

DATE: July 2, 2021

TO: Committee of the Whole-CD

FROM: Scott Buening, Community and Economic Development Director

SUBJECT: Resolution 21-073-R Executing a Lease for an Outdoor Restaurant Seating Area at 11 N. Batavia Avenue (Bocadito's Café, Inc.)

Summary: Resolution authorizing execution of a lease to use City land for an outdoor dining area for the Bocadito's Café at 11 N. Batavia Avenue.

- 1. Background:** The Bocadito's restaurant was formerly located at 109 E. Wilson Street. This was a planned relocation to the Newton House at 11 N. Batavia Avenue. The yard that is located south of the building along Wilson Street is actually City-owned property, originally acquired for the westerly extension of Wilson Street. The tenants would like to use this property for a fenced outdoor dining area. However, since this is property owner in fee by the City, we would need to enter into a lease with the tenant to allow use of this land.

Staff has negotiated the attached lease with the tenant to allow them to use a specified footprint of the land. The tenant wanted to make sure that they were paying for the area of City property that they were actually using, so we had negotiated the area and thus the rental rate for some period of time. At the end, the attached site plan shows the area they will be renting which consists of 757.5 square feet of land. The rental rate for this was calculated in the same way as other outdoor dining licenses are calculated, being that it is \$50.00 plus \$0.50 per square foot used. Therefore, the annual lease amount based on this number would be \$428.75. The tenant has provided a signed copy of the lease and a signed personal bond as well as a check in the amount of the annual lease rate. Before they can open this to the public they will need to provide a certificate of insurance naming ten City as an additional insured.

We note that part of this property is considered excess land and we have been directed to try to sell this to the adjacent owner. We have begun this process by engaging an appraiser to establish a value for the property. Once the value is established, we will be talking to the adjacent property owner about a potential sale of the non-memorial part of this property. If that sale proceeds, then the lease will be terminated with the City, and the tenant will work through the new landlord on any rental requirements for this land.

Staff recommends approval of the Resolution authorizing execution of the lease of City land to Bocadito's Café, Inc.

- 2. Alternatives, including no action if viable:**

- **Approval of the Resolution to execute the lease.**
- **Do not approve of the resolution and do not allow use of the City land.**

- **Budget Impact:** The annual rental rate based on our current fees would be \$428.75.
 - **Staffing Impact:** No impact on staffing, other than reducing the amount of area we need to mow.
3. **Timeline for actions:** The tenant has already commenced with using the area to build their patio based upon the lease being signed on their end. If the lease is not signed by the City, they will need to remove their improvements from the City property. Time is of the essence to make their use of the City property properly authorized.
 4. **Staff recommendation:** Staff recommends approval of Resolution 21-073-R Executing a Lease for an Outdoor Restaurant Seating Area at 11 N. Batavia Avenue (Bocadito's Café, Inc.)
5. **Attachments:**
1. Resolution 21-073-R.
 2. Signed lease
 3. Outdoor seating area plan.
 4. Area Map.

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 21-073 -R**

**EXECUTING A LEASE FOR AN OUTDOOR RESTAURANT SEATING AREA AT
11 N. BATAVIA AVENUE (BOCADITO'S CAFÉ, INC.)**

WHEREAS, Bocadito's Café, Inc. wishes to install an outdoor dining and patio area as part of an adjacent restaurant being built out at 11 N. Batavia Avenue; and

WHEREAS, the location of such facility requires that the City lease to Bocadito's Café, Inc. certain space; and

WHEREAS, city staff has determined that there is adequate space available for the proposed facilities; and

WHEREAS, the location of such facilities will not interfere with Public Works operations or provides adequate ability for the City to access any such facilities; and

WHEREAS, it is in the best interests of the City that the space be leased for the purpose as outlined in the attached lease; and

WHEREAS, Bocadito's Café, Inc. has negotiated a Lease Agreement which sets forth the terms and conditions for leasing of the necessary space;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF BATAVIA AS FOLLOWS:

CITY OF BATAVIA, ILLINOIS, RESOLUTION 21-073-R

SECTION 1: That the Mayor and City Clerk are authorized to execute the Lease Agreement attached hereto as **EXHIBIT #1**.

