

**RESOLUTION NO. 34-11**

**A RESOLUTION AUTHORIZING THE LEASE OF SIDEWALK  
RIGHT-OF-WAY TO MAIN STREET BAGELS**

Recitals:

The City has negotiated an agreement for Main Street Bagels to lease a portion of the sidewalk right-of-way located in front of 557/559 Main Street from the City for use as outdoor dining; and

The City Council deems it necessary and appropriate that the City lease said property to Main Street Bagels.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

The City Manager is hereby authorized and directed to sign the Lease Agreement leasing the city-owned sidewalk right-of-way for a period of four and a half months for \$262.50, to Main Street Bagels.

PASSED and ADOPTED this 6<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
President of the Council

Attest:

  
\_\_\_\_\_  
City Clerk

## DOWNTOWN OUTDOOR DINING LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into as of June 1, 2011, by and between THE CITY OF GRAND JUNCTION, COLORADO, a municipal corporation, as Lessor, hereinafter City and, Main Street Bagels as Lessee, hereinafter Lessee.

### RECITALS:

The City by Ordinance No. 3650 and subsequently amended by Ordinance No. 4120 established a Sidewalk Restaurant commercial activity permit for restaurants in the Downtown Shopping Park (DSP) on Main Street, Seventh Street and Colorado Avenue.

In accordance with that authority the City Council and the Downtown Development Authority (DDA) desire to make certain areas of the sidewalk in the DSP available by lease to approximate land owners and/or lessees that want to make use of a portion of the sidewalk in the DSP for restaurant and/or alcohol service.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, it is agreed as follows:

1. The City does hereby lease to Lessee approximately 700 square feet of the sidewalk in the DSP located in front of 557/559 Main Street, hereinafter the Leased Area; specifically the Leased Area is that portion of the sidewalk immediately across the sidewalk from the Lessee's business. The Leased Area is depicted on the attached Exhibit A. A brief description of the Lessee's business is depicted on the attached Exhibit B.
2. The term of this lease shall be for a period beginning on July 6, 2011, and terminating on November 15, 2011. Rent shall be calculated at \$1.00 per square foot per year. As rent for the Leased Area, Lessee agrees to pay the City the total sum of \$262.50 (700SF @ \$1/SF/yr for 4.5 month period), which sum shall be payable in advance on or before July 6, 2011, at the offices of the City Clerk, Grand Junction City Hall, 250 North 5<sup>th</sup> Street, Grand Junction, Colorado 81501.

If the rent payment is not paid in full when due, a Lease shall not issue.

4. Lessee agrees to use the Leased Area for the sole purpose of selling and dispensing food and/or beverages to the public. The Leased Area shall be open to the public, weather permitting, during the Lessee's normal business hours but in no event shall food and/or beverage service be extended beyond 1:00 am. Food shall be available to be served in the Leased Area during all hours that it is open to the public and in accordance with the Lessee's liquor license if lessee holds a valid liquor license.

5. Lessee further agrees to use the Leased Area for no purpose prohibited by the laws of the United States, the State of Colorado or ordinances of the City of Grand Junction. Further, Lessee agrees to comply with all reasonable recommendations by DDA relating to the use of the Leased Area. Prior to alcohol service in the leased area, the Lessee shall modify its liquor licensed premises as required by the laws of the State and City. **Modification of the licensed premises, in accordance with Colorado law, is a precondition to the authority in this lease.**
6. Pursuant to this Lease, Lessee understands and agrees that upon termination of the lease, Lessee shall remove any and all improvements, enclosures, furniture, fixtures, equipment or structures installed by it or at its direction in the Leased Area promptly upon expiration of this Lease. All modification shall be at the Lessee's sole expense. Failure to remove the same within ten (10) days of expiration shall result in ownership thereof transferring to the City and/or DDA.
7. Lessee agrees to keep the Leased Area in good repair and free from all litter, dirt and debris and in a clean and sanitary condition; to neither permit nor suffer any disorderly conduct or nuisance whatsoever, which would annoy or damage other persons or property by any alteration to the Leased Area or by any injury of accident occurring thereon. Further, Lessee does, by execution of this Lease, indemnify and hold harmless the City of Grand Junction and the DDA and its employees, elected and appointed officials, against any and all claims for damages or personal injuries arising from the use of the Leased Area. Lessee agrees to furnish certificate(s) of insurance as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the leasing, use, occupancy, maintenance and operation of the Leased Area. Insurance shall be procured from a company authorized to do business in the State of Colorado and be satisfactory to the City. The amount of insurance, without co-insurance clauses, shall not be less than the maximum liability that can be imposed upon the City under the laws of the State, as amended. Lessee shall name the City and the DDA as named insureds on all insurance policies and such policies shall include a provision that written notice of any non-renewal, cancellation or material change in a policy by the insurer shall be delivered to the City no less than ten (10) days in advance of the effective date.
8. All construction, improvements, furniture, fixtures and/or equipment on the Leased Area shall comply with the following:
  - a. Not be wider than the street frontage of the business nor extend to the extent that pedestrian traffic is impeded. Pedestrian passage must be a minimum of 8' between any permanent fixtures, including fences, planters, art pedestals, and any other fixed object.

