

ANTHONY J. BALES, CITY MANAGER

City of Hudson PROPOSED LEGISLATION

DATE: September 16, 2011

TO: City Council President Basil and Members of Council
Anthony J. Bales, City Manager

CC: William A. Currin, Mayor

FROM: Thomas E. King, Community Development Director

RE: Resolution Authorizing the City to Enter Into a License Agreement at 49 Village Way

11-103

MEETING: September 21, 2011

I. Legislative History

Resolution 04-183 authorized the City Manager to enter into license agreements for restaurant sidewalk seating following the opening of First and Main in 2004. Outdoor restaurant seating requires the approval of the Planning Commission. Sidewalk seating licenses have been approved for One Red Door, Caribou, Cold Stone Creamery, and San Francisco Oven.

II. Purpose & Explanation

The City has a request from Michael Schwartz and Stephen Ciciretto representing the ownership group of One Red Door. They are proposing alterations to expand patio seating at two locations: One Red Door and a new restaurant Lunedì in the former San Francisco Oven location. The One Red Door patio expansion was recommended for approval by Planning Commission following public hearing Monday, September 12. Authorization is needed from Council to approve of a license agreement for the use of public property.

The request to the City is to expand not the number of seats but the area of enclosure and create a patio enclosure in the current location along Library Street removing three parking spaces. This will involve a substantial reconstruction of the sidewalk and parking space area. Engineering details have not been designed. The public pathway of the Library Street sidewalk will actually increase from less than a 5 foot width to 5 feet without intrusions of planters.

Attached to the License Agreement is the plan for the outdoor seating and

license area.

III. Recommended Action

Staff recommends that Council authorize the City Manager to enter into the attached license agreement to authorize improvements and use of Library Street right of way and adjacent public land for outdoor restaurant seating.

TEK/cgm

RESOLUTION NO.: 11-103

OFFERED BY: MAYOR CURRIN

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LICENSE AGREEMENT FOR PROPERTY AT 49 VILLAGE WAY FOR
OUTDOOR DINING PURPOSES.

WHEREAS, this Council has determined that outdoor dining areas for retail dining and beverage establishments in the First & Main commercial area will enhance the economic viability of that downtown redevelopment area and provide a desirable amenity to the citizens of Hudson and other customers of such First & Main commercial area establishments; and

WHEREAS, outdoor dining facilities in the First & Main commercial area necessitate the use of public sidewalks and other public property for such dining areas and, therefore, a license from the City is necessary to permit such use and the strict regulation of such use is necessary for public purposes;

NOW, THEREFORE, BE IT RESOLVED by the Council of Hudson, Summit County, State of Ohio, that:

Section 1: The City Manager is authorized to enter into a license agreement with the owner and tenant of property at 49 Village Way in the City in a form that is substantially in accordance with the License Agreement attached hereto and incorporated herein as Exhibit A.

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

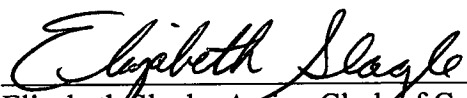
Section 3: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: October 5, 2011



William A. Currin

ATTEST:



Elizabeth Slagle, Acting Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on October 5, 2011.


Elizabeth Slagle, Acting Clerk of Council

Exhibit A

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement"), entered into this ____ day of _____, 2011, by and between the City of Hudson, an Ohio municipal corporation, (the "City"), whose mailing address is 27 East Main Street, Hudson, Ohio, 44236, and 49 Village Way, LLC ("Tenant"), whose mailing address is 49 Village Way, Hudson, Ohio 44236, and Hudson Village Finance Company, LLC ("Owner"), whose mailing address is 2618 N. Moreland Boulevard, Cleveland, Ohio 44120 (hereinafter collectively Tenant and Owner are referred to as the "Licensee").

WITNESSETH:

WHEREAS, Tenant is an operator of a retail dining and beverage establishment at First & Main Commercial Area; and

WHEREAS, as used in this Agreement, the term "Licensee" shall also include the Owner of the premises upon which the Tenant occupies and operates its business, and the Owner is included as a party to this Agreement for enforcement and other purposes; and

WHEREAS, Licensee has requested permission from the City to place tables and chairs on that portion of sidewalk in the public right of way outside the retail dining and beverage establishment at 49 Village Way in the City in order to offer outdoor dining; and

WHEREAS, Licensee has filed a plan dated August 6, 2011 entailing considerable investment in new sidewalk, curbing, drainage, seating, and landscaping improvements; and

WHEREAS, the City has determined that it would be in the best interest of the City and its residents to enter into such an agreement with the Licensee to provide the aforesaid outdoor area for dining and beverage seating and service.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. Dining and Beverage Area License. In consideration of the covenants and agreements hereinafter set forth, City does hereby grant to Licensee a license for the use and occupancy of the real property located in the public right of way immediately adjacent to the building located at 49 Village Way, in Hudson, Ohio, for the purpose of providing space for outdoor seating for dining and beverage consumption for Licensee's retail dining and beverage establishment (the "Licensed Dining Area") as established by the plan approved by the City of Hudson Planning Commission on September 12, 2011 (the "Outdoor Dining Plan"). The license for outdoor dining is supplemental to, and contingent upon, the operation of Licensee's retail dining establishment in the indoor premises located at the aforementioned address, and the outdoor dining shall not be allowed if the retail dining establishment ceases operation.
2. Area of Enclosure. Licensee shall configure the Licensed Dining Area to the specifications set forth in the Outdoor Dining Plan, which is attached to and made a part of this Agreement.