PRESENTED to the City Council of the City of Batavia, Illinois, this ___ day of _____, 2021.

PASSED by the City Council of the City of Batavia, Illinois, this this ___ day of _____, 2021.

APPROVED by me as Mayor of said City of Batavia, Illinois, this this ___ day of _____, 2021.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	Baerren					Solfa				
2	Leman					Wolff				
3	Ajazi					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	Vogelsinger					Miller				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Kate Garrett, City Clerk

LEASE OF CITY OWNED LAND

Outdoor Restaurant Seating Area

Agreement made effective as of _____, 2021 (the "Effective Date"), by and between the City of Batavia, a municipal corporation duly organized and existing under the laws of the State of Illinois (hereinafter "Lessor"), and Bocaditos Café, Inc., an Illinois Corporation (hereinafter "Lessee").

In consideration of the mutual covenants, agreements, and stipulations contained in this agreement, the parties agree as follows:

I. LEASE

A. The Lessor grants to the Lessee the exclusive right and privilege for the term specified below of operating an outdoor restaurant seating area on property designated as PIN 12-22-177-025 being the area immediately adjacent to and south of the property at 11 N. Batavia Avenue, Batavia, IL, west of the existing north-south sidewalk and north of the public sidewalk (hereinafter "Seating Area").

B. The Lessee shall have the right to such food and beverages as are customarily sold at the Lessee's restaurant, provided that any alcoholic beverages served are subject to holding a valid liquor license for said area as well as approved barriers for delineating the beverage serving area.

II. OPERATION; EASEMENT; TERM; TERMINATION

A. The Lessee shall not allow the Seating Area to be used for any purpose other than that specified above in this Agreement or permit the Seating Area to be used, in whole or in part, by any other firm, person, or corporation, except as an agent of Lessee.

B. The Lessee may take possession and use the Seating Area during all hours that it is open for business beginning on the Effective Date and continuing through one (1) year from the date of this Agreement (hereinafter "Initial Lease Term").

C. The Initial Lease Term shall be automatically extended without the need for Lessee to provide any notice for one (1) year periods, and all the extended lease terms through the date of termination shall be known as the Lease Term, provided that an additional annual lease rent is paid to the City by January 1 of the next calendar year.

D. Either party may terminate the Agreement with sixty (60) day notice in writing, provided that the Lessor may terminate the Agreement with no less than thirty (30) day notice if the Lessor reasonably needs the Seating Area for public purposes, and further if Lessor may have immediate access to the Seating Area to access the utilities or otherwise in the case of an emergency on whatever notice is reasonably practical. If Lessor must access the Seating Area for utility maintenance, repair, or replacement, or for other public purposes, Lessor shall be responsible to restore the improvements to their previous condition for use of the Seating Area after the Lessor is finished.

E. As part of this Agreement, the Lessor will allow the extension of a water service line across the Seating Area in a location to be mutually agreed to by Lessor and Lessee. Said water line shall be converted to an easement when the construction project is complete and approved by the City. Said permission to extend and remain on the Seating Area shall survive expiration of the Agreement.

III. RENT

The Lessee shall pay to the Lessor an annual payment of \$428.75 in advance. The \$428.75 payment shall be nonrefundable and non pro-ratable if this Agreement is terminated by the Lessee for any reason or terminated due to the default of the Lessee under the terms of this Agreement. If the Lessor terminates the Agreement with less than sixty (60) day notice, or must take possession in an emergency, the Lessor shall pro-rate the rent that is owed by Lessee for the period that Lessee is not able to use the Seating Area. The use of the dining area shall cease on November 15, 2021. Any use of the dining area after that date shall incur an additional least payment of \$428.75 for each additional six (6) months the area is used. In addition, Lessor shall submit a Personal Bond (hereinafter "surety") in the amount of \$1,000.00 to pay for clean up or repair of the Seating Area in the event Lessee fails to do so at the request of the City. Said surety shall be released at the conclusion of the Agreement, subject to the Seating Area being returned in satisfactory condition to the City. If the City does make a claim on the surety to perform clean up or maintenance activities, then Lessee shall renew said surety within seven (7) days otherwise the City may revoke this Agreement pursuant to Section XII below.

