LEASE OF PUBLIC PEDESTRIAN RIGHT-OF-WAY

THIS LEASE AGREEMENT, made and entered into this _____day of _____ 20____, by and between the City of Council Bluffs, Iowa, a municipal corporation, and **Greg Poor**, d/b/a **G&A Properties, LLC**, the owner of the property located at 144 W. Broadway, Council Bluffs, Iowa 51503, and **Chris Malloy**, the operator of the business, **C'Mon Inn**, which is located at the aforementioned address, herein referred to as "lessees." This leasehold conveyance is subject to the reservations of the following terms and conditions:

1. **PREMISES.** The City of Council Bluffs, a municipal corporation in the State of Iowa, and its agents, contractors, and assignors, hereby grants a leasehold on the public right-of-way for purposes of a right-of-way encroachment improvement in, to, on, over, and across the following described real estate:

   See attached survey (Exhibit A)

2. **LENGTH OF TERM AND OPTION TO EXTEND**. The initial term of the lease will be 5 years, and shall terminate at midnight on December 31st following the 5th anniversary of the date of the execution. Within 90 days of the termination of the initial term the parties shall negotiate and agree to any modifications of the terms and conditions of this agreement. If an agreement is reached, a 5 year extension shall be granted with the rent being due March 1st of each additional year. If either party wishes to modify any of the terms and conditions during the term(s) of this lease, notice must be given to the other party in writing no later than December 31st of the current term year. If, at any time the parties cannot come to any agreement as to the terms and conditions, the lease shall be deemed terminated.

3. **RENT.** Lessee agrees to pay to the City of Council Bluffs an annual rental fee of $1,000.00. The initial rent payment shall be due upon execution of this lease. All subsequent rental fees shall be due by March 1st of each year.

4. **USE OF THE LEASEHOLD PROPERTY.**

   a. Alcohol Sales: Alcohol sales and consumption shall be limited to the "Lease Area I" as described in Exhibit A.

   b. Notice to Patrons: Lessee shall post a sign at all entrances and exits to the leasehold noting hours of legal operation and the rules regarding alcohol consumption as they relate to the leasehold property, in accordance with any local or state law.

   c. RESTRICTIONS ON USE OF LEASED AREAS: Lessee shall have the right of access to the leasehold area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the leasehold area described, but shall **not** allow or facilitate patrons carrying alcohol on or across "Lease Area II" as described in Exhibit A. The right to carry alcohol across "Lease Area II" to "Lease Area I" shall be limited to the waitstaff and employees of the establishment.

   d. Advertising Prohibited: Lessee or successors or assignors shall not erect or display signage, advertising, or menu displays on the leasehold property.

e. Erection of Structures Prohibited: Lessee or successors or assignors shall not erect or place any structure over or within the leasehold area without obtaining prior written consent of the City Council, and if applicable the Council Bluffs Historical Preservation Commission for non-permanent fixtures, and prior written consent of the city engineer for permanent fixtures. Structures included within this section include serving stations, trash receptacles, and outdoor heaters.

f. Change of Grade Prohibited: Lessee or successors or assignors shall not change the grade, elevation or contour of any part of the leasehold area in any way without obtaining the prior written consent of the city engineer.

g. Removal and Replacement: The cost of removal and replacement of any unauthorized improvement or structure within the leasehold area, necessitated by the exercise of the rights under this lease, shall be borne by the lessee or the lessee's successors or assignors.

h. Occupancy Limitations/Requirements: Lessee shall have no more or less than **4 tables and 16 chairs** within "Lease Area I" as described by Exhibit A. The number of individuals within "Lease Area I" shall not exceed number of chairs available at any given time.

i. Limitation of Outdoor Areas: Lessee shall have no more than one outdoor area as part of its liquor license premises. The granting of this lease will require the elimination of any preexisting outdoor area from the liquor license premises, and be the basis for denial for any future application for additional outdoor areas during the term of this agreement.

