

MEMORANDUM

To: Mr. Don Johnson, City Manager

From: Gordon Young, Deputy Chief of Police

Cc: Corrigan O'Donohue, Chief of Police *CM*

Date: 6/28/2013

**Re: REQUEST TO CHANGE PLAN OF OPERATION AND EXPAND
OUTDOOR PATIO**

Café Muse, located at 416-418 S. Washington St., has requested to expand their outdoor patio from 14 seats to 24 seats. This request is being made in conjunction with Lily's Restaurant patio expansion request because the public walkway route in front of their businesses will change (see attached drawing).

Their outdoor patio is currently located adjacent to their building facade. The proposed patio will be located five feet away from their building facade and extend wider than their building facade on the south side.

The business located to the south of Café Muse is "ETS Engineering, Inc." I spoke with the business owner, Scott Leo, and he approves of the proposed patio layout.

The format of the business will not change and the interior patron seating will not change (75 interior).

Café Muse is a well run establishment with no significant calls for police service. Over the past year, this department responded to one (1) call-for-service for a noise complaint that was unfounded. The Royal Oak Police Department does not object to the requested changes.

However, the Planning Department (see attachment) and Engineering Department are opposed to this proposal. The Engineering Department recommends that the purpose and intent of the City's public sidewalks is to favor pedestrians and pedestrian safety over the desires to block areas for use by private businesses. The proposed "Cross Access" inhibits optimal pedestrian use and safety, especially with parking access. Should this current concept be considered, Engineering recommends a minimum of 7'-8' of clearance between building and patio/ seating area fencing.

Approval for this change in the Plan of Operation is subject to the approval or denial of the Royal Oak City Commission.

Respectfully,

A handwritten signature in black ink, appearing to read 'Gordon Young', with a stylized flourish extending to the right.

Gordon Young
Deputy Chief of Police
Royal Oak Police Department

COMMENTS
SIDEWALK CAFES PROPOSED @
CAFÉ MUSE & LILY'S SEAFOOD
MAY 2013

Standard policy has been to require sidewalk cafes to be located adjacent (next) to the building façade of the petitioner (eligible business) and not in front of other building/business facades. Based upon this well established policy both of the sidewalk café designs being proposed by Café Muse and Lily's Seafood would be rejected by the Planning Department as part of any sidewalk café application.

The policy referenced above along with all other minimum criteria starts with the recognition that the primary purpose of any public sidewalk is for safe pedestrian traffic not to accommodate the biggest possible sidewalk cafe for an adjacent private business.

While the Planning Department supports the concept of sidewalk cafes in the downtown and the very positive added impacts/benefits they provided to both the businesses and the downtown in general we do not support the designs purposed by Café Muse or Lily's Seafood. These configurations add unnecessary conflicts, issues and safety concerns to users of the public sidewalk.

Yes, Ann Arbor and other communities may allow sidewalk cafés to be placed away from the building façade. That does not mean Royal Oak should or needs to allow such configurations. A visit to any of those communities will provide clear evidence that such arrangements create unnecessary additional points of conflict between users of the public sidewalk and servers/wait staff/busboys moving between the building and the sidewalk café to deliver/remove food and/or drink to customers as well as customers exiting the café and/or moving back and forth to use restrooms as well for other reasons. The required five (5) clear path is not truly clear of the business activity.

In addition, to the conflicts one issue with current sidewalk cafes is cleanliness and this proposed configuration will expose even larger areas of the sidewalk to spills and other debris.

The proposed configuration also impacts the ability of people to have direct access to the public sidewalk from a parking space forcing them to walk around the sidewalk café and possibly having to use the traffic travel lane to do so creating additional unnecessary safety concerns.

Allowing eligible businesses to extend sidewalk cafes in front of other businesses also creates it own set of unnecessary issues, including confirmation that the adjacent business or businesses do not object now or in the future, are there different financial and/or insurance issues/requirements, access, maintenance and services issues. How far should an eligible business be allowed to purpose extending a sidewalk café?

The current set of well established policies gives potential sidewalk café applicants clear directions and keeps city staff reviews to a minimum.

The Planning Department can not identify any reason or justification to revise the long standing policies and/or further inconvenience users of the public sidewalk.

Keep in mind that the public sidewalk also includes a variety of other elements; decorative lights, trees/tree grates, flower barrels and boxes, bicycle racks, trash receptacles, directional and traffic control signs/equipment, sandwich board signs, and parking meters.

The Engineering Department also recommends that the “cross access” not be permitted however if the City Commission were to grant the purposed configuration has provided the following design recommendations;

- 1) A minimum of three (3) feet between back of curb and café railing
- 2) The minimum five (5) foot clear pedestrian path should be increased to seven (7) or eight (8) feet when located adjacent to building façade (between building & café railing). If the City Commission were to approve less signage prohibiting loitering should be required.
- 3) All cafés on the same block shall follow a single or same configuration; either adjacent to building façade or away from building façade, so clear pedestrian path is consistent.
- 4) There shall be a minimum clear path of six (6) feet from the street to the building between each sidewalk café.
- 5) The proposals from Lily’s Seafood and Café Muse will need to incorporate additional dimensions and depicted the right-of-way lines. Further, the “rope” railing purposed by Lily’s Seafood should not be allowed, standard railing only.

*The City Commission may also wish to establish a maximum length (travel distance) between these clear paths.

JWDesign
Architectural Studio
112 S. WASHINGTON AVE.
ROYAL OAK, MI 48067

CAFE MUSE

414

BRICK PAVING

2'-0" CLEAR

CAFE MUSE

PRELIMINARY
OUTDOOR
DINING PLAN



PROJECT NO. 19002

FEBRUARY 20, 2013

PARKING METER (TOP)

11'-0"

CURB

LIGHT POLE

PARKING

WASHINGTON



Get Google Maps on your phone
Text the word "GMAPS" to 466453





CITY OF ROYAL OAK
BISTRO LICENSED BUSINESS
PLAN OF OPERATION

Café Muse LCC
Business Name

Café Muse
Doing Business As

416-418 S. Washington Ave, Royal Oak
Street Address

Preamble: We have received copies of Royal Oak City Ordinances **430-1 through 430-12**, Ordinances Established as a General Policy for Liquor Licenses and Permits, understand its provisions, and will be governed by them.

The following Plan of Operation is developed in keeping with the spirit and intent of this Ordinance.

- I. **HOURS OF OPERATION:** At present, our planned hours of operation will be Sunday 7:30am-10pm, Monday-Saturday 7:30am-midnight. Last call will be 30 minutes before closing and last service 20 minutes before closing.
- II. **FORMAT:** The premises will be primarily operated as a full-service restaurant, offering beer, wine and cocktails for clientele; full-service kitchen facility; providing for 75 seated interior patrons, which includes 7 bar seats, and 24 exterior seated patrons. We plan on using our facility for occasional private parties, which may or may not have live entertainment provided. We may, from time to time, offer live entertainment during our regular business operations.

There shall be no gaming devices on the premises, or direct connections to an additional bar. Patrons will only be served alcohol while being seated.

We agree to adhere to the provisions of the **Entertainment Agreement**, which has been signed. It is agreed that we will not change the format of type of business without written approval of the City Commission. This includes changing from a full-service restaurant to a bar where food service is reduced, etc. The ratio of food sales to alcohol sales is anticipated to be 70% food sales to 30% alcohol sales.

- III. **CODE COMPLIANCE:** The premises fully comply with all applicable health, safety, building, sanitation, electrical, plumbing, and fire codes, as well as zoning requirements.

The Outdoor Service Area will operate in accordance with and consistent with all City policies, practices, and procedures regulating outdoor service, including, but not limited to:

- a. The Outdoor Service Area will not be permanently enclosed;
- b. The fence and/or other barricades or rail surrounding the Outdoor Service Area should be anchored in accordance with the Uniform Engineering Anchoring System, as promulgated by the Engineering Department of the City of Royal Oak;

- c. The manner in which the Outdoor Service Area is enclosed shall be subject to inspection by the Police and Engineering Departments;
- d. The use of alcohol will be allowed in accordance with the rules of the Michigan Liquor Control Commission from April 15th to October 31st;
- e. Wait staff shall transport all alcoholic beverages to/from the Outdoor Service Area.
- f. The Outdoor Service Area will be clean, free of debris and trash, and shall be cleaned at the close of each business day; and
- g. Café Muse will pay fees in accordance with the City's Sidewalk Café License Agreement application.

IV. PLAN OF OPERATION: It is acknowledged that under Ordinance 430-4, Section A, the business shall be operated in accordance with an approved Plan of Operation. Changing the operation of the business in any manner inconsistent with the approved Plan of Operation is a violation of the ordinance and the rules of the Liquor Control Commission. Any change to the Plan of Operation must be approved by the City Commission prior to it being placed into effect on the business premises.

V. SECURITY: Security for the customers, building, and community is the first priority for the corporation, and as such, we will undertake whatever measures are necessary to maintain and supervise the expected level.

VI. PARKING: Parking shall be provided as follows:
Lafayette Street Parking Structure

Employees will park at: Lafayette Street Parking Structure or Center Street Parking Structure

VII. ALCOHOL MANAGEMENT: The establishment will strictly obey all rules and regulations promulgated by the City of Royal Oak and the State of Michigan Liquor Control Commission. There will be neither service to nor consumption of alcoholic beverages by minors at any time. No alcohol will be sold, or permitted to be sold, on a commission basis by any person.

The following policies will be enforced at the establishment:

1. No alcoholic beverages will be allowed on the premises, other than what is dispensed by the establishment.
2. All staff will pay attention and be alert to observable clues displayed by an intoxicated individual, such as: impaired reflexes, impaired coordination, reduced judgment and inhibitions, impaired vision, etc.

3. All staff will be alert to potential problems at their respective areas at the facility.
4. All staff will be polite and courteous to the intoxicated individual(s) and will be knowledgeable as to when to request assistance from additional facility staff.
5. Patrons who appear to be 30 years of age or younger will be asked to show proper identification. Signage will be posted at serving locations. Patrons must produce proper identification.
 - 5.1 All patrons under 21 years of age, service will be refused.
 - 5.2 Check "State Seal" and other markings. Check for damage or alterations to identification card.
 - 5.3 Do not return falsified identification cards. Call management immediately.
6. If a patron shows signs of intoxication, staff is to refuse service, politely explain policy, suggest non-alcohol purchase, and/or call for management, if necessary.
7. If a patron is purchasing on behalf of someone else who appears **less than 30 years old**, staff is to request to see identification of recipient or contact supervisory personnel who will seek patron(s) out. Staff will refuse service to minors and will inform all parties involved that policy allows for ejection from premises if illegal activity has occurred.
8. Alcohol dispensing may be restricted to one of the following practices or any combination thereof:
 - No sales to intoxicated persons.
 - No sales without proper identification.
 - Limited alcoholic choices, if necessary.
 - When in doubt, do not serve. Call supervisor.
9. Observe all patrons leaving the property. No alcoholic beverages are allowed to leave the facility or property.
10. Staff is to approach any person appearing to be impaired and leaving the event to determine if they are driving. If so, staff is to attempt to persuade them not to drive and request a non-impaired companion to drive. If unable, staff will refer patron(s) to bus or taxi service.
11. We shall provide non-alcoholic beverages to all designated drivers either free or reduced prices.
12. The establishment fully participates in the Techniques in Alcohol Management Program and will continue such participation in that program or a similarly recognized program approved by the Royal Oak Police Chief. ServSafe Alcohol certification, provided through the Michigan Restaurant Association, for all employees shall be provided to the Chief of Police within 35 days of date of hire.

VIII. REFUSE DISPOSAL: The establishment will dispose of refuse in enclosed dumpster(s), with lids. Pickup will be a minimum of three times per week. A water line with spigot will be provided to clean dumpster enclosure as necessary.

IX. GENERAL: Every effort will be made to maintain positive relationships with adjacent and nearby businesses, as well as cooperation with all City departments. Every effort will be made to solve any problems which may arise.

X. EMERGENCY CONTACTS:

Greg Reyner 248-390-5433
David Smith 248-872-9555

XI. Valet service will not be offered at this time.

Date: May 7, 2013

Café Muse LLC / Café Muse
Corporate Name / Doing Business As



By: David S. Smith / Owner
Name / Title

~~PROPOSED~~

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There shall be no gaming devices on the premises, or direct connections to an additional bar. Patrons will only be served alcohol while being seated.

We agree to adhere to the provisions of the Entertainment Agreement, which has been signed. It is agreed that we will not change the format of type of business without written approval of the City Commission. This includes changing from a full-service restaurant to a bar where food service is reduced, etc. The ratio of food sales to alcohol sales is anticipated to be 70% food sales to 30% alcohol sales.

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3. All staff will be alert to potential problems at their respective areas at the facility.
4. All staff will be polite and courteous to the intoxicated individual(s) and will be knowledgeable as to when to request assistance from additional facility staff.
5. Patrons who appear to be 30 years of age or younger will be asked to show proper identification. Signage will be posted at serving locations. Patrons must produce proper identification.
 - 5.1 All patrons under 21 years of age, service will be refused.
 - 5.2 Check "State Seal" and other markings. Check for damage or alterations to identification card.
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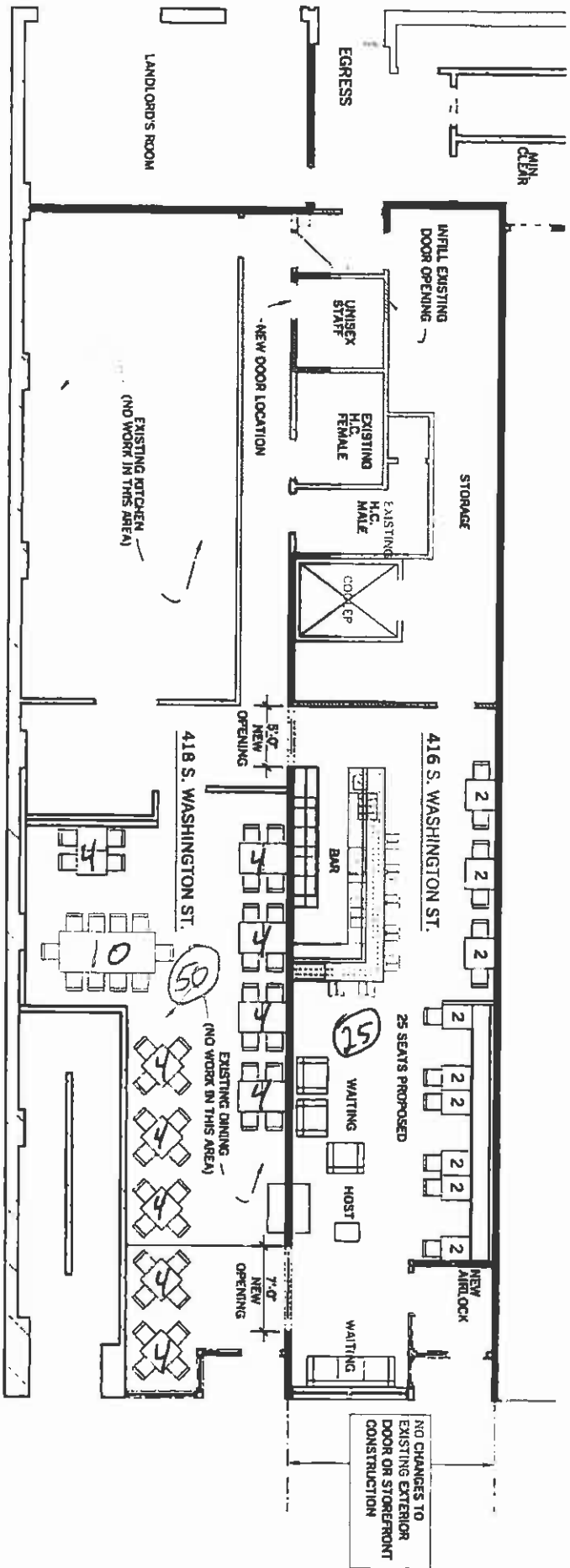
Greg Reyner 248-390-5433
David Smith 248-872-9555

XI. Valet service will not be offered at this time.

Date: May 25th, 2012

Café Muse LLC / Café Muse
Corporate Name / Doing Business As


By: David S. Smith / Owner
Name / Title



PROPOSED FLOOR PLAN

SCALE: 1/8" = 1'-0"



LICENSE AGREEMENT

THIS LICENSE is effective the fifteenth (15th) day of April, 2011 and expires on October 31, 2011.

WITNESSETH:

That the CITY OF ROYAL OAK, a Michigan Municipal Corporation, 211 Williams Street, Royal Oak, Michigan, hereinafter called the "Licensor", licenses and permits CAFÉ MUSE, hereinafter called the "Licensee", to make an encroachment into the public sidewalk abutting 416 & 418 S Washington, Royal Oak, Michigan more particularly described as:

Lots 2 & 3, Block 20, Assessor's Plat No. 20

Said encroachment shall consist of a serving area for food and drink with a fence and/or other barricades surrounding said sidewalk (see Exhibit A). It is hereby understood and agreed that any construction on the public sidewalk shall be of a temporary nature only, and easily removable as hereinafter may be required. No structure of a permanent nature shall be erected on the sidewalk.

This License is granted upon the following conditions, assent to which is signified by the signature/s of the Licensee/s:

1. This License shall be seasonal, from April 15 to October 31. The fence and/or other barricades surrounding the sidewalk serving area shall be removed at the end of each season.

2. A minimum clearance of five (5) feet for pedestrian traffic shall be maintained between the fence and/or other barricades or rail surrounding the sidewalk serving area and all obstructions, including but not limited to, curbs, parking meters, fire hydrants, street lamps, benches, planters, waste receptacles, trees, sign posts, traffic control devices, and any other streetscape elements. The fence and/or other barricades or rail shall align with and extend no further from the building wall than those of other sidewalk serving areas on the same block.

The fence and/or other barricades or rail surrounding the sidewalk serving area should be anchored in accordance with the uniform engineering anchoring system as promulgated by the Engineering Department of the City of Royal Oak and attached hereto as Exhibit B.

A minimum clearance of seven (7) feet shall be maintained between the sidewalk and the bottom edge of table umbrellas or awnings. The outer edge of table umbrellas or awnings must remain inside the

fence and/or other barricades or rail. No objects shall project beyond the fence and/or other barricades or rail.

Signage or any other form of advertising is prohibited on any fence and/or other barricades or rail surrounding the sidewalk serving area.

Establishments that allow smoking within a sidewalk serving area shall provide fireproof containers to collect, extinguish and dispose of discarded cigarettes and cigars, in addition to providing ashtrays. Such containers and ashtrays shall be emptied on a regular basis.

3. The Licensee agrees to repair and/or replace any damage to any portion of the sidewalk or streetscape as a result of the installation, maintenance and/or removal of the café railing system. All costs for such repair or replacement, and all work performed, shall be the responsibility of the Licensee. The City Engineer shall have the sole discretion to determine when a sidewalk/ streetscape is in need of repair or replacement. All required repairs must be complete before the beginning of the next season.

4. The manner in which the serving area on the sidewalk is encompassed shall be subject to prior approval and inspection by the Police and Engineering Departments.

5. The Licensor shall permit and agree to the use of alcohol only as permitted and/or licensed by the Michigan Liquor Control Commission in the area of and during the term of this License.

6. The Licensee shall furnish and do at the Licensee's own cost and expense any and all things herein permitted or that the Licensee is herein bound to do, including but not limited to any upkeep and maintenance of said sidewalk.

The Licensee shall clean the entire area of encroachment and all other adjacent sidewalk areas by removing debris, trash, sweeping and washing down the area each day. The cleaning shall be conducted as frequently each day and as necessary to prevent debris or trash from being blown or scattered onto other properties. A thorough sweeping and cleaning shall be conducted at the close of business each day. The cleaning shall not be postponed until the beginning of the next business day.

Steam cleaning and/or degreasing agents shall be used to thoroughly clean the area of encroachment and all other affected adjacent sidewalk areas as needed. At a minimum, steam cleaning

and/or degreasing agents shall be used within the first five (5) days of each month and upon the expiration of the seasonal license agreement.

Failure to comply with any provision of this Agreement shall result in a fine of two hundred dollars (\$200), payable to the City of Royal Oak within five (5) days of Notice of Non-compliance. Failure to pay the two hundred dollars (\$200) fine shall result in immediate termination of this Agreement. A second act of non-compliance within the license period shall result in immediate termination of the License Agreement upon Notice of the Second Act of Non-compliance. The Licensee may petition the City Commission for reinstatement of the License Agreement.

7. The Licensee agrees and undertakes to indemnify and save the Licensor harmless from any and all claims, demands and rights of action of every name, nature and description, whether arising under state or Federal statutes, or at common law, for injury or alleged injury to persons whether employees of the Licensor, or agents or employees of the Licensee or to third parties, and for damage or alleged damage to property regardless of to whom it may belong or in whose custody it may be, arising through, on account of, or out of the License herein granted, no matter how caused, whether by the negligence of the Licensor, its agents, employees or otherwise. The Licensee agrees that in case claim is made or suit instituted against the Licensor for such loss, injury or damage, including liability under a Dramshop claim, the Licensee will, upon notice from the Licensor, settle, adjust or defend the same at its sole cost and expense, without expense to the Licensor, and will pay any judgment rendered therein together with Court costs.

8. The City of Royal Oak shall be added as a named insured to Licensee's general liability insurance policy and shall provide the City with a copy of the Certificate of Insurance therefore prior to the April 15th opening each year. The additional insured on the certificate of insurance must read as follows:

"City of Royal Oak, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers."

The cancellation notice on the certificate of insurance must read as follows:

"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the Certificate Holder."

The general liability insurance policy and the Certificate of Insurance must be effective for the duration of the seasonal license from April 15 through October 31 each year. It is the responsibility of the Licensee to provide a Certificate of Insurance for the license period of April 15 through October 31, to the Royal Oak City Treasurer as a condition precedent to the issuance of a License. The Licensee shall carry insurance coverage in the amount of three hundred thousand dollars (\$300,000.00) for liquor, one million dollars (\$1,000,000.00) for general and products liability. Umbrella coverage in the amount of one million dollars (\$1,000,000.00) may also be used if the general liability coverage is less than one million dollars (\$1,000,000.00). Furthermore, the Licensee agrees to reimburse the Licensor for any deductible costs or claims expenses arising from any claims or suits filed against the City.

9. The Licensee shall immediately cease operation or any use of the encroachment upon receipt of a Notice of Cancellation of insurance. Licensee shall not resume any use of the encroachment until presentation of a valid Certificate of Insurance and approval by the City Manager to resume use of the encroachment.

10. The Licensee agrees that the Licensor has the right to revoke and terminate this Agreement without just cause or other explanation of any sort being required. The Licensee shall immediately cease operation or any use of the encroachment upon written or oral notice by Licensor. Upon termination, Licensee shall restore the sidewalk to its original condition.

11. The Licensee understands and acknowledges that there are or may be utility easements in this public right-of-way. Licensee agrees that should any additions, repairs or corrections be required to be made to any utility located within said right-of-way, all costs or expenses concomitant with the removal and replacements associated with the encroachment shall be borne by the Licensee. It is further agreed and understood that the Licensor or its agents shall be allowed to make any and all emergency repairs to the utilities located upon or within such easement without being required to give notice to Licensee.

12. That in the event the Licensee sells, leases or relinquishes control of the business and/or property or any portion thereof, Licensee shall immediately notify the office of the City Manager and this License Agreement shall immediately terminate.

13. That the last call for service of food and drink shall be no later than 1:00 a.m. All patrons must vacate the sidewalk area no later than 1:30 a.m.

14. For any Licensee who serves beer, wine, mixed drinks, or any type of alcoholic beverage, security personnel, staff supervision, or host shall be provided at the sidewalk area during peak operating hours. For any Licensee who serves beer, wine, mixed drinks, or any type of alcoholic beverage, security personnel, staff supervision, or host shall be on duty no later than 6:00 p.m. and shall continue as long as food and drink are being served, or until all patrons have vacated the sidewalk area. Security personnel, staff supervision or host shall be provided for, and conduct themselves consistent with all current Liquor Control Commission Rules and Regulations.

15. By executing/signing this Agreement the Licensee certifies that he/she is in full compliance with license requirements of the State of Michigan for outside sales of alcohol. (R436.1419).

16. There shall not be any live music on any sidewalk area without prior approval of the City Commission.

17. That during the term of this License, the Licensee shall post a two hundred dollar (\$200.00) cash performance bond or such other amount as may be required by the City Engineer to assure full compliance with the term hereof. The bond may be applied to any outstanding fines or charges. The cash performance bond may be refunded thirty (30) days after the expiration of the license period, at the request of the Licensee, unless there is any pending action against the cash performance bond.

18. For any Licensee who serves beer, wine, mixed drinks, or any type of alcoholic beverage, the basic license fee each year for an area of one hundred eighty (180) square feet or less shall be seven hundred fifty dollars (\$750) for a first time applicant, and six hundred dollars (\$600) for the renewal of a previously approved Licensee. For all other types of businesses that do not serve beer, wine, mixed drinks or any other alcoholic beverage, the basic license fee each year for an area of one hundred eighty (180) square feet or less shall be three hundred seventy five dollars (\$375) for a first time applicant, and three hundred dollars (\$300) for the renewal of a previously approved license. Any encroachment of greater than one hundred eighty (180) square feet shall require payment of an additional thirty dollars (\$30) each

year. The license fee shall be payable at the time of application for the License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WITNESSES:

Gretchen E. Osim
Gretchen E. Osim

JANET MILLIS
JANET MILLIS

CITY OF ROYAL OAK

James B. Ellison
James B. Ellison, Mayor

Melanie Halas
Melanie Halas, City Clerk

CAFÉ MUSE

David S. Smith
(Name)

DAVID S. SMITH
(Name Printed)

OWNER
(Title)

Approved as to form:

David Gillam
David Gillam
City Attorney

**CAFÉ MUSE
418 S. WASHINGTON**

TOTAL CALLS FOR SERVICE – 05/01/2012 – 05/01/2013 = 1

<u>DATE</u>	<u>REPORT/D-CARD</u>	<u>COMPLAINT</u>	<u>SYNOPSIS</u>
8/26/2012	12-23632D	Noise Complaint	Not excessive or out of the ordinary. No report.