

RESOLUTION 2023-92

**A RESOLUTION APPROVING A LICENSE AGREEMENT FOR
OUTDOOR SEATING WITH THE DOWN UNDER**

WHEREAS, City is the owner of the property generally referred to as the “Heritage Square” located in the City south of Main Street (the “Property”); and

WHEREAS, Mike Jones (“Jones”) owns and operates a food and drink establishment generally known as the “Down Under,” which is located adjacent to the Property at 102 W. Main Street in West Branch; and

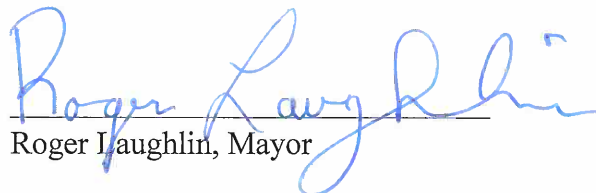
WHEREAS, Jones has approached the City about using a portion of the Property for the purpose of establishing an outdoor seating area on the Property; and

WHEREAS, City has agreed to grant the Business a Revocable License Agreement (See Exhibit A) to allow Business to use a portion of the Property for the establishment and maintenance of an outdoor seating area on the Property; and

WHEREAS, Jones must apply for the appropriate outdoor service privilege with the Iowa Alcohol Beverage Division as a contingency of this approval.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the West Branch, Iowa, that the City approves a License Agreement for Outdoor Seating for The Down Under, contingent upon obtaining the outdoor service privilege with the Iowa Alcohol Beverage Division.

PASSED AND APPROVED this 21st day of August 2023.



Roger Laughlin, Mayor

ATTEST:



Leslie Brick, City Clerk

LICENSE AGREEMENT FOR OUTDOOR SEATING

THIS LICENSE AGREEMENT (the "Agreement") entered into by and between the City of West Branch, Iowa, 110 N. Poplar Street, West Branch, Iowa 52358 (hereafter the "City"); and The Down Under, 102 W. Main Street, West Branch, Iowa 52358 (hereafter referred to as "Business").

WHEREAS, City is the owner of the property generally referred to as the "Heritage Square" located in the City south of Main Street (the "Property"); and

WHEREAS, Business owns a food and drink establishment generally known as the "Down Under," which is located adjacent to the Property at 102 W. Main Street in West Branch; and

WHEREAS, Business has approached the City about using a portion of the Property for the purpose of establishing an outdoor seating area on the Property; and

WHEREAS, City has agreed to grant the Business a Revocable License Agreement to allow Business to use a portion of the Property for the establishment and maintenance of an outdoor seating area on the Property, subject to the terms and conditions below.

1. Grant of License. City hereby grants to Business, a nonexclusive revocable license to allow for the establishment and maintenance of an outdoor seating area on a portion of the Property depicted on Exhibit "A" attached hereto. All costs associated with establishment and maintenance of the outdoor seating area shall be borne by the Business.

2. Term of License. This License Agreement will remain in full force and effect as long until such time as the City gives the Business one hundred eighty (180) days written notice to the address listed below.

3. City Use. During the term of this Agreement, the Business shall have the right to use the Property for said outdoor seating area only in the area depicted on Exhibit "A." The City shall have the right to use the remaining portion of the Property in any manner it desires.

4. Termination of License prior to expiration. In the event that Business violates the terms of this License Agreement or ceases to operate as the "Down Under" in its current location, this License Agreement shall automatically terminate upon written notice to the Business.

5. Effect of Termination. Upon termination of this License Agreement pursuant to Section 2 or 4 above, the Business shall remove the outdoor seating area from the Property and

restore the Property to as close as possible to its original condition prior to the placement of the outdoor seating area on the Property.

6. Indemnification. Business shall save, defend and hold City harmless from any and all claims associated with the use of the Property under this Agreement.

7. Insurance. Business, prior to establishing the outdoor seating area on the Property, shall submit a certificate of insurance to the City naming the City as an additional insured on its commercial liability policy in an amount of not less than One Million Dollars (\$1,000,000.00). Said insurance policy shall contain a 30-day cancellation notice to the City.

8. Applicable laws. Business, in the establishment and operation of said outdoor seating area, shall comply with all applicable federal, state and local laws, regulations and ordinances regarding the serving of alcoholic beverages outside its establishment. All fees associated with said licenses shall be borne by the Business.