5. CITY RESPONSIBILITIES.

a. Enclosing the Premises. Alcohol sales and consumption shall be limited to the "Lease Area I" as described in Exhibit A. The City of Council Bluffs shall provide fencing in a standard established by the City and in accordance with a design approved by the Historical Preservation Commission where applicable. The fence shall be installed and maintained by the City of Council Bluffs. The fencing will have designated entrances and exits, but will not be equipped with operable gates.

b. Relocation of Obstructions. The City shall be responsible for relocation of obstructions in the right-of-way in conflict with the leased area and a minimum of six feet wide public walk space. Obstructions include signs, benches, trash cans, etc. The City shall be responsible for relocation of fire post indicator valves in conflict with public walk space. The City shall be responsible for modification of landscape planters in conflict with the public walk space.

6. CARE AND MAINTENANCE.

a. Duty to Repair: Lessee or successors or assignors agrees that any curb, walk, or other city improvement outside of the leasehold area which may be damaged as a result of any entry made through the exercise of the lessee's right of access shall be repaired by the City at the expense of the lessee, or the lessee's successors or assignors.

b. Damage: Any damage to the leased premises, fencing, or other public fixtures, normal wear and tear excepted, shall be charged to the lessee. Damage shall be charged in accordance with normal city standards and costs.

c. Non-permanent Fixtures and Furniture: Any fixture or furniture placed within the leased premises shall be provided by the lessee, but is subject to standards established by the City and the Historical Preservation Commission where applicable. All furniture, which is stacked and stowed away on the leasehold premise after consumption hours have ended, shall be un-stacked by 10:00 a.m. the following morning.

d. Duty to Maintain: Lessee or lessee's successors or assignors agree that any right-of-way encroachment improvements must be maintained in good working order for its intended use. Maintenance shall include ensuring that the improvement is not in violation of the Municipal Code. The leased premises shall be maintained in a safe and sanitary manner by the lessee, in accordance with normal city standards.

e. Waste/Garbage: The lessee or lessee's successors or assignors agree to properly dispose of all refuse and waste generated by the leased premises which remains on the leased premises or that migrates into the public pedestrian right-of-way by 10:00 a.m. the morning following every day the leasehold is in use.

7. INSURANCE. Lessee will be required to carry liability insurance in the amount of $1,000,000. The Lessee agrees to name the City of Council Bluffs, its employees, successors, and assignees as additionally insured parties under said liability insurance, and shall provide the City with a copy of the policy by March 1st of each year during the current term.

8. INDEMNITY. Lessee hereby agrees to indemnify, defend and hold the City, its successors or assignors harmless from and against any and all claims loss, damage, liability, or fees they may sustain by virtue of any act or omission of the lessee or lessee's successors or assignors conducted in relation to this leasehold.

9. CITY RESERVATIONS.

a. The City reserves the right to use the Leasehold area for the maintenance of any and all utilities equipment presently in place, and for such reconstruction, re-emplacement, and repair thereof which the city and its licensees and/or franchise grantees may in the future deem necessary and proper and for the removal of any improvements emplaced thereon by the lessees or the lessees' successors or assignors, necessitated by the reconstruction, re-emplacement, or repair of such utilities, such removal to be at the sole expense of the lessee or lessee's successors or assignors and without obligation to

repair or replace such improvements, and subject to any and all other easements and right-of-way of record and those not of record.

b. The City reserves a public right-of-way across the "Lease Area II" for all pedestrian traffic and all other public uses.

10. DEFAULT, NOTICE OF DEFAULT, AND REMEDIES.

a. Events of Default: Each of the following shall constitute an event of default by lessee:

i. Failure to pay rent when due;

ii. Failure to observe or perform any duties, obligations, agreements, or conditions imposed on lessee pursuant to the terms of the lease;

iii. Failure of the lessee to maintain the permits required for business operation;

iv. Any conviction for the violation of the City's municipal ordinances or the laws of the State of Iowa;

v. Abandonment of the premises. "Abandonment" means the lessee has failed to engage in its usual and customary business activities on the premises for more than sixty (60) consecutive business days;

vi. Institution of voluntary bankruptcy proceedings by lessee; institution of involuntary bankruptcy proceedings in which the lessee thereafter is adjudged a bankruptcy; assignment for the benefit of creditors of the interest of lessee under this lease agreement; appointment of a receiver for the property or affairs of lessee, where the receivership is not vacated within ten (10) days after the appointment of the receiver.

b. Notice of Default: Upon the occurrence of an Event of Default by lessee, the lessor shall give written notice of such default to the lessee. Lessee shall have 30 days from the date of such notice within which to cure such default. In the event that such Event of Default is not cured within the time period described herein, lessor shall have the right to terminate the lease in its entirety.

