Sidewalk Café Permit Agreement

THIS AGREEMENT is entered into this 11 day of JUNE, 2010, by and between the CITY OF CORVALLIS, an Oregon municipal corporation, hereinafter referred to as "City", and **Peacock Bar & Grill**, 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 JUNE 11, 2010 through December 31, 2010.

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: **125 SW 2nd 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. The permitee shall notify the Building Official in writing when operation of the sidewalk café commences.

c. 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, landscape curb, or other edge of the public sidewalk, that also includes a minimum of four (4) feet of clear and unobstructed passageway to an elevation of seven (7) feet between the sidewalk café tables, chairs and barriers and tree wells, bike racks, lamp posts, sign posts and any other fixtures or obstructions.

d. The sidewalk and all things placed thereon shall at all times be maintained in a clean and orderly condition. Only those things authorized by the permit and shown on the site plan may be stored in the public right-of-way when the sidewalk café is not in operation. The operation of a sidewalk café requires that trash containers be provided on site.

e. The sidewalk café shall not occupy or obstruct the vision clearance triangle.

f. No signs shall be attached to any furniture or any other structure related to the operation of the sidewalk café except as required by these or other use regulations.

g. The permittee shall hold a valid Oregon Liquor Control Commission liquor license.

h. Storage of containers commonly used for dispensing alcoholic beverages to customers including but not limited to bottles, pitchers, and carafes must be kept inside the business unless an employee is

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stationed in the outside area at all times. No taps, kegs, coolers or other alcoholic beverage storage devices are allowed outside on the sidewalk.

i. The sidewalk café area is required to be supervised by employees of the license business, as required by the Oregon Liquor Control Commission liquor license.

j. The permittee is required to utilize and maintain an approved café delineation method.

k. All service and consumption of alcoholic beverages in the sidewalk café area will discontinue by 11:00 pm on Sunday through Thursday. All service and consumption of alcoholic beverages at sidewalk cafes will discontinue by 1:00 am on Saturday and Sunday.

l. The permittee must also provide food service in the licensed area.

m. The permittee shall designate one access/exit point for the exterior service area and this point shall be located near a business entrance; and the permittee shall post signage at the access/exit point and enclosed area prohibiting the removal of alcoholic beverages from the licensed sidewalk café area.

n. Permittee shall remove all sidewalk café installations and mitigate any resultant damage to the public Right of Way within 15 days of ceasing operations of the sidewalk café or adjacent business. Permittee or property owner shall remove sidewalk café installations from the public Right of Way within 15 days of Notice from the City that a sidewalk café, the adjacent business, or permittee has ceased operation.

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.

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 Commercial General Liability and Liquor Legal Liability Insurance coverage naming the City of Corvallis as an additional insured with the policy limits not less than $1,000,000 per occurrence and aggregate or the amount of municipal tort liability under the Oregon Tort Claims Act 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: The City of Corvallis, its officers, agents, and employees are included as additional insureds under this policy as respects sidewalk café permit with 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: 6/7/10

PERMITTEE

_____

Date: 5/30/2010