IN WITNESS WHEREOF, this instrument is executed this 2 day of August, 2023.

BUSINESS:

By: Mike Jones

Mike Jones, Owner of The Down Under

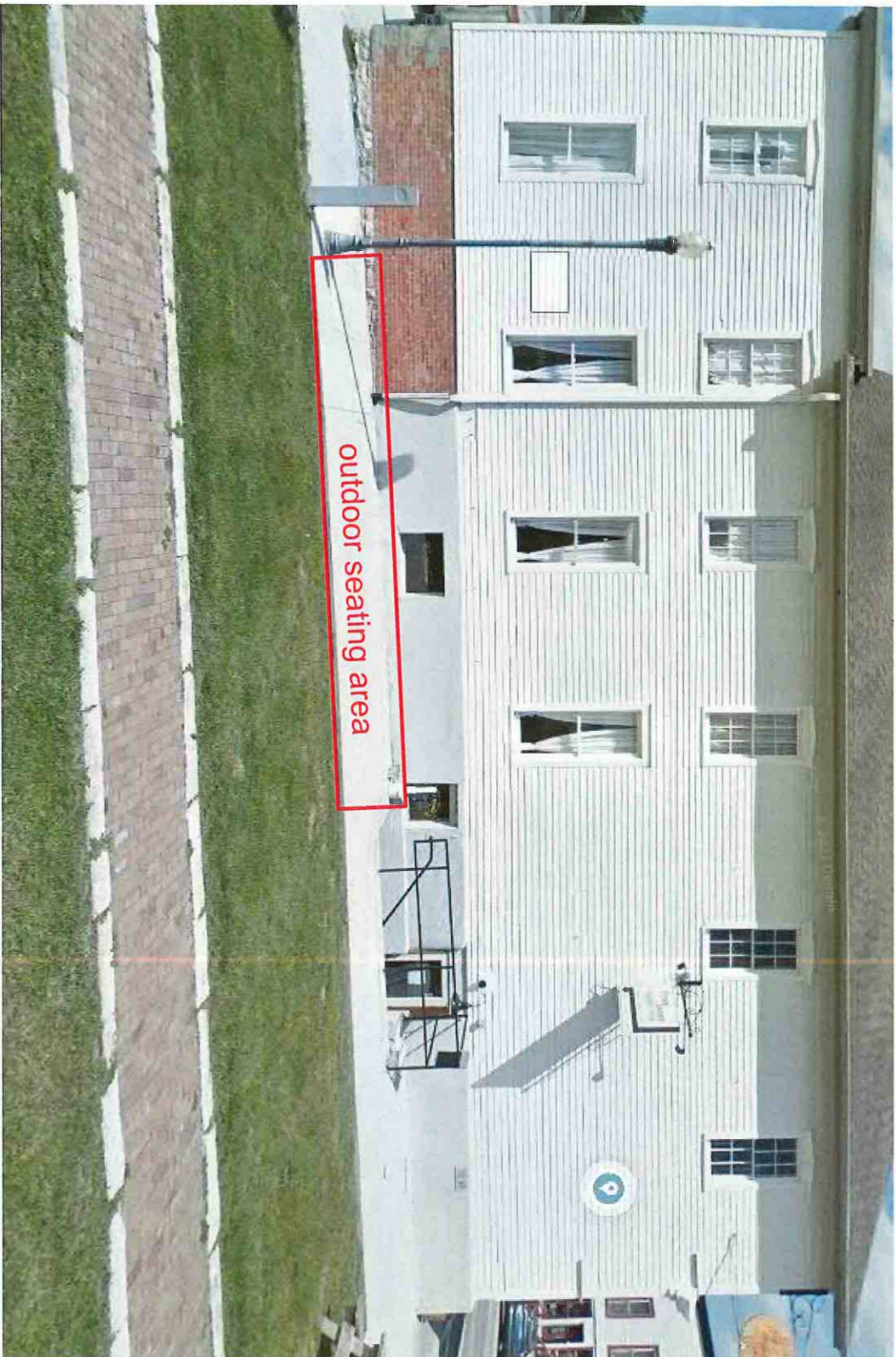
CITY:

Roger Laughlin
Roger Laughlin, Mayor

ATTEST:

Leslie Brick
Leslie Brick, City Clerk

Exhibit A



outdoor seating area