SIDEWALK CAFÉ PERMIT AGREEMENT

THIS AGREEMENT is entered into this 25th day of January, 2005, by and between the CITY OF CORVALLIS, an Oregon municipal corporation, hereinafter referred to as "City", and Sunnyside Up, hereinafter referred to as "Permittee", the promises of each being given in consideration of the promises of the other.

WHEREAS, Permittee desires to occupy the public right-of-way for the purpose of operating a sidewalk café in accordance with Chapter 8.08 of the Corvallis Municipal Code, and

WHEREAS, Chapter 8.08 of the Corvallis Municipal Code contains certain conditions for permittee as result of the City allowing this activity;

NOW, THEREFORE, the parties agree as follows:

1. Term. This permit shall be in effect from January 25th through December 31, 2005.

2. Right-of-Way Use. City hereby grants to Permittee a non-assignable right to occupy the following described right-of-way, subject to all of the terms and conditions of this Permit and Chapter 8.08 of the Corvallis Municipal Code, as currently enacted or as subsequently modified, for the purpose of operating a sidewalk café at the following location: 116 NW 3rd Street, and in a manner as shown on the attached site plan, Exhibit A, which by this reference is incorporated into and made a part of this permit.

3. Use Regulations.

a. The permit is specifically limited to the area described in paragraph 2 above.

b. Permittee shall assure that the operation of the sidewalk café shall be located such that there is at least six (6) feet from the outermost edge of the sidewalk café to the street curb, that also includes a minimum of three (3) feet of clear and unobstructed passageway between the sidewalk café tables, chairs and barriers and tree wells, bike racks, lamp posts, sign posts and any other fixtures or obstructions.

c. The sidewalk and all things placed thereon shall at all times be maintained in a clean and orderly condition. Should the permittee not utilize the sidewalk as authorized for a period of 48 hours, all the tables and materials shall be removed therefrom. The operation of a sidewalk café requires that trash containers be provided on site.

d. The sidewalk café shall not occupy or obstruct the visual clearance triangle.

e. No signs shall be attached to any furniture or any other structure related to the operation of the sidewalk café.

4. Applicable Laws. Permittee agrees to comply with all applicable local, state and federal laws, rules and regulations related to the operation of their sidewalk café.

5. Assignability. This permit is for the exclusive benefit of the parties hereto. It shall not be assigned, transferred, or pledged by either party without the prior, written consent of the other party.

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6. Temporary Suspension by City. City shall have the right to temporarily suspend this permit if the public interest requires use of the right-of-way for a public event, construction, repair or any other purpose.

7. Hold Harmless. Permittee shall indemnify, protect, defend, and hold the City, its officers, agents and employees, harmless against any claim for injury or damage and all loss, liability, cost, or expense, including court costs and attorney's fees, growing out of or resulting directly or indirectly from a sidewalk café permit issued by the City of Corvallis during the term of this agreement except that resulting solely from the negligence of the City.

8. Insurance. Permittee shall procure and obtain a policy of insurance naming the City of Corvallis as an additional insured with the policy limits not less than $200,000.00 per person, $500,000.00 per accident for bodily injury and/or property damage for all the activities and operations conducted as a result of the sidewalk permit. Permittee shall file with the City a Certificate of Insurance showing the above coverage prior to operating a sidewalk café. The certificate shall provide that the insurance company give written notice to City at least 30 days prior to cancellation or any material change in the policy and the policy shall bear the following endorsement: Without prejudice to coverage otherwise existing herein, the City of Corvallis, its officers, agents, and employees are included as additional insureds under this policy as to any claim or claims for injury to person including death, or damage to property, resulting from or growing out of the operations of the permittee within the City of Corvallis, Oregon.

9. Non-discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, family status, national origin, age, mental or physical disability, sexual orientation or source of income in the performance of this agreement.

10. Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of these regulations or permit.

11. Termination.

a. The City may repeal or amend Chapter 8.08 of the Corvallis Municipal Code, and thereby terminate or modify all sidewalk café operations. Permittee shall not obtain any property right in the continued private commercial use of the public sidewalk.

b. The City may deny, revoke, or suspend the permit upon finding that any provision of this ordinance or condition of approval will be or has been violated.

IN WITNESS WHEREOF, the City and Permittee have herewith executed their signatures.

CITY OF CORVALLIS, OREGON

By: _____
Development Services Manager

Date: 3/1/05

PERMITTEE

_____

Date: 1/30/05

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sidewalk café permit