



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
DATE: August 13, 2009
RE: License Agreement for the V. Picasso Restaurant to Construct a Canopy at 214 West Main Street

Introduction

The City of Urbana has received a request from Mr. Victor Fuentes owner of the V. Picasso restaurant to have installed in the city right-of-way a canopy at 214 West Main Street. See Exhibits A & B for the canopy details and location. The physical location of the canopy and its support system will not block the public access and use of the sidewalk. The attached license agreement stipulates the conditions for granting use of the public right-of-way for the installation of a canopy. Canopy construction is poised to begin this month.

The City has granted similar license requests for the installation of canopies within city right-of-ways. Examples include for Carle Foundation in 2009 on Church Street just east of Coler Avenue and for Provena Hospital in 1999 on Church Street at Romine Street.

Fiscal Impact

There is no fiscal impact to the city for this request. Staff time is required in developing this agreement and for providing construction oversight. A sidewalk café permit will need to be obtained every year for the owner's use of the sidewalk to place tables and chairs and serve alcohol.

Recommendation

It is recommended that the attached Ordinance Approving an Agreement for Use of Right-of -Way (214 West Main Street) be approved.

Attachments: Ordinance
Agreement
Exhibit A & B

ORDINANCE NO. 2009-08-091

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY (214 West Main Street)

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That an Ordinance Approving an Agreement for Use of Right-Of-Way (214 West Main Street) in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Assignment and Estoppel Certificate as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, 2009.

AYES:

NAYES:

ABSTAINS:

Phyllis Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2009.

Laurel Lunt Prussing, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

(214 West Main Street)

THIS AGREEMENT is made and entered into this _____ day of August, 2009 by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and V. Picasso Inc., a private corporation (hereinafter "Owner").

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Owner do mutually covenant and agree as follows:

A. Main Street is a dedicated right-of-way in excess of 82.5' west of the western right-of-way of Race Street as shown in Exhibits A and B, attached hereto and made a part hereof (the "Right-of-Way").

B. The Owner is herein granted by the City a limited license ("License") to construct a canopy to be built in part upon such Right-of-Way. The License granted herein is wholly dependent upon the Owner, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. This License is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements, in and about the Right-of-Way. Either party may terminate this Agreement for cause by giving written notice to the other party at least forty-five (45) days prior to the proposed termination. For the purposes of this section, "for cause" means the breach of any material provision of this Agreement, which remains uncured for a period of thirty (30) days after serving the written notice thereof to the other party; or if such default cannot be cured within thirty (30) days, then a reasonable period of time, so long as the party in default is making a reasonable effort to cure said default. A notice of termination shall specify the "cause" upon which such termination is based. This Agreement may be terminated at any time without notice upon the express written consent of both parties.

It is expressly understood and agreed that the nonexclusive License herein granted is, and shall be at all times, subordinate to the City's use and public's use of the Right-of-Way for purposes normally associated with a public right-of-way; accordingly, if reasonable necessary to accommodate repair or construction of utilities or improvements owned by the City within the Right-of-Way, the Owner shall, as its sole cost, be obligated to relocate any portion of the canopy installed in the Right-of-Way, pursuant to this Agreement, if directed in writing to do so by the City Engineer, or, as otherwise agreed to by the City and the Owner. In all events, the Owner must be given a reasonable amount of time to arrange for the disassembly or relocation of the canopy unless impractical.