IV. FIXTURES AND EQUIPMENT

The Lessee shall supply and furnish all the furniture, equipment, and appliances necessary and appropriate for the operation of the Seating Area, and the Lessee shall bear all expenses of fitting the Seating Area for business. Any furniture, equipment, and appliances in the Seating Area shall remain the property of the Lessee and be the responsibility of the Lessee at all times. Lessee shall not construct any permanent fixtures or equipment intended to remain permanently in the Seating Area, and the furniture, equipment, and appliances shall be removed by Lessee at the termination of this Agreement, whether by expiration or pursuant to any of the provisions of this Agreement. All fixtures and equipment shall be removed, and the Lessee shall restore the area to its original conditions when the Agreement is terminated, for whatever reason.

V. SERVICES FOR LESSEE

The Lessee shall be responsible for all utilities and services necessary to operate the Seating Area. The Lessee shall also bear all expenses for supplies necessary for the operation of the Seating Area.

VI. MAINTENANCE AND UPKEEP OF SEATING AREA AND SURROUNDING AREA

The Lessee shall keep the Seating Area and surrounding area in a clean, sanitary, and orderly condition. The Seating Area and surrounding area shall be kept clean, and all trash and litter shall be cleaned up at least nightly and as necessary during business hours. Lessee shall be responsible for all snow and ice removal on Seating Area plus five (5) feet outside the leased premises on any

sidewalk or paved area. Said snow and ice shall be removed within 24 hours of any snow or ice event.

VII. RESTORATION OF SEATING AREA

Upon termination of the Agreement, whether by expiration or pursuant to any of the provisions of this Agreement, Lessee shall immediately remove all of Lessee's property from the Seating Area and restore the Seating Area to the condition that it was prior to the grant of the License and operation of the Seating Area.

VIII. INDEMNIFICATION AND HOLD HARMLESS

Lessee shall be completely responsible for managing the Seating Area at all times during the term of the Agreement and shall hold the Lessor, and its officers, employees and agents harmless and indemnify them from and against all actions, claims, demands, liabilities, and damages that may in any manner be imposed on or incurred by the Lessor as a consequence of or arising out of any act, default, or omission on the part of the Lessee or any of its employees or agents that arise from the Lessee's possession, operation and control of the Seating Area.

IX. INSURANCE

The Lessee agrees at all times to carry adequate casualty insurance on its property and that of its employees on the Seating Area; to carry Workers' Compensation insurance to the full requirements of the State of Illinois for its employees; to carry public liability insurance (occurrence coverage) for the benefit of the Lessor and the Lessee as their interests may appear, in an amount of not less than \$1 million; and to pay the premiums for such insurance and furnish the Lessor with certificates from the insurance companies for all the above policies, with insurance companies acceptable to the Lessor. Prior to opening for business, certificates of insurance must be presented to the Lessor demonstrating that the Lessee has obtained the necessary insurance coverage and renewals as necessary to maintain the insurance throughout for the Lease Term.

X. TAXES, FEES, LICENSES, AND PERMITS

Any and all taxes, fees, and assessments, including, but not limited to, license fees, fees for permits, sales or use taxes, property taxes or any other taxes, fees, or assessments that may be levied or assessed on the assets, business, or capital, on the Lessee's income from the Seating Area and the food and beverage sales in the Seating Area, by any duly constituted local, city, county, state, federal, or other governmental authority, shall be borne and paid for by the Lessee. The Lessee shall obtain all required licenses and permits required for operation of the Seating Area prior to opening the Seating Area for business. Failure to pay any amounts owed to the Lessor in its capacity as a municipal body may be grounds for termination of the Agreement.