11. NOTICES AND DEMANDS. All notices shall be given to the parties hereto at the addresses designated unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this lease when it is deposited in the U.S. Mail, registered or certified, properly addressed, return receipt requested, and postage prepaid.

12. PROVISIONS BINDING. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

CITY OF COUNCIL BLUFFS, IOWA, Lessor

ADOPTED
AND
APPROVED, _____, 20____.

_____
Matthew J. Walsh Mayor

ATTEST: _____
Jodi Quakenbush City Clerk

STATE OF IOWA)
COUNTY OF) ss
POTTAWATTAMIE)

On this _____ day of _____, 20____ before me the undersigned, a Notary Public in and for said County and said State, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Matthew J. Walsh and said Jodi Quakenbush, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

_____
Notary Public in and for said State

LESSEES

By: _____, d/b/a G&A Properties, LLC
Greg Poor, Property Owner

STATE OF _____)
) ss:
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this____ day of _____, 20___.

_____
Notary Public

AND

By: _____, d/b/a C'Mon Inn
Chris Malloy, Business Operator

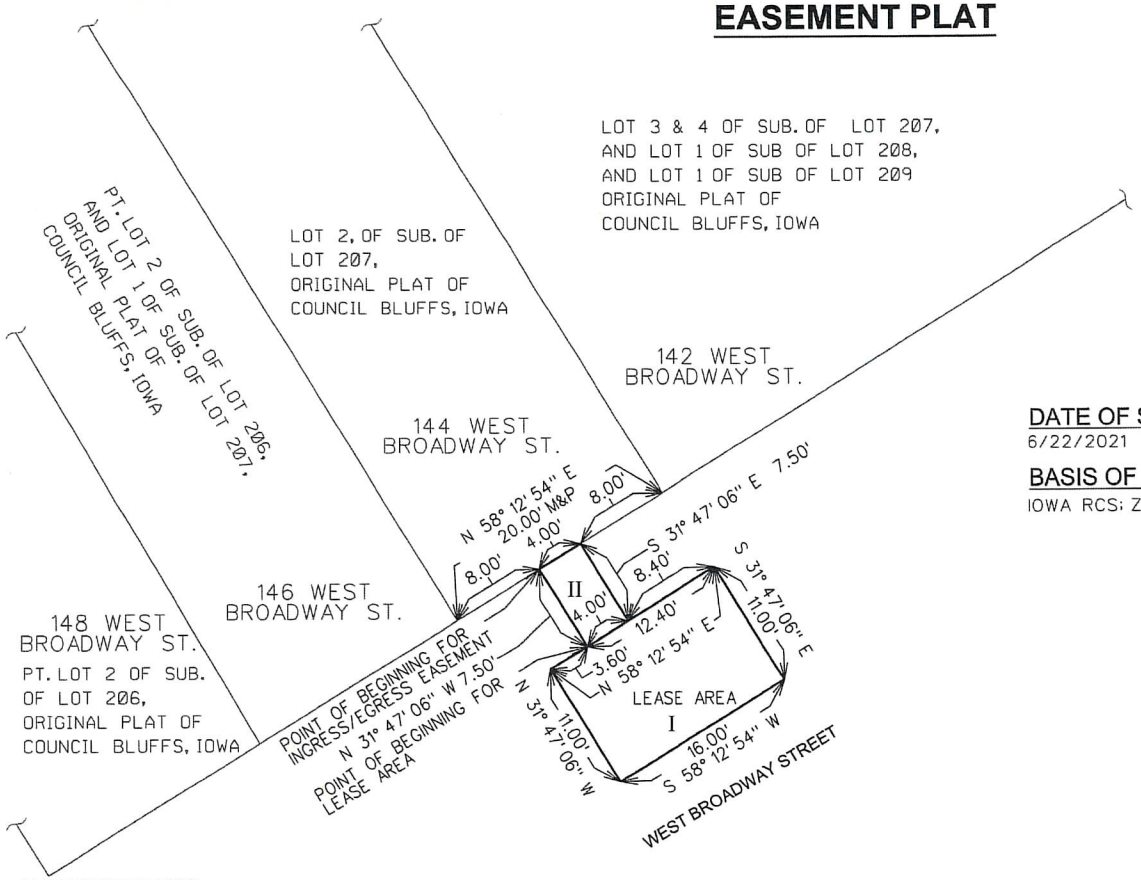
STATE OF _____)
) ss:
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this____ day of _____, 20___.

_____
Notary Public

EASEMENT PLAT

Exhibit A



DATE OF SURVEY
6/22/2021

BASIS OF BEARING
IOWA RCS; ZONE 6; IOWA RTN DERIVED

0 10
FEET

LEGEND

Survey	Found	Set
Section Corner	▲	△
1/2" Rebar, Orange Cap #23198 (Unless Otherwise Noted)	●	○
ROW Rail	H	
Calculated Point	+	
Platted Distance	P	
Measured Bearing & Distance	M	
Recorded As	R	
Deed Distance	D	
Calculated Distance	C	
Centerline		
Section Line		
1/4 Section Line		
1/4 1/4 Section Line		
Easement Line		

DESCRIPTIONS

LEASE AREA DESCRIPTION

A PART OF WEST BROADWAY STREET RIGHT-OF-WAY ADJOINING THE SOUTHEASTERLY BOUNDARY LINE OF LOT 2 IN THE SUBDIVISION OF LOT 207, ORIGINAL PLAT OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2, BEING A BUILDING CORNER LYING ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST BROADWAY STREET; THENCE NORTH 58° 12' 54" EAST ON SAID NORTH RIGHT-OF-WAY LINE, 8.00 FEET; THENCE SOUTH 31° 47' 06" EAST, 7.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 58° 12' 54" EAST, 12.40 FEET; THENCE SOUTH 31° 47' 06" EAST, 11.00 FEET; THENCE SOUTH 58° 12' 54" WEST, 16.00 FEET; THENCE NORTH 31° 47' 06" WEST, 11.00 FEET; THENCE NORTH 58° 12' 54" EAST, 3.60 FEET TO THE POINT OF BEGINNING AND CONTAINING 176.00 SQUARE FEET, MORE OR LESS.

INGRESS/EGRESS AREA DESCRIPTION

A PART OF WEST BROADWAY STREET RIGHT-OF-WAY ADJOINING THE SOUTHEASTERLY BOUNDARY LINE OF LOT 2 IN THE SUBDIVISION OF LOT 207, ORIGINAL PLAT OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2, BEING A BUILDING CORNER LYING ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST BROADWAY STREET; THENCE NORTH 58° 12' 54" EAST ON SAID NORTH RIGHT-OF-WAY LINE, 8.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 58° 12' 54" EAST ON SAID NORTH RIGHT-OF-WAY LINE, 4.00 FEET; THENCE SOUTH 31° 47' 06" EAST, 7.50 FEET; THENCE SOUTH 58° 12' 54" WEST, 4.00 FEET; THENCE NORTH 31° 47' 06" WEST, 7.50 FEET; TO THE POINT OF BEGINNING AND CONTAINING 30.00 SQUARE FEET, MORE OR LESS.

LICENSED PROFESSIONAL LAND SURVEYOR
JACOB IRLMEIER
23198
IOWA

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.

Jacob Irlmeier, PLS — Date 7/14/21

License Number 23198

My License Renewal Date is December 31, 2021

Pages or sheets covered by this seal:
1 of 1

MARK	REVISION	DATE	BY
Engineer: XXX	Checked By: JWI	Scale: 1"= 400'	
Technician: JMM	Date: 07/07/21	Field Bk:	Pg:
Project No: 1210617		Sheet 1 of 1	

EASEMENT PLAT - C'MON INN (CHRIS MALLOY)
DESCRIPTION AND SKETCH FOR OUTDOOR SEATING
COUNCIL BLUFFS, IOWA

SNYDER & ASSOCIATES, INC.
1761 MADISON AVENUE
COUNCIL BLUFFS, IA 51503
712-322-3202 | www.snyder-associates.com

SNYDER & ASSOCIATES

Project No: 1210617
Sheet 1 of 1