ORDINANCE NO. 2008-3601

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN SECTIONS 82-366 THROUGH 82-385 OF THE CITY CODE; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1.

That Chapter 82, Article IV, Division 5, Sections 82-366 through 82-385, of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

Sec. 82-366. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City Manager - means the city manager or the city manager's designee.

Code Compliance Officer – means the code compliance officers, fire inspectors, or any other authorized agent or employee of the city whose duty it is to assure code compliance.

Menu board - means a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification.. The location, size, design, materials and color of the menu board shall be approved by the City Manager and shown on the sidewalk café site plan (as hereinafter defined). Menu boards shall be no larger than six (6) square feet; may not be internally illuminated; and the top of the board shall not exceed five feet, six inches (5'6") from grade. The menu board shall not be a sandwich board sign (as defined herein).

Permittee .- means the recipient of a sidewalk cafe permit under the terms and provisions of this division.

Restaurant - for purposes of this division only, means a food service establishment that is maintained and operated as a place where food and/or beverages are prepared and/or served and sold for consumption within the premises, or a business establishment which has, as an ancillary or secondary use, a part thereof where food and/or beverages are prepared and/or served and sold for consumption within the premises. No sidewalk café permit shall be issued to a restaurant whose occupational license or certificate of use is limited to take-out service and does not have inside seating.

Right-of-way - means land in which the state, the state department of transportation, the county or the city owns the fee or has an easement devoted to or required for use as a transportation facility or street.

Sandwich board sign - means a freestanding, A-frame structure located on a sidewalk or street which may be affixed in position or is collapsible and which contains a sign (as defined in section 114-1).

Sidewalk - means that portion of the right-of-way which is located between the curb line or the lateral line of a street and the adjacent property line and which is intended for use by pedestrians; provided that on Lincoln Road Mall, a sidewalk shall mean a right-of-way as defined in this section, but shall only refer to that area between the property line and the centerline of the right-of-way, exclusive of landscaped areas and a twelve (12) foot-wide clear path for emergency and maintenance vehicular access.

Sidewalk café - means a use located on a right of way which is associated with a restaurant and is primarily characterized by tables and chairs; may be shaded by awnings, canopies or umbrellas; and may include such other sidewalk café furniture (as hereinafter defined) as permitted and/or approved pursuant to this division.

Sidewalk Café Furniture – means those non-permanent fixtures, furnishings and equipment associated with the operation of a sidewalk café and approved pursuant to this division including, without limitation, tables, chairs, umbrellas, planters, heaters, fans, rolling service stations, service carts, bussing stations, and menus and/or specials boards.

Sidewalk cafe site map - means a city-approved map detailing the location of the pedestrian pathway as it relates to a sidewalk cafe.

Sign - shall have the same meaning as provided for in section 114-1.

Specials board - means a board allowing for the posting of a restaurant's daily specials and fabricated in such a manner so as to not constitute a form of advertising or establishment identification. The location, size, design,

materials and color of the specials board shall be approved by the City Manager and shall be shown on the sidewalk café site plan. Specials boards shall be no larger than six (6) square feet; may not be internally illuminated; and the top of the board shall not exceed five feet six inches (5'6") from grade. The specials board shall not be a sandwich board sign (as defined herein).

Street - means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic and/or parking.

Sec. 82-367. Declaration of necessity and intent.

It is hereby found and declared that:

(a) There exists the need for outdoor eating establishments (sidewalk cafes) in certain areas of the city to provide a unique environment for relaxation and food and/or beverage consumption.
(b) The existence of sidewalk cafes encourages additional pedestrian traffic to these areas.
(c) The presence of sidewalk cafes may thus impede the free and safe flow of pedestrian traffic.
(d) There is a need for regulations and standards for the existence and operation of sidewalk cafes to facilitate and ensure a safe environment in these areas.
(e) The establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote the general health, safety and welfare of the residents of the city.

(Ord. No. 92-2808, § 1(39-28), 10-8-92; Ord. No. 97-3092, § 1(39-28), 9-10-97)

Sec. 82-368. Removal and storage fees; disposition of property.

If, pursuant to this division, the city removes, relocates, and/or stores any sidewalk café furniture, the permittee shall be responsible for the reasonable expenses incurred by the city for the removal, relocation, and/or storage of all such sidewalk café furniture. The City Manager shall promulgate and review, as needed, regulations regarding the storage and disposition of sidewalk café furniture under this division. The city and its officers and employees shall not be responsible for any damage to or loss of any sidewalk cafe furniture removed, relocated and/or stored pursuant to this division.
(Ord. No. 97-3092, § 1(39-36), 9-10-97)

Sec. 82-369. Appeals from the decision of the City Manager.