C. In the event of an emergency, defined as imminent peril to person or property or when the Owner has inadequately complied with an order of the Director pursuant to Paragraph (B) so long as the Owner is given notice and an opportunity to cure the event(s) of noncompliance, the Owner consents and agrees that the City or its duly authorized agent may remove the canopy, or

any portion thereof, and charge all reasonable costs and expenses incurred in such removal, disposal, and restoration to the Owner. Should the Owner fail in any way to make timely payment to the City for such costs and expenses, the Owner agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

D. The construction and installation of the canopy, or any change thereof, including any extension, maintenance, reduction or removal of the canopy shall be subject to the issuance of a permit by the Director. No canopy shall be constructed in any streets, alleys or other public way, until a permit is issued by the Director. Said permit shall indicate the time, manner and place of constructing the canopy. Permit approval shall be granted if the proposed improvements are consistent with the use of the Right-of-Way granted by this Agreement. The application for a permit shall be accompanied by prints, plans and maps showing the proposed location of the canopy to be constructed. In the event of an emergency which the Owner believes poses a threat of immediate harm to the public or to any of the Owner's facilities, then the Owner shall be granted access to the Right-of-Way to mitigate the threatened harm without benefit of a permit, provided however, the Owner shall advise the City of the emergency at its earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter.

E. The License shall be limited solely to the construction, maintenance, and use of the canopy in the said Right-of-Way, which is shown in Exhibit A and B. If the City reasonably believes that use of the canopy by the Owner is no longer in use by the Owner, or is otherwise abandoned by the Owner, the City shall notify the Owner in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice must give the Owner at least thirty (30) days to respond. If the Owner reasonably demonstrates that the canopy is still in use by the Owner and is not otherwise abandoned by the Owner, this Agreement shall remain in force and effect according to its terms. If the Owner does not demonstrate within thirty (30) days of the notice that the canopy is in use by the Owner and is not otherwise abandoned by the Owner, this Agreement shall be deemed lapsed and terminated. Any additional use, other than that specifically named herein, without the further express written consent of the City, shall be construed as a violation of this Agreement.

F. The Owner, after doing any work shall, at its sole cost and expense, promptly repair and restore the Right-of-Way including all sidewalks, parkways or pavements disturbed by the Owner to the condition in which they existed prior to the performance of the work, to the extent practicable. In the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise require repairing, because of such disturbance due to construction of the improvements which are the subject of this license, then the Owner shall, as soon as climatic conditions will reasonably permit, promptly and no more than fifteen (15) days from receipt of notice from the City to do so, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before. Said restoration shall be completed within ten (10) days or a reasonable period of time after the date of commencement of such restoration work. In the event that the Owner fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City may, but shall have no obligation to, perform such work and recover from the Owner any costs and expenses the City incurs. In the event that the Right-of-Way or improvement cannot be so repaired, replaced or restored, the

Owner shall compensate the City for the cost of such improvements and in an amount estimated by an independent architect or engineer mutually agreed upon by the parties. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped and then restored within a reasonable time thereafter to the original condition with sod or hydroseed in accordance with the applicable provisions of this Agreement. The Owner shall keep all structures which it shall construct by virtue of this Agreement, in a reasonably safe condition at all times and shall maintain such traffic control and protection during the construction, repair or renewal work performed hereunder as will reasonably avoid danger to life, limb and property. Any damage caused by the Owner to any other utility including storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or any facilities from any other utility company shall, at its sole cost and expense, promptly repair and restore said damaged facility.

G. The Owner agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the construction of the canopy, whether or not suit is filed, unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Owner shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of the Owner's negligence such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

H. The Owner agrees to use its best efforts to maintain contractors on any work project involving the canopy and to work toward its timely completion, barring inclement weather or other situations beyond the Owner's control.

I. The Owner acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the canopy.

J. The Owner shall provide as-built plans to the City, upon completion of the installation of the canopy.

K. The License granted pursuant to this Agreement may not be transferred without the express written consent of the City, provided that such consent shall not be unreasonably withheld.

L. The License shall be non-exclusive and shall not confer any exclusive right, privilege, or license to occupy the Right-of-Way for any purpose.

M. The License granted under this authority shall not convey any right, title, or interest in the Rights-of-Way but shall be deemed a license only to use and occupy the Right-of-Way for the limited purposes and term stated in the grant. The License granted under this authority shall not be construed as conveying any warranty of title.