3. Term. The initial term of this Agreement shall be for a period of ten (10) years, commencing November 1, 2011 through November 1, 2021 (hereinafter, the "License Term"). This Agreement shall automatically renew for one (1)-year terms during subsequent years, unless the City terminates the Agreement upon at least sixty (60) days written notice to Licensee prior to the expiration of any given term, or pursuant to Paragraph 4 below, or if prior to the expiration of any of the one(1)-year terms, the City proposes amendments to this Agreement that are to be effective in subsequent terms of the Agreement.
4. Termination.
 - a. The City may terminate this Agreement at any time during the License Term, or any renewal term, for violation of the terms of this Agreement by giving Licensee twenty (20) days written notice. Any costs of repairs to the Licensed Dining Area upon such termination shall be at the sole expense of Licensee.
 - b. The City may suspend this Agreement upon twenty-four (24) hours notice to Licensee for good cause as being detrimental to the interests of the City and inconsistent with best restaurant practices, which may include but is not limited to: the sale of alcoholic beverages to minors or intoxicated persons (whether or not any criminal charges are ever brought or successfully prosecuted); failure to keep the tables, chairs, and surrounding area in a clean and neat condition; loud noise or other persistent misbehavior by patrons; impairment of pedestrian traffic; or the causing of a nuisance. The City shall give Licensee a reasonable time in which to correct the situation causing the suspension and may determine when the Licensed Dining Area may again be used. The City may terminate this Agreement for good cause as set forth in this subpart b upon twenty-four (24) hours notice to Licensee and after two previous suspensions and reinstatements of this Agreement pursuant to this subpart b.
 - c. The City may suspend this Agreement upon ninety (90) days prior written notice for maintenance or replacement of public infrastructure or road reconstruction, or suspend this Agreement immediately for a period to allow emergency repairs to restore service, avoid loss of service or address issues of public safety with utilities and appurtenances.
 - d. The City may terminate this Agreement upon one hundred eighty (180) days prior written notice for widening of public roadways or placement of utilities that the City determines in its discretion are incompatible with the purposes of the Licensed Dining Area.
5. Insurance. Licensee shall maintain and keep in full force throughout the term of this Agreement comprehensive general liability insurance against all claims for personal injury, death or property damage occurring on the Licensed Dining Area with minimum limits of liability of One Million Dollars (\$1,000,000.00) per person, Three Million Dollars (\$3,000,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) for property damage. Licensee shall furnish certificates of insurance evidencing payment therefor to City prior to the commencement of the License Term and at such additional times as may be requested by the City. Such policies shall name the City as an additional insured and shall be non-cancelable for any cause without first giving the City fifteen (15) days prior written notice. Licensee may satisfy this insurance requirement

by maintaining such coverage under chain-wide umbrella policies, provided that the City is named as an additional insured.

6. Indemnification. Licensee shall indemnify, defend, keep and hold the City and its officers, agents, and employees free and harmless from liability for any and all damages, loss, or penalties of any kind whatsoever incurred as a result of Licensee's conduct or performance under this Agreement or exercise of the Agreement. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of Licensee's exercise of the Agreement, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement; such indemnification shall include, but not be limited to, reasonable attorney's fees and costs.
7. Improvement and Equipment.
 - a. Licensee shall not make any temporary or permanent improvements to the Licensed Dining Area, including but limited to placing planters or ropes on the Licensed Dining Area, placing railings or fencing in the Licensed Dining Area, or blocking off sections of the Licensed Dining Area, without the prior written consent of the City.
 - b. Licensee shall obtain the approval of the City Engineer of construction plans and obtain a Right of Way Permit and Zoning Certificate from the Department of Community Development which together will authorize improvements shown on the plan dated August 6, 2011 and attached to this Agreement. All construction shall be completed as approved by July 1, 2012.
 - c. No planters or other objects of a permanent or temporary duration shall be placed on, or above, any area on the street side of the fenced enclosure of the License Area illustrated on said plans, EXCEPT for one temporary sign subject to removal by the City of Hudson for any concern of safety or inconvenience of pedestrian movement or sidewalk maintenance.
 - d. After the conclusion of the License Term, Licensee shall remove any improvements it has made to the Licensed Dining Area or items of personal property it has placed on the Licensed Dining Area and repair and restore any and all areas to their previous condition. The City may, however, consent in writing that an improvement may remain.
 - e. Licensee shall provide all fencing, tables, chairs, and other necessary equipment for use in the Licensed Dining Area which shall be approved by the City Community Development Department. Licensee shall limit the equipment to a reasonable amount and consistent with the Outdoor Dining Plan so as to ensure the safety of the public in the Licensed Dining Area.
8. Maintenance and Repair.
 - a. Licensee shall be responsible for cleaning and routine maintenance of the equipment in Licensed Dining Area, including but not limited to: ensuring that the Outdoor Dining Plan is followed by Licensee; cleaning the tables and chairs; maintaining the equipment in good and reasonable repair; and immediately replacing any and all broken, cracked, bent or otherwise defective equipment.
 - b. Licensee shall be responsible for cleaning and routine maintenance of the Licensed Dining Area, including but not limited to: ensuring that the Outdoor Dining Plan is followed by Licensee; ensuring that the entire area is free of litter and refuse; sweeping of the pavement as needed; removing debris from the tables and chairs immediately upon exit of patrons; washing down tables