Not possible

Exceptions to this minimum (installed prior to June 13, 2011) may not be modified to decrease the pedestrian passage any further for any reason.

- b. No portion of the Lessee's furniture, fixtures or equipment shall extend beyond the boundaries of the Leased Area; this shall be construed to include perimeter enclosures, planters, signs, tables, chairs, shade structures, umbrellas while closed or open and any other fixtures, furniture or equipment placed or utilized by the Lessee.
- c. A fence may be required for other Leased Areas if the Lessee has encroached outside of the perimeter during previous Lease periods.
- e. No cooking shall be located on the Leased Area.
- f. Lessee may place furniture, fixtures and equipment in the Leased Area so long as the same are not allowed to encroach into the public right of way or otherwise to endanger any passerby or patron and are secured to resist wind.
- g. The Lessee shall allow its fixtures to remain in place at its own discretion and liability and shall accept and retain full responsibility and liability for any damage to such fixtures caused thereby.
- h. Neither electric (alternating current) nor gaslights are allowed on the Leased Area. Candles and battery powered lights are allowed.
- i. The Lessee shall store all fixtures, including but not limited to umbrellas, chairs, tables, and signs for the period of November 15 to March 30.
- j. On and after March 1, 2012 the Lessee shall not allow signage, including but not limited to banners, on the Leased Area. Similarly signage shall be disallowed on furniture, which includes but is not limited to, chairs, benches, tables, umbrellas, planters and the perimeter fence of the Leased Area. Menu signs shall be allowed in accordance with provisions of the City of Grand Junction sign code and subject to review by the DDA.
- k. The Lessee shall not utilize public trash or recycling receptacles for refuse generated within the leased area. The Lessee may provide a private trash and/or recycling receptacle within the leased area provided that it is emptied and maintained on a regular basis.

9. The leased premises and improvements, additions and fixtures, furniture and equipment thereon shall be maintained and managed by Lessee.
- 10 Lessee agrees to permit agents of the City and/or the DDA to enter upon the premises at any time to inspect the same and make any necessary repairs or alterations to the sidewalks, utilities, meters or other public facilities as the City may deem necessary or proper for the safety, improvement, maintenance or preservation thereof.

Lessee further agrees that if the City shall determine to make changes or improvements to the DSP, which may affect any improvements placed by the Lessee, that the Lessee, by execution of this Agreement, hereby waives any and all right to make any claim for damages to the improvements (or to its leasehold interest) and agrees to remove any structures necessary during such construction periods. The City agrees to rebate all rents in the event it undertakes major structural changes during a lease period.

11. The City by this demise hereby conveys no rights or interest in the public way except the right to the uses on such terms and conditions as are above described and retains all title thereto.
12. Lessee agrees not to sublet any portion of the Leased Area, not to assign this lease without the prior written consent of the City being first obtained.
13. Lessee hereby affirms that Lessee is the owner and/or lessee of the abutting property and agrees that on sale or other transfer of such ownership interest, Lessee will so notify the City of the transfer in interest and all right and interest under this Lease shall terminate.
14. Lessee agrees to surrender and deliver up the possession of the Leased Area promptly upon the expiration of this Lease or upon five (5) days' written notice in the case of the termination of this Lease by City by reason of a breach in any provisions hereof.
15. If legal action is taken by either party hereto to enforce any of the provisions of this Lease, the prevailing party in any legal action shall be entitled to recover from the other party all of its cost, including reasonable attorney's fees.
16. It is further agreed that no assent, expressed or implied, to any breach of any one or more of the covenants or agreements herein shall be deemed or taken to be a waiver of any succeeding or any other breach.
17. Lessee agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to the Leased Area and its use. In performing under the Lease, Lessee shall not discriminate against any worker, employee or job applicant, or any member of the public because of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical handicap, status or sexual orientation,

family responsibility or political affiliation, or otherwise commit an unfair employment practice.

18. Lessee and City agree that all correspondence concerning the Lease shall be in writing and either hand delivered or mailed by first class certified mail to the following parties:

City of Grand Junction  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

Lessee:

Mark Smith  
Main Street Bagels  
559 Main Street  
Grand Junction, CO 81501

CITY OF GRAND JUNCTION



Laurie M. Kadrach, City Manager

LESSEE



Business Owner

**Exhibit A: Brief Description of Business / DDA Certification:**

Exhibit A: Brief Description of Business / DDA Certification:

Business Name (insured name): Main Street Bagels

DBA (if needed): \_\_\_\_\_

Applicant / Relationship to Business: Owner

Contact Phone and Email: 970 241-9484 info@mainstreetbagels.net

Type of Food/Beverage to be served in leased area: Breakfast & Lunch

Days of Operation / Operating Hours: 7 days 6<sup>am</sup>-8pm

How this operation will benefit Downtown Grand Junction:  
Tax revenue etc

Number of tables to be used in the leased area: 10-12

Number of chairs to be used in the leased area: 30-40

Semi-permanent or movable structures including carts, stands, signs, etc: na

Describe any musical or vocal presentations or effects to be used in the leased area:  
periodic acoustic

Copies of current:

Permits & Licenses:	State Sales Tax	<input checked="" type="checkbox"/>	<u>PK</u>
	City Sales Tax	<input checked="" type="checkbox"/>	<u>PK</u>
	Liquor License	<input type="checkbox"/>	<u>PK</u>
	Restaurant/Food Service	<input checked="" type="checkbox"/>	<u>PK</u>

Proof of Liability Insurance Coverage:  PK

**DDA Certification:** The Downtown Development Authority hereby finds that this application is proper, that all applicable permits have been obtained or will be obtained, that it is in compliance and will further the goals and objectives of the Plan of Development for Downtown Grand Junction, and that no current application exists for this location.

Signed: [Signature]

Date: 10/16/11

If denied, state reason:  
\_\_\_\_\_

## Exhibit B: Assurances, Hold Harmless and Indemnity Agreement

### Exhibit B: Assurances, Hold Harmless and Indemnity Agreement

The Applicant assures the Downtown Development Authority and the City of Grand Junction that if a lease is issued, s/he will comply with all of the requirements and provisions of Grand Junction City Ordinance 3609, all other applicable ordinances and laws, and the Plan of Development for Downtown Grand Junction. The applicant further assures that s/he has obtained or will obtain all of the necessary and required permits or licenses to engage in the business or activity proposed.

I, Mark Smith, applicant for a Lease to conduct activities in the Downtown Shopping Park area, agree that I shall:

- (a) Hold harmless the City of Grand Junction, its officers and employees, and the Downtown Development Authority of Grand Junction, its officers and employees, from any claims for damage to property or injury to persons which may arise from or be occasioned by any activity carried on by me within the Downtown Shopping Park, and
- (b) Indemnify the City of Grand Junction, its officers and employees, and the Downtown Development Authority, its officers and employees, against any claim, loss, judgment, or action, or any nature whatsoever, including reasonable attorney fees, that may arise from or be occasioned by any activity carried on by me within the Downtown Shopping Park.

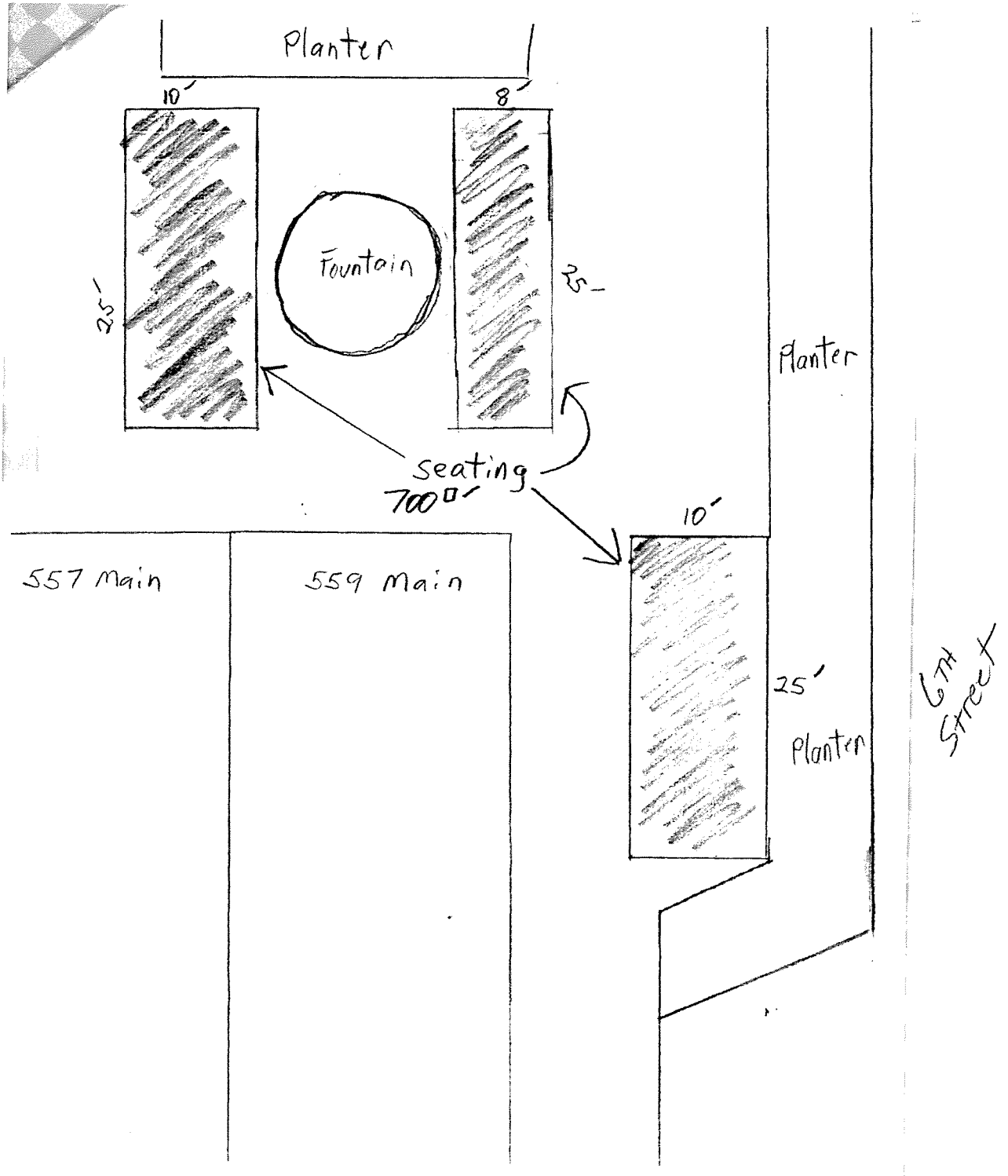
I realize that consideration for this release is the granting of a lease to me by the City of Grand Junction, and I realize and agree that this Hold Harmless/ Indemnity Agreement shall take effect whenever I begin to conduct the type of activities for which the lease has been applied or when the permit is issued, whichever is earlier. I also understand and agree that this agreement shall apply to any activities which I carry on which are done in violation of the terms of this lease.

Executed this 24 day of May, 2011.

Signed: Mark Smith



Exhibit C: Proposed Lease Area (Main Street Bagels):





# CERTIFICATE OF LIABILITY INSURANCE

MAINS-2 OP ID: AA

DATE (MM/DD/YYYY)  
05/17/11

<b>PRODUCER</b> Colorado West Insurance 2782 Crossroads Boulevard Grand Junction, CO 81506 Darren R. Dellonzo, CIC	970-245-6960	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> Main Street Bagels Inc Missy Smith 559 Main Street Grand Junction, CO 81501	<b>INSURERS AFFORDING COVERAGE</b> INSURER A. CNA Commercial Insurance INSURER B. Pinnacol Assurance INSURER C. INSURER D. INSURER E.	<b>NAIC #</b> 20443 41190

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADDL LTR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Business Owners GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> LOC	2067253390	04/01/11	04/01/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	B2067263465	04/01/11	04/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below Y/N <input type="checkbox"/>	4122163	04/01/11	04/01/12	WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				PROPERTY 256,115

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Grand Junction Downtown Development Authority is listed as an additional insured as pertains to general liability coverages only.

**CERTIFICATE HOLDER****CANCELLATION**

CITY--7  City of Grand Junction Downtown Development Authority 250 North 5th Street Grand Junction, CO 81501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Darren R. Dellonzo</i>
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ACORD 25 (2009/01)

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