Appeals from decisions of the City Manager made pursuant to this division shall be to the special master in accordance with the procedures set forth in

sections 30-72 and 30-73 hereof. Appeals from the decisions of the special master shall be to a court of competent jurisdiction by petition for writ of certiorari.
(Ord. No. 92-2808, § 1(39-38), 10-8-92; Ord. No. 97-3092, § 1(39-37), 9-10-97)

Sec. 82-370. Notice of violation.

(a) Code compliance officers shall issue twenty four (24) hour warning notices for all non-life safety violations of this division.

(b) No warning notices shall be required prior to the issuance of life safety violations and/or sidewalk café site plan violations, and such violations shall be corrected immediately. Life safety violations are defined as those conditions which, in the reasonable determination and judgment of the City Manager, involve serious danger and/or risk to the public health, safety or welfare (including, without limitation, blocking pedestrian pathways and violations of the state accessibility code for building construction). Site plan violations are defined to include those instances where the permittee is operating outside of the permitted sidewalk café area (as approved pursuant to Section 82-382(b)(6)) and shall include a table or tables set up outside the approved boundaries of the sidewalk café site plan, and/or umbrellas, heaters, fans, bussing stations and other sidewalk café furniture found to be outside the approved site plan; but shall not be deemed to include instances where a chair or chairs are moved outside the approved boundaries of a site plan by a sidewalk café patron(s).

(c) If a code compliance officer finds a violation of this division, such code compliance officer shall issue a notice of violation to the violator as follows:

1. For non-life safety violations of this division (where a 24-hour notice has been previously issued within the preceding sixty (60) days for the same violation) - a violation will be issued.
2. For life safety violations of this division and for site plan violations - no 24-hour warning notice is required, and a violation may be issued at any time.

Sec. 82-371. Civil fines and penalties; denial of future permits to repeat violators.

(a) The following civil fines and penalties shall be imposed for violations of this division:

(1) First Violation $100.00

(2) Second violation within the preceding twelve (12) months.....$250.00

(3) Third violation within the preceding twelve (12) months $500.00

(4) Fourth within the preceding twelve (12) months $750.00

(5) Fifth violation within the preceding twelve (12) months – a fine of $1,000 and suspension of the sidewalk café permit for one weekend (Saturday and Sunday)

(6) Sixth violation within the preceding twelve (12) months – a fine of $1,000 and revocation of the sidewalk café permit for the remaining portion of the permit year

(7) Failure to apply for permit - termination of sidewalk café operations

(8) Failure to renew permit - suspension of sidewalk café operations

(b) A permittee who has been issued more than six (6) violations pursuant to this division within a permit year shall be prohibited from applying for and obtaining a sidewalk café permit for a period of two (2) consecutive permit years, following the permit year in which the applicant/permittee incurred the aforestated violations.

Sec. 82-372. Rights; payment of fine; right to appeal; failure to pay civil fine or to appeal.

(a) A violator who has been served with a notice of violation shall elect either to:

(1) Pay the civil fine in the manner indicated on the notice; or

(2) Request an administrative hearing before a special master, to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation. Warnings may not be appealed.

(b) The procedures for appeal shall be as set forth in sections 30-72 and 30-73 hereof.

(c) Failure of the named violator to appeal the decision of the code compliance officer within ten (10) days after the date printed on the notice of violation shall constitute a waiver of the violator's right to administrative hearing. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties shall be assessed accordingly.

(d) Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction by petition for writ of certiorari.

(Ord. No. 92-2808, § 1(39-41), 10-8-92; Ord. No. 93-2897, § 2, 12-15-93; Ord. No. 97-3092, § 1(39-40), 9-10-97)

Sec. 82-373. Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.

(a) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(b) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator, and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two (2) months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute on the lien.

(Ord. No. 92-2808, § 1(39-42), 10-8-92; Ord. No. 97-3092, § 1(39-41), 9-10-97)

Secs. 82-374--82-380. Reserved.

Sec. 82-381. Permitted areas; conditional permit; City Manager's right to remove sidewalk cafes.

(a) Sidewalk cafes shall only be located where permitted by the city's zoning ordinance and land development regulations, as same may be amended from time to time.

(b) The approval and issuance of a sidewalk café permit is conditional at all times.