and chairs as needed, but not less than once per day; hosing off the cement floor as needed, but not less than once a day; and chaining or removing table and chairs indoors at the end of the day.

9. Permits and Approvals. Licensee shall be responsible for obtaining all permits, licenses, and/or approvals pertaining to occupancy, zoning, environmental controls and any other relevant governmental issues which are necessary to permit Licensee to operate outdoor dining on the Licensed Dining Area. In the event Licensee intends to serve liquor on the Licensed Dining Area, Licensee shall be required to obtain the necessary permits from the Ohio Department of Liquor Control.
10. Use and Occupancy.
 - a. Licensee shall use and occupy the Licensed Dining Area in a careful, safe and proper manner and in compliance with all relevant federal, state and local ordinances, laws, rules and regulations. In the event Licensee intends to serve alcohol on the Licensed Dining Area, Licensee shall use and occupy the Licensed Dining Area in compliance with all applicable liquor control statutes, regulations, and ordinances.
 - b. Licensee shall not occupy or use the Licensed Dining Area or permit the same to be occupied or used for any purpose or business which is unlawful, contrary to this Agreement, or, in the City's reasonable judgment, is disreputable, immoral, or inappropriate.
 - c. Licensee shall not allow said Licensed Dining Area to be used for any purpose or in any way which will increase the rate of insurance on the Licensed Dining Area nor for any purpose other than that specified in the Agreement.
 - d. Licensee shall not permit the Licensed Dining Areas be to occupied in whole or in part by any persons other than those specified in the Agreement.
 - e. Licensee shall not use any substance or force that will increase the hazard of fire in the Licensed Dining Area.
 - f. Licensee shall not allow the Licensed Dining Area to be used for any unlawful purpose or in any way that will injure the reputation of the downtown district or disturb the neighborhood.
 - g. No musical instruments, stereos, or other amplified sound shall be allowed in the Licensed Dining Area without the prior consent of the City, except for low level background music at a volume as determined by the City.
 - h. Licensee shall make appropriate provision for disposal of all trash, garbage or debris that is generated from Licensee's use of its premises and of the Licensed Dining Area and the same shall not be disposed of in any receptacles owned and/or controlled by the City.
11. Times of Operation. Outdoor dining will be permitted only between the hours of 6:30 am through 11:00 pm, Sunday through Thursday, and 7:30 am through 1:00 am, Friday and Saturday.
12. Signs. Any signs on the Licensed Dining Area, including but not limited to signs on tables or chairs, must be in accordance with all applicable laws and ordinances and must be approved in writing in advance by the City.
13. Public Property. Licensee acknowledges that the Licensed Dining Area is public property and the area immediately adjacent to the Licensed Dining Area will continue to be used as a public right-of-way.

14. Assignment. Licensee's interest hereunder is a personal interest which may not be assigned to any other party without the written consent of the City. Neither the license interest, nor any interest of Licensee in the Licensed Dining Area or any improvements or personal property thereon shall be subject to involuntary assignment, transfer, or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect and shall, at the option of the City, terminate this Agreement.
15. Non-Waiver. The failure of the City to enforce any of the rights given to it under this Agreement by reason of a violation by Licensee of any of the terms of this Agreement shall not be construed as a waiver of the power of the City to exercise any such rights as to any subsequent or different violation.
16. Severability. In the event any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.
17. Survival of Covenants. All promises made in this Agreement, including but not limited to indemnification and insurance provisions, shall survive the termination or expiration of this Agreement.
18. Entire Agreement. This written License Agreement constitutes the entire understanding between the parties, superseding all previous negotiations and discussions, and no modification or alteration of this Agreement shall be binding unless it is in writing and signed by both parties.
19. Service. Service of any communication required or permitted in this Agreement shall be made by personal service or certified mail, return receipt requested, at the addresses listed in the heading or at such other addresses as either party may provide in writing from time to time.
20. Authorization. Each person executing this Agreement warrants and represents that he or she is authorized to execute this Agreement on of his or her legal entity.

[SIGNATURES ON NEXT PAGE]

"CITY OF HUDSON, OHIO:

49 VILLAGE WAY, LLC

By: _____
Scott N. Schroyer
Acting City Manager

By: _____
(Signature)

(Name) Please type or print

(Title)

AND

HUDSON VILLAGE FINANCE COMPANY, LLC

By: _____
(Signature)

(Name) Please type or print

(Title)

Approved as to legal form:

Solicitor
City of Hudson

