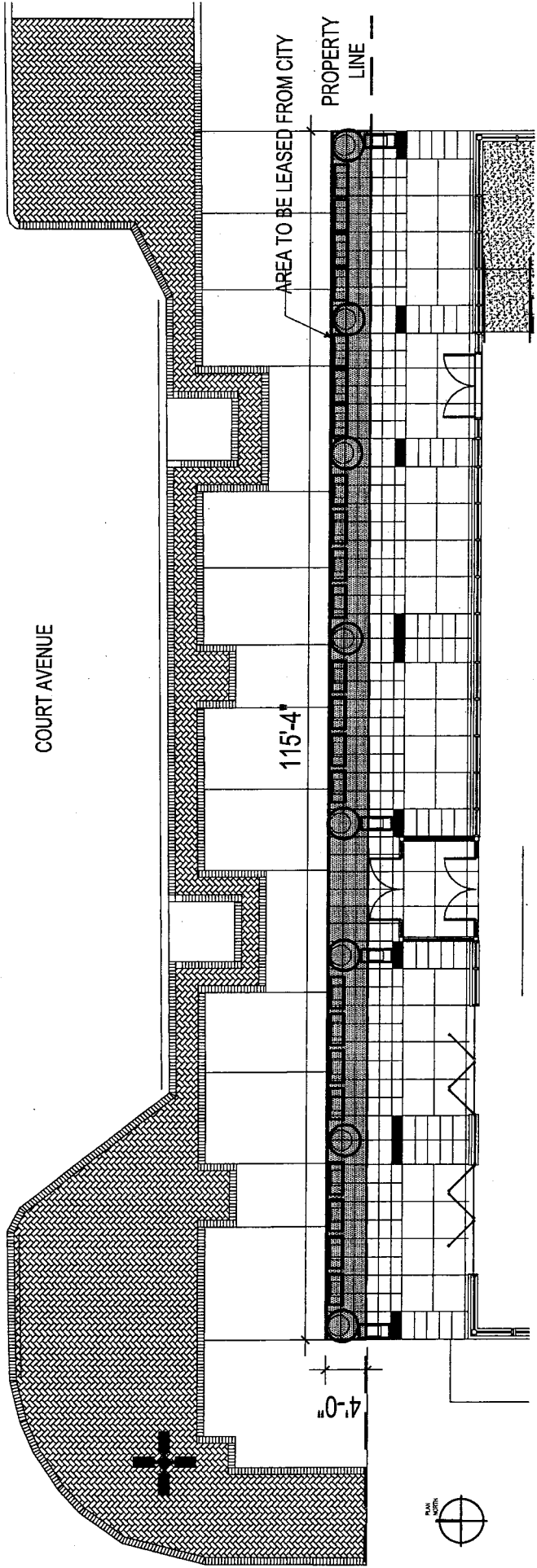


3'-0"

CONCRETE PLANTERS

2 NORTH ELEVATION

SCALE: N.T.S.



COURT AVENUE

AREA TO BE LEASED FROM CITY

PROPERTY LINE

115'-4"

4'-0"

1 STREETScape PLAN

SCALE: N.T.S.

DOS RIOS RESTAURANT STREETScape

substance

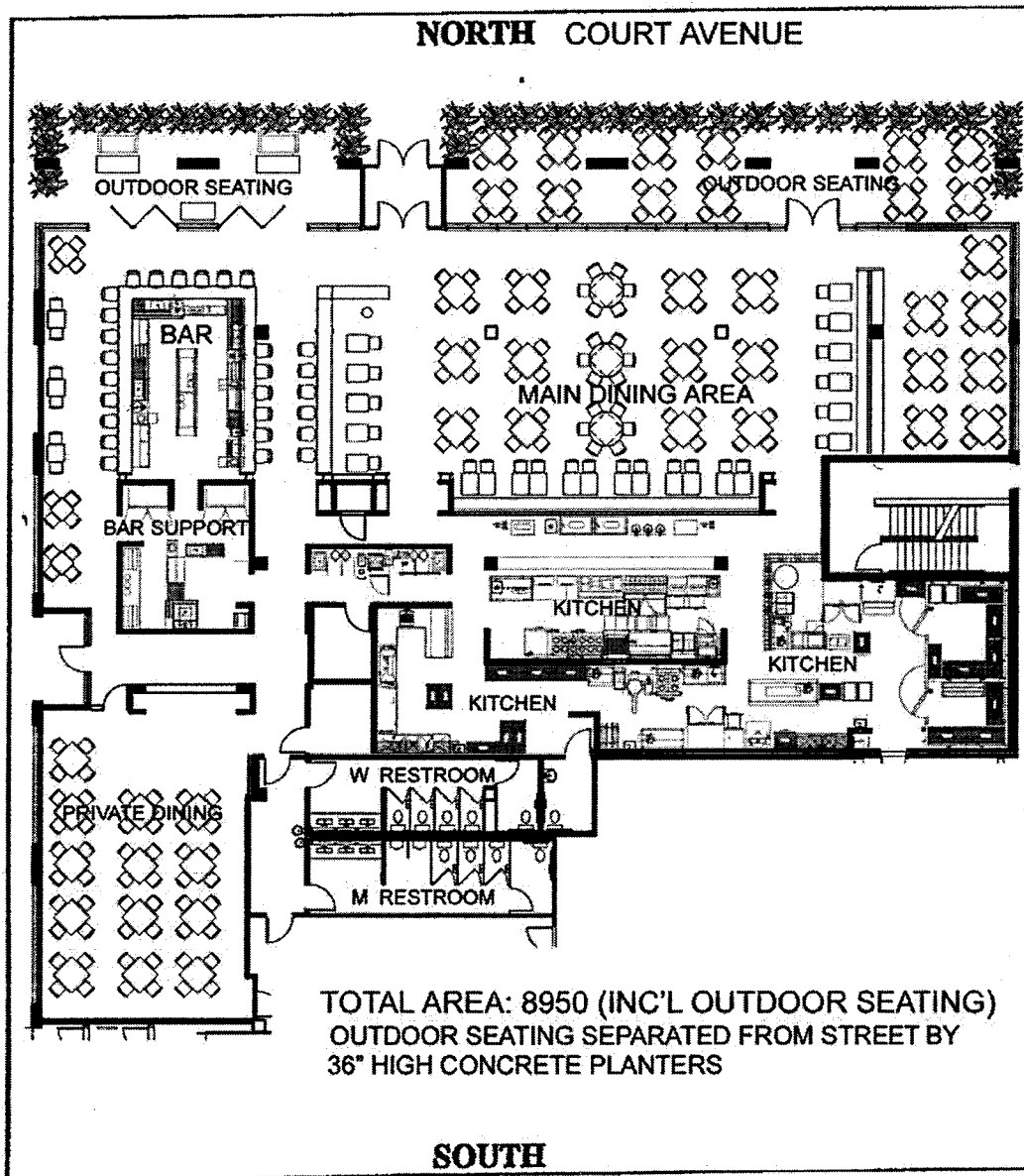
ARCHITECTS  
 1000 N. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 P: 303.733.4444

**SKETCH OF PREMISES FOR LIQUOR AND/OR BEER LICENSES**

**BUSINESS NAME** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

\*\*\*\*\*  
**NOTE: SHOW ALL AREAS TO BE LICENSED:** (Include square footage, seating, restrooms (2), bar, kitchen, storage areas, dance floor, entrances, and exits.) Include outdoor service area, if applicable, and proximity to primary area.  
**LIST TYPE OF FENCING TO BE USED FOR OUTDOOR SERVICE**



**SIDEWALK LEASE AREA LEGAL DESCRIPTION  
FOR 4<sup>th</sup> and COURT Dos Rios Restaurant,  
DES MOINES, POLK COUNTY, IOWA**

**Legal Description for Sidewalk Lease Area:**

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 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.



# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID MA  
KHOFD-1

DATE (MM/DD/YYYY)  
10/01/07

<b>PRODUCER</b> Sean Ballance Risk Transfer, LLC 301 East Pine St Suite 350 Orlando FL 32801	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b>  KH of Des Moines LLC dba Dos Rios 101 Plaza Real South Suite 214 Boca Raton FL 33432	INSURER A:	Evanston Insurance Co.
	INSURER B:	National Union Fire Ins. Co.
	INSURER C:	Hartford Steam Boiler
	INSURER D:	
	INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR Liquor \$1,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	07GLPAX100112	09/05/07	09/05/08	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
							MED EXP (Any one person)	\$ 0
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
			AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
			GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
							OTHER THAN AUTO ONLY: EA ACC	\$
							AGG	\$
B		X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	EBU4463459	09/05/07	09/06/08	EACH OCCURRENCE	\$ 5000000
							AGGREGATE	\$ 5000000
								\$
								\$
								\$
			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTHER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
C			OTHER BOILER & MACHINERY	TBD	09/05/07	09/05/08	EQUIPMENT	775000
							BI/EE	

*OK*  
*Manjushree*  
*12-7-07*

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Certificate holder is named as Additional Insured with respects to outdoor sidewalk, dining and service area.  
 Primary Non-Contributory (form IC02261006) included.  
 Waiver of Subrogation in favor of certificate holder ( see enclosed Exhibit 'A')

<b>CERTIFICATE HOLDER</b>  City of Des Moines City Hall Mark Schultz 400 East First Street Des Moines IA 50309	<b>CITY OF D</b>	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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EXHIBIT A

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

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

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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.

Servicing Office:

Insurance for this coverage part provided by:  
**ZURICH AMERICAN INSURANCE COMPANY**

**ATLANTA**  
 3003 SUMMIT BLVD, SUITE 1800  
 ATLANTA, GA 30319

1. Policy Number WC 2938687-05	Renewal of Number WC 2938687-04
Named Insured and Mailing Address <b>OASIS ACQUISITION, INC.</b> (SEE ENDORSEMENT U-WC-321-A) 4400 N CONGRESS AVE, STE 250 WEST PALM BEACH FL 33407	Producer and Mailing Address <b>AON RISK SERVICES, INC. OF FL</b> 1001 BRICKELL BAY DR STE 1100 MIAMI FL 331314937
Producer Code 73908-000	

Other workplaces not shown above:  
 FEIN: 20-4298739/65-0825614  
 NCCI Company No. 10863     New     Renewal     Rewrite    of Prior Policy No.  
 This information page, with policy provisions and endorsements, if any, completes this policy.  
 Insured is: CORPORATION

2. Policy Period: From 06-01-07 to 06-01-08 at 12:01 A.M. Standard Time at Insured's mailing address.  
 Insured's identification number(s):  
 911480794/

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers' Compensation Law of the states listed here: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, IA, ID, IL, IN, KS, MD, ME, MI, MO, MS, NC, NE, NH, NJ, NY, OH, PA, RI, SC, SD, TN, TX, VA, VT

B. Employers Liability Insurance: Part Two of the policy applies to the work in each state listed in Item 3.A.

The Limits of Liability under Part Two are:

Bodily Injury by Accident	1,000,000	each Accident
Bodily Injury by Disease	1,000,000	policy limit
Bodily Injury by Disease	1,000,000	each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

D. This policy includes these endorsements and schedules:  
 See Schedule of Forms and Endorsements

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required on the following Classification Schedule is subject to verification and change by audit.  
 See Classification Schedule

TOTAL ESTIMATED STANDARD PREMIUM	\$ 3,716,626.00	If indicated below, adjustments of premium shall be made:  <input checked="" type="checkbox"/> Annually <input type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> This is a Three Year Fixed Rate Policy <input type="checkbox"/> Quarterly
PREMIUM DISCOUNT	\$ - 172,814.00	
EXPENSE CONSTANT	\$ 260.00	
PREMIUM FOR ENDORSEMENTS	\$	
TAXES AND SURCHARGES	\$ 54,971.00	
TOTAL ESTIMATED ANNUAL PREMIUM	\$ 3,599,043.00	
MINIMUM PREMIUM	\$	
DEPOSIT PREMIUM	\$	

Aon Risk Services, Inc. of FL  
 Agent or Producer

*Cary H. Lind*  
 Countersigned by Resident Licensed Agent

*07/06/07*  
 Date

*OK*  
*Mary [Signature]*  
 12-12-07

## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

**GENERAL SECTION****A. The Policy**

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

**B. Who Is Insured**

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

**C. Workers Compensation Law**

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

**D. State**

State means any state of the United States of America, and the District of Columbia.

**E. Locations**

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE  
WORKERS COMPENSATION INSURANCE****A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

**B. We Will Pay**

We will pay promptly when due the benefits required of you by the workers compensation law.

**C. We Will Defend**

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

**D. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

**E. Other Insurance**

We will not pay more than our share of benefits and costs covered by this insurance and other



insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

#### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

#### G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

#### H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance; or
  - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

### PART TWO EMPLOYERS LIABILITY INSURANCE

#### A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury, by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

#### B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed

against such third party as a result of injury to your employee;

2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

**C. Exclusions**

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Conti-

mental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

**D. We Will Defend**

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

**E. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

**F. Other Insurance**

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

**G. Limits of Liability**

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

**H. Recovery From Others**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

**I. Actions Against Us**

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

**PART THREE  
OTHER STATES INSURANCE**

**A. How This Insurance Applies**

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

**B. Notice**

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

**PART FOUR  
YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

#### PART FIVE - PREMIUM

##### A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

##### B. Classifications

Item 4 of the information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

##### C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

##### D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

##### E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

##### F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

##### G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

**PART SIX - CONDITIONS**

**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

**B. Long Term Policy**

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

**C. Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

**D. Cancellation**

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

**E. Sole Representative**

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned By \_\_\_\_\_

WC 00 00 00 A

(Ed. 4-92)

# Workers Compensation and Employers Liability Insurance Policy

ZURICH AMERICAN INSURANCE COMPANY

A stock insurance company  
A member company of Zurich North America

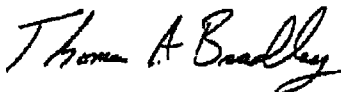
Administrative office:  
Zurich Towers  
1400 American Lane  
Schaumburg, Illinois 60195-1056

## Insured

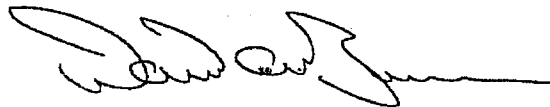
OASIS ACQUISITION, INC.  
(SEE ENDORSEMENT U-WC-321-A)  
4400 N CONGRESS AVE, STE 250  
WEST PALM BEACH FL 33407

## Producer

AON RISK SERVICES, INC. OF FL  
1001 BRICKELL BAY DR STE 1100  
MIAMI FL 331314937



President



Secretary

EMPLOYERS LIABILITY COVERAGE ENDORSEMENT

This endorsement applies only to work in the states shown in the Schedule.

- A. Part One (Workers Compensation Insurance) does not apply to work in a state shown in the Schedule.
- B. Part Two (Employers Liability Insurance) applies to work in states shown in the Schedule as though they were shown in Item 3.A. of the Information Page.
- C. Part Two (Employers Liability Insurance), C. Exclusions is changed by adding these exclusions.

This insurance does not cover

- 13. bodily injury to an employee when you are deprived of common law defenses or are subject to penalty because of your failure to secure your obligations under the workers compensation law of any state shown in the Schedule or otherwise fail to comply with that law.

Schedule

States

ND; OH; WA; & WY

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Insured

Effective Policy No.

Endorsement No. Premium

Insurance Company

Countersigned by \_\_\_\_\_