(c) It shall be unlawful for any person to operate a sidewalk cafe without a valid permit as required by this division.

(d) The City Manager shall have the right to immediately remove, after 24-hours written and/or verbal notice to the permittee, any sidewalk café furniture used in connection with a sidewalk cafe which is operating without a valid permit.

(e) The City Manager may cause the immediate removal, relocation and/or storage of all or part of a sidewalk café in emergency situations or for public safety considerations.

(f) The City Manager may require the temporary removal and/or relocation of all or part of a sidewalk cafe when street, sidewalk, or utility repairs, or other public construction, necessitates such action. If such temporary removal exceeds fifteen (15) days, the City Manager

shall pro-rate the remaining permit fee for each additional day the sidewalk café (or portion thereof) is removed and apply a credit toward the following year's permit fee or, upon written request by the permittee, refund the remaining fee to the permittee.

(g) Upon written and/or verbal notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the permittee shall, within no more than four (4) hours of same, remove and place indoors all tables, chairs and any other sidewalk café furniture located on the right of way. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The City Manager may remove, relocate, and/or store any sidewalk cafe furniture found on the right of way that has otherwise not been removed by the permittee pursuant to this subsection. Any and all costs incurred by the city for removal, relocation and/or storage of sidewalk cafe furniture shall be the responsibility of the permittee. Sidewalk cafés will not re-open for business following a hurricane or other major weather event until notified by the City Manager. Violation of this subsection (g) shall result in the issuance of an immediate $1000.00 fine, and/or suspension, for up to thirty (30) days, of the sidewalk café permit.

Sec. 82-382. Application.

(a) A sidewalk cafe permit shall be effective for one year, from October 1 until September 30 of the following year.

(b) Application for a permit to operate a sidewalk cafe shall include, but not be limited to, the following information:

(1) The name, address and telephone number of the applicant/permittee.
(2) The name and address of the business establishment seeking a permit to operate the sidewalk café (including the name and address of the restaurant).
(3) A copy of a valid city occupational license to operate the restaurant in front of which the proposed sidewalk cafe will be operating. The total count of chairs to be utilized for the restaurant must include the number of chairs used in conjunction with the sidewalk café and the number of chairs inside the restaurant, as authorized by the license.
(4) A copy of a valid certificate of use for the restaurant in front of which the proposed sidewalk cafe will be operating.

(5) Copies of current certificates of insurance, in the amounts and categories required by Section 82-386.

(6) A site plan signed and sealed by a duly licensed architect or engineer which accurately depicts the layout and dimensions of the existing sidewalk area and adjacent private property; proposed location, size and number of tables, chairs, umbrellas, and any other sidewalk café furniture; and location of doorways, steps, trees and/or landscaped areas, fountains, parking meters, fire hydrants, bus shelters, directory/kiosks, public benches, trash receptacles, and any other existing public fixtures, furnishings and/or other obstruction(s), within the proposed sidewalk cafe area. The sidewalk café site plan shall be approved by the City Manager prior to the issuance of a sidewalk café permit and the permit shall be specifically limited to the subject area shown on the approved site plan.

(7) Photographs, drawings or manufacturers' brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, and any other sidewalk café furniture related to the operation of the sidewalk cafe. Tables, chairs, umbrellas, and any and all other sidewalk café furniture shall be approved by the City Manager prior to the issuance of a sidewalk cafe permit.

(8) A copy of the approved sidewalk café site plan, shall be maintained on the permittee's premises and shall be available for inspection by city personnel at all times.

(9) The annual application shall be accompanied by a non-refundable base application fee as set forth in appendix A.

(10) Applications shall be reviewed for compliance with applicable city, state and federal laws, and must be reviewed and approved by the city's public works department; fire department; office of risk management; finance department; planning and zoning department; and building department.

(11) Prior to issuance of a sidewalk cafe permit, the city's chief financial officer shall certify that there are no outstanding fines, monies, fees, taxes or other charges owed to the city by the applicant/permittee and/or the business establishment/restaurant. A sidewalk cafe permit will not be issued until all outstanding debts to the city are paid in full.

(12) No sidewalk cafe permit shall be issued to a restaurant whose occupational license or certificate of use is limited to take-out service and does not have inside seating.

(13) A sidewalk cafe permit may not be transferred and/or otherwise assigned. A new owner and/or operator of a restaurant and/or

business establishment with a sidewalk café permit will be required to apply for and obtain a new permit.