XI. ASSIGNMENT

The Lessee shall not have the right to assign its rights under this Agreement except on the prior, express, and written consent of the Lessor.

XII. DEFAULT

Each obligation of the Lessee contained in this Agreement is material and of the essence of this Agreement, and if the Lessee shall default or permit a breach in whole or in part of any covenant, obligation, or stipulation specified in this Agreement to be kept by it, and in the event of such breach or default and the Lessee's failure to rectify same, after notice and a reasonable time to cure the default, the Lessor is authorized, with or without process of law, to enter onto the Seating Area to expel, remove, and put off the Lessee, together with all property of every kind belonging to it; to repossess and enjoy the Seating Area in the same manner as before the execution of this Agreement; to order the Lessee to immediately cease operations; and/or to exercise any other right or remedy provided by law or equity.

XIII. NO PARTNERSHIP AGENCY OR JOINT VENTURE

It is understood and agreed that nothing contained in this Agreement shall be considered as in any way constituting the Lessor and the Lessee as agents for each other or that a partnership or joint venture exists between the Lessor and the Lessee.

XIV. SURRENDER OF POSSESSION AT END OF TERM

Within seven (7) days after the end of the Lease Term, the Lessee (unless alternative arrangements are made with the Lessor) shall remove all the Lessee's fixtures, furniture, and equipment from the Seating Area, restore the Seating Area to the condition it was before the Lease, and return possession of the Seating Area to the Lessor in good and clean condition. Unless alternative arrangements are made with the Lessor, any fixtures, furniture, or equipment seven (7) after the Lease Term in the Seating Area shall be deemed the property of the Lessor, and the Lessor may use or dispose of the furniture, equipment, or fixtures as it deems appropriate in its sole discretion.


WHEREFORE, this Agreement is approved as of the Effective Date stated above by

LESSEE

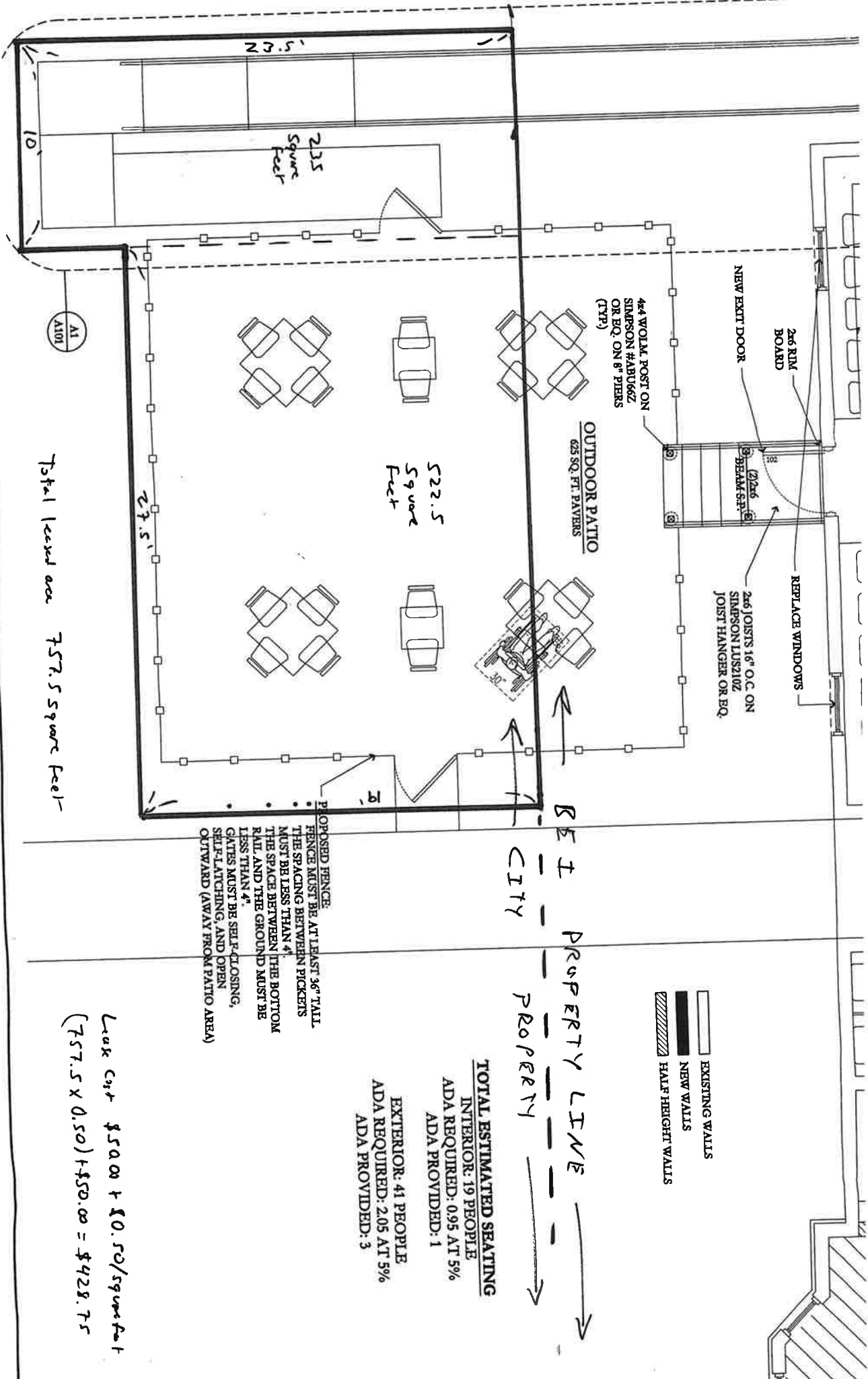
LESSOR

BOCADITOS CAFÉ, INC.

CITY OF BATAVIA

By 

By _____, its _____



Total leased area 757.5 square feet

PROPOSED FENCE:
 FENCE MUST BE AT LEAST 36" TALL.
 THE SPACING BETWEEN PICKETS
 MUST BE LESS THAN 4".
 THE SPACE BETWEEN THE BOTTOM
 RAIL AND THE GROUND MUST BE
 LESS THAN 4".
 GATES MUST BE SELF-CLOSING,
 SELF-LATCHING, AND OPEN
 OUTWARD (AWAY FROM PATIO AREA)

BEI CITY PROPERTY LINE PROPERTY

EXISTING WALLS
 NEW WALLS
 HALF HEIGHT WALLS

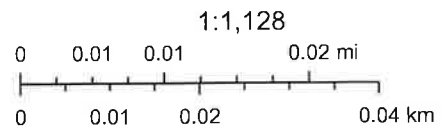
TOTAL ESTIMATED SEATING
 INTERIOR: 19 PEOPLE
 ADA REQUIRED: 0.95 AT 5%
 ADA PROVIDED: 1
 EXTERIOR: 41 PEOPLE
 ADA REQUIRED: 2.05 AT 5%
 ADA PROVIDED: 3

Leak cap \$50.00 + \$0.50/square foot
 (757.5 x 0.50) + \$50.00 = \$428.75

Web AppBuilder for ArcGIS



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|------------------|-----------------|
| STREETS LG SCALE | City of Batavia |
| PARCELS | CREEKS |
| CONDO PARCELS | BUILDINGS |
| ADDRESSES | PARCELS |
| CITY LIMITS | CONDO PARCELS |
| Unincorporated | ADDRESSES |

Kane County IL/Eagleview, Maxar, Microsoft