DRAFT 08/11/09

N. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

O. Notices transmitted to either party to this Agreement shall be addressed as follows. All notices required under this Agreement shall be in writing. Notices shall be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the address of the respective party as stated below, or to any changed address either party may have fixed by notice. Notice shall be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice shall be deemed given on the date of the mailing.

To the City:	Mayor City of Urbana 400 South Vine Street Urbana, Illinois 61801	Public Works Director City of Urbana 706 South Glover Avenue Urbana, Illinois 61802
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To the Owner:	V. Picasso Inc. Attention: Victor Fuentes 214 West Main Street Urbana, Illinois 61801
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Either party may designate by written notice a different address to which notices shall be sent.

P. The Owner shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Q. The initial term of this Agreement shall be twenty (20) years from the date of the execution. Upon expiration of this initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) years, unless, no less than ninety (90) days prior to the expiration of the current term, either party provides written notice to the other party of the intent not to renew.

R. The Owner shall comply with all ordinances of the City, including, but not limited to, all generally-applicable provisions regarding rights-of-way, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement. The Owner shall comply with all conditions of permits issued to it.

S. In the event any one or more of the provisions contained in the Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such provision shall be deemed severed from the Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore, remain in full force and effect.

DRAFT 08/11/09

T. This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties, and may be changed, modified or amended only by mutual written agreement executed by them.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year first above written.

CITY OF URBANA, ILLINOIS

By: _____
Laurel Lunt Prussing, Mayor

ATTEST:

Phyllis D. Clark, City Clerk

V. PICASSO INC.

By: _____
Victor Fuentes, President

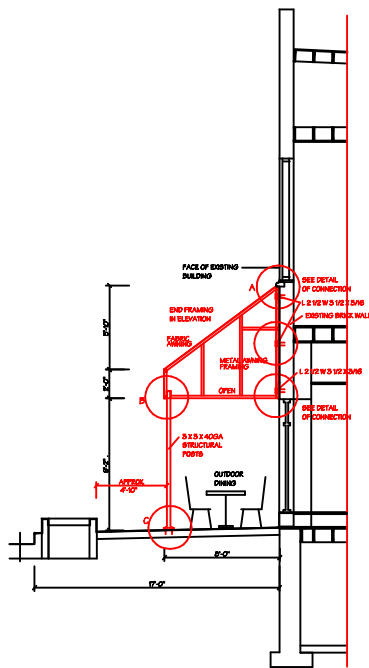
ATTEST:

(Print Name & Title)

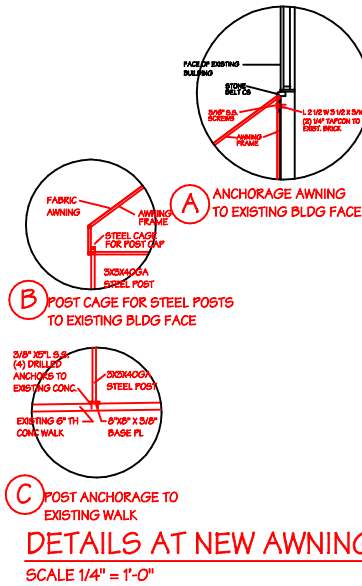
Prepared by and please return recorded copy to:

*Ron O'Neal, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801*

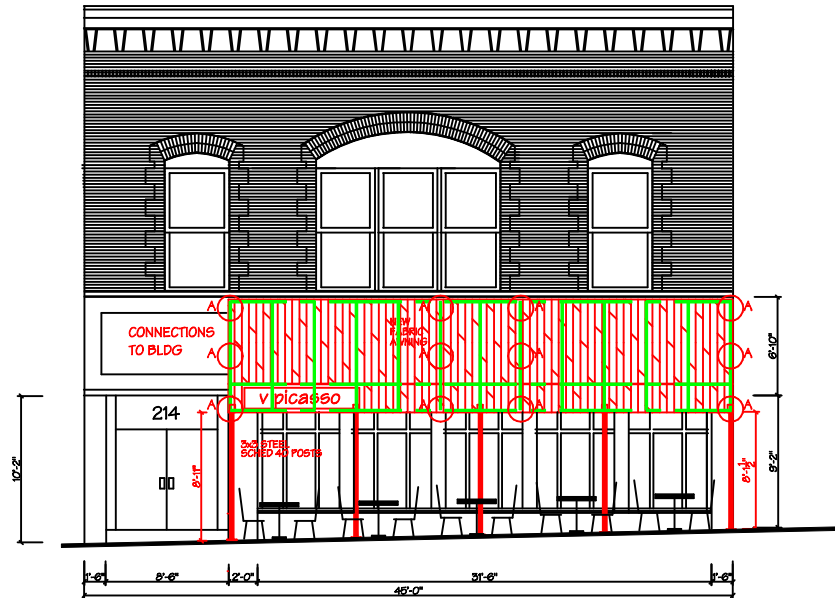
EXHIBIT "A"



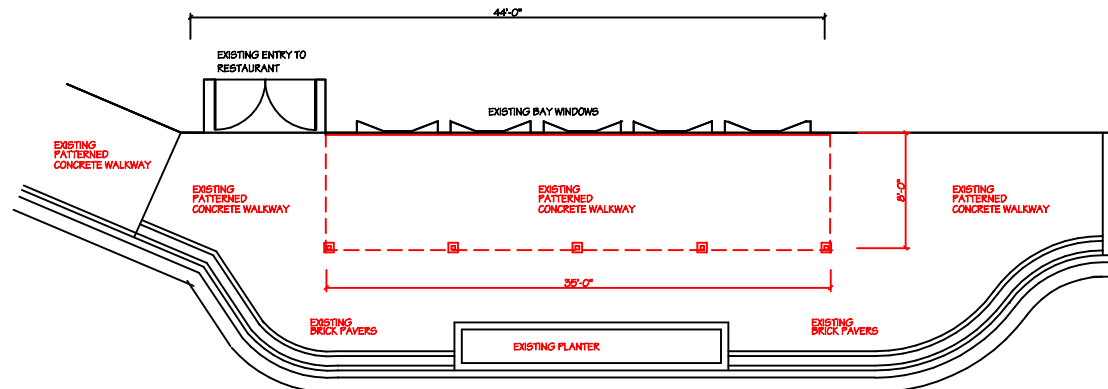
SECTION AT NEW AWNING
SCALE 1/4" = 1'-0"



DETAILS AT NEW AWNING
SCALE 1/4" = 1'-0"



SOUTH ELEVATION OF NEW AWNING AT EXISTING PUBLIC WALK
SCALE 1/4" = 1'-0"



PLAN OF NEW AWNING AT EXISTING PUBLIC WALK
SCALE 1/4" = 1'-0"

DESIGN LOADS:

LIVE LOADS:
SNOW: 30 PSF
WIND: 90 MPH
DEAD: 3 PSF (EST)
STEEL: A36 POSTS

AWNING MATERIALS:

ALL AWNING MATERIALS BY SUPPLIER/INSTALLER
ALL AWNING FRAMES ALUMINUM TUBING
FABRIC COVERING AND ENDS
SIGNAGE: PER URBANA SIGN ORDINANCE

ASD ARCHITECTS

201 WEST SPRINGFIELD AVE.
CHAMPAIGN, ILLINOIS 61820
PHONE: (217) 356-4983 FAX: (217) 403-3404

REVISIONS

NO.	DATE	DESCRIPTION

DATE	DESCRIPTION

**STRUCTURAL SUPPORT FOR
NEW EXTERIOR AWNING
V. PICASSO**

244 WEST MAIN STREET URBANA, IL 61801

SHEET

AW1

EXHIBIT "B"



224

111

109

106

220

N Race St

222

218

214

212

208

204

202

136

License Agreement Site
214 W. Main St.
Urbana, IL

W Springfield Ave

ROW 82.5'

W Main St

219

201

201

S Race St

135