(14) The permit covers only the public right of way. Tables and chairs on private property will be governed by other applicable regulations. No outdoor seating authorized pursuant to this division shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of, a liquor license; nor shall the outdoor seating be used as the basis for computing required seating for restaurants, or as grounds for claiming exemption from such requirements under the provisions of any applicable city, county, and/or state law.

(15) Sidewalk cafés shall comply with all applicable accessibility codes including, without limitation, the Americans with Disabilities Act (ADA), and state code provisions addressing accessibility for building construction, as same may be amended from time to time.

(c) *Renewals.* As provided in Section 82-371(b), a permittee who has been issued more than six (6) violations pursuant to this division within a permit year, shall be prohibited from applying for and obtaining a sidewalk café permit for the following two (2) consecutive permit years.

Sec. 82-383. Permit fee; penalties for late payments; review of fee.

(a) The annual permit fee for operation of a sidewalk cafe shall be as set forth in appendix A, and shall be based on a per square foot calculation of permitted sidewalk area (including the area between the tables and chairs).

(b) The City Manager, in his reasonable discretion and judgment, may suspend or prorate the annual permit fee in cases of public construction or public emergency situations.

(c) The permit fee shall be paid on or before October 1, and shall cover the time period from October 1 through September 30 of the following calendar year (permit year).If the permit fee exceeds $2,000.00, the fee may be paid in two semi-annual installments, with the first installment due on October 1, and the second due on April 1. No permit shall be issued for any portion of a year, but any person/entity operating a sidewalk cafe for a period beginning after the commencement date of the full permit year (October 1) may obtain a permit for the remaining portion of that permit year upon payment of a pro-rated portion of the permit fee calculated from the first day of the month of issuance of the permit to the end of the permit year. Except as expressly provided in this division, no refund of the permit fee shall be granted.

(d) Late payments for permit fees shall accrue at the rate of ten (10%) percent per annum for the first thirty (30) days. If the permit fee is not paid within sixty (60) days after it is due, the permit shall terminate automatically. Any continued operation of a sidewalk cafe after termination of a permit shall be construed as operating a sidewalk cafe without a valid permit, and the City Manager shall have the right to remove, upon 24-hours written and/or verbal notice to the permittee, any and all sidewalk café furniture used in connection with the sidewalk cafe.

(e) As provided in Resolution No. 2003-25299, a review of the annual permit fee will be required whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last fee adjustment, is five percent (5%) or greater.

Ord. No. 92-2808, § 1(39-30), 10-8-92; Ord. No. 95-2999, § 1, 6-21-95; Ord. No. 97-3092, § 1(39-31), 9-10-97; Ord. No. 98-3146, § 1, 10-21-98; Ord. No. 2000-3237, § 2, 4-12-00; Ord. No. 2003-3397, § 1, 2-26-03; Ord. No. 2003-3423, § 1, 7-30-03)

Editor's note: Ord. No. 2003-3397, § 1, adopted February 26, 2003, changed the title of § 82-383 from "Fee; renewal fee; penalties for late payments for renewal fee" to "Fee; renewal fee; penalties for late payments for renewal fee; exception."

Sec. 82-384. Permitted sidewalk café frontage; requests for expansions.

(a) Sidewalk cafes are restricted to the sidewalk frontage of the restaurant to which the permit is issued or, if the restaurant is an ancillary and/or secondary use to another type of business establishment, the sidewalk café shall be restricted to the sidewalk frontage of the building (or portion thereof) of the "primary" business establishment (within which the restaurant is located). Only a restaurant whose premises are on a ground floor adjacent to and fronting the sidewalk may be issued a sidewalk café permit.

(b) An applicant for a sidewalk cafe permit may be permitted, upon prior written request by the permittee to the City Manager, to extend by a maximum total of fifty (50) feet in the right-of-way on one side and/or the other side of the restaurant to which the permit is issued (or of the business establishment where the restaurant is located); the permittee shall make written application to the City Manager setting forth the reason(s) for the proposed expansion and provide a site plan showing the proposed expansion. All requests for expansions pursuant to this subsection (b) shall be reviewed by the City Manager on a case by case basis. In reviewing such requests, the City

Manager, in making his determination to approve or deny, shall consider the following:

(i) Pedestrian access
(ii) Visibility of the front of the adjacent owner's business
(iii) Obstructions
(iv) Accessibility to the adjacent owner's business by patrons
(v) The City Manager, shall solicit input from businesses and property owners on the same block including, without limitation, the immediately adjacent (i.e. next door) business and property owners.
(vