

## **8<sup>TH</sup> STREET SIDEWALK LICENSE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between \_\_\_\_\_ (“Licensee”), whose address is \_\_\_\_\_, \_\_\_\_\_, Idaho 83\_\_\_\_\_, and the Urban Renewal Agency of Boise City, a\k\a the Capital City Development Corporation, an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Idaho Urban Renewal Law of the State of Idaho (Chapter 20, Title 50, Idaho Code), whose legal address is 805 West Idaho Street, Suite 403, Boise, Idaho 83702 (“Licensor”).

### **RECITALS**

A. Licensor is the owner of that certain parcel of real property consisting of the sidewalk area adjacent to the north one-half of Block 44 along 8<sup>th</sup> Street, Boise, Ada County, Idaho, commonly known as North 8<sup>th</sup> Street and depicted on attached Exhibit A (“Property”).

B. Licensee is the owner of that certain building commonly known as \_\_\_\_\_ and depicted on attached Exhibit A (“Building”).

C. Licensee desires to obtain a license for the use of that certain portion of the Property immediately adjacent to the Building depicted on attached Exhibit A as the sidewalk space (“Sidewalk Space”).

D. Licensor finds it in the best interest of the public to grant a non-exclusive license to Licensee for the purposes described herein and subject to the limitations set forth below, because it will promote the development of retail, residential, office, hotel, and cultural projects in downtown Boise.

For consideration, the parties agree as follows:

### **AGREEMENT**

**1. Grant of License:** Pursuant to the terms, conditions, and limitations of this Agreement, Licensor hereby grants to the Licensee, a license to encroach upon the Sidewalk Space for the following specific uses (“License”):

- A. Outdoor seating for food and beverage service operations, including alcoholic beverages, conducted from within or adjacent to the Building;
- B. Retail sale and display of consumer goods;
- C. Educational, promotional, and entertainment activities conducted in connection with, in support of, or sponsored by the retail and hospitality operations of owners and tenants of the Building; and

- D. Construction staging, materials storage, and related minor construction activities associated with the remodel or finish out of tenant spaces in the Building subject to the prior written approval of Licensor, which may be withheld in Licensor's sole discretion.

2. **Covenants by Licensee:** Licensee hereby covenants to:

- A. Keep the Sidewalk Space clear of debris and litter, clean the brick surface as needed, and reimburse Licensor for Licensor's cost to replace any damaged brick caused by Licensee's use;
- B. Comply with all Boise City, Ada County, and State of Idaho codes, ordinances, laws, and regulations related to the uses described in paragraph 1 above, including but not limited to the sale and serving of alcoholic beverages; and
- C. Comply with the Standards for Use of 8<sup>th</sup> Street Sidewalk Areas, a copy of which is attached hereto as Exhibit B, which policy may be amended from time to time in the sole discretion of Licensor; Licensor shall provide Licensee with copies of any such amendments in a timely fashion.

Failure to comply with these covenants shall constitute breach of this Agreement and grounds for termination.

3. **Compensation to Licensor:** As consideration for the License, Licensee agrees to pay to Licensor an annual One Hundred Dollar (\$100.00) processing fee.

4. **Term of License:** This License shall be valid from \_\_\_\_\_, 2006, to December 31, 2006. The License shall renew automatically on an annual basis unless Licensor provides a written notice to Licensee no later than December 31 of the then-current year that the License shall not be renewed for the following calendar year. The annual processing fee shall be due on January 1 of each year that the License is renewed; provided, however, the initial \$100.00 processing fee shall be due and payable upon the execution of this Agreement.

5. **Termination:** The License shall terminate and be of no further force or effect upon one or more of the following occurrences:

- A. Violation of the terms of this Agreement and the failure to cure within fifteen (15) days of receipt of written notice from Licensor of such violation; provided, however, if the nature of such violation is such that it cannot reasonably be cured within such period and if such violation does not present an immediate threat to the health or safety of the public, then Licensee shall not be in default so long as Licensee is diligently proceeding to cure such violation;

- B. Sole determination by Licensor that the uses described herein are no longer appropriate for the Sidewalk Space (Licensor shall provide Licensee thirty (30) days' notice to vacate the Sidewalk Space in the event such determination is made); or
- C. Written notification by Licensee to Licensor of no less than thirty (30) days of Licensee's intention to terminate this Agreement (in such event Licensee shall remove all improvements from the Sidewalk Space by such termination date).

In the event this Agreement is terminated for reasons stated under this section or Section 9 of this Agreement, the Licensee agrees to return the Sidewalk Space as nearly as practical to the condition that the Sidewalk Space was in prior to any use by Licensee, normal wear and tear excepted. Should Licensee fail to promptly remove any improvements and/or fixtures upon the Sidewalk Space at the termination of this License and should the Licensor desire to have said improvements and/or fixtures removed, the Licensor may remove said improvements and/or fixtures upon the Sidewalk Space at the termination of this License. Furthermore, Licensor may remove said improvements and/or fixtures and assess Licensee for the costs of removal of the same. Licensee shall also be liable for all costs incurred by Licensor to cause that portion of the Sidewalk Space to be returned to the same condition it was in prior to any use by Licensee, normal wear and tear excepted.

It is further agreed that should Licensee not remove said improvements and/or fixtures located in the Sidewalk Space at the termination of the License, Licensee hereby disclaims any interest or title to said improvements and/or fixtures left on the Sidewalk Space, and all such improvements and/or fixtures shall pass to the Licensor at no cost to Licensor.

**6. Ownership:** Licensee acknowledges that the Sidewalk Space, which is described in paragraph 1 of this Agreement and described on Exhibit A, is owned by the Licensor, and Licensee waives any claim to ownership of the Sidewalk Space whether in fee, adverse possession, or any other right, title, or interest therein, other than established pursuant to the terms of this Agreement. Further, Licensee expressly acknowledges that, except for activities occurring within the Sidewalk Space, Licensee has no right to control activities occurring in the Property.

**7. Taxes and Assessments:** Licensee expressly agrees to pay all special assessments and personal property taxes that may be imposed against the Sidewalk Space during the term of this Agreement.

**8. Indemnification of Licensor and Insurance:** Licensee agrees to defend and hold Licensor harmless from and against any and all claims, suits, actions, debts, damages, costs, charges, and expenses, including court costs and attorney fees, and against all liability, loss, and damage of any nature whatsoever that Licensor shall or may at any time sustain or be put to because of the operation or negligent acts or omissions in the use of the Sidewalk Space by Licensee, Licensee's agents, tenants, sublicensees, invitees, or the like.

Licensee shall, at its sole cost and expense, procure and maintain during the life of the License property and commercial general liability insurance acceptable to Licensor, which insurance shall at a minimum have a combined single limit of One Million Dollars (\$1,000,000) for each occurrence and an aggregate limit of at least Two Million Dollars (\$2,000,000).

**9. Assignment:** It is expressly agreed that this Agreement shall be transferred or assigned with the transfer or assignment of an interest in the Licensee's real property, including Licensee's lenders, so long as any assignee or transferee agrees in writing to accept the obligations imposed upon the Licensee under this Agreement; otherwise, this Agreement shall not be assigned or transferred without the prior written consent of the other party.

Licensor acknowledges that Licensee intends to allow the tenants of the Building to use the Sidewalk Space for the uses described herein. Default or breach by any such tenant of the terms of this Agreement shall constitute a default or breach under this Agreement and shall provide grounds for termination. This includes, but is not limited to, the violation of any code, statute, ordinance, or regulation.

In the event Licensee desires to allow a tenant to use the Sidewalk Space, Licensee shall cause said tenant to enter into a tenant agreement in the same form and manner as attached hereto as Exhibit C ("Tenant Agreement"). In the event such a tenant fails to execute a Tenant Agreement within thirty (30) days of the tenant's commencement of use of the Sidewalk Space, this Agreement shall immediately be deemed terminated. Licensee expressly agrees that Licensor shall have the right to communicate directly with any such tenant in the enforcement of the relevant terms, conditions, and limitations of this Agreement, so long as Licensee is provided with written notice of any alleged defaults, breaches, or violations as required by this Agreement.

**10. Event:** Licensee acknowledges that Licensor does and has the right to schedule events in the Property that may impact the use of the Sidewalk Space. Licensor reserves the right to suspend the License in Licensor's sole discretion if Licensor feels a conflict will be created by such use. Licensor will provide Licensee, or Licensee's tenants, with at least forty-eight (48) hours' notice of such events or suspension of use; provided, however, Licensor shall not be liable for any failure to notify Licensee of such events or suspension. Furthermore, Licensor shall not be liable for any loss of business caused by such events or suspension of use, including but not limited to the weekly Farmers' Market event.

**11. Licensor's Use of Sidewalk Space:** In the event Licensor determines, in its reasonable discretion, that the Sidewalk Space is not being used on a consistent basis by Licensee, its agents, sublicensees, or tenants for the purposes described in paragraph 1, Licensor shall have the right to terminate this Agreement in accordance with paragraph 5 of this Agreement.

**12. No Partnership:** It is understood and agreed that nothing herein contained shall be considered as in any way constituting a partnership between Licensor and Licensee.

13. **Notice:** If any notice be required hereunder, it shall be sufficient if served to the following addresses:

If to Licensor: Capital City Development Corporation  
805 West Idaho Street, Suite 403 (83702)  
Post Office Box 987  
Boise, Idaho 83701-0987

If to Licensee: \*  
\*  
\*

14. **Time Is of the Essence:** Time is of the essence of the provisions hereof.

15. **Attorney Fees:** Should any of the parties to this Agreement be required to retain legal counsel to enforce any of the terms and/or conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

16. **Entire Agreement:** This Agreement embodies the entire agreement among said parties. There are no other agreements, warranties, or representations among said parties other than set forth in this Agreement.

17. **Heirs and Assigns:** This Agreement shall be binding upon and inure to the benefit of the personal representatives, executors, heirs, and assigns of the respective parties hereto.

18. **Choice of Law:** It is the intention of the parties that this Agreement, the performance hereunder, and all suits and special proceedings hereunder shall be construed in accordance with, under, and pursuant to the laws of the State of Idaho.

19. **Headings:** Headings are provided for the convenience of the parties and shall not be utilized by any court in construing the meaning of this Agreement.

20. **Recitals:** The Recitals set forth above are made a part of this Agreement.





## **Exhibit A**

### Depiction of the Property

**Exhibit B**

Standards for Use of 8<sup>th</sup> Street Sidewalk Areas

**Exhibit C**

Tenant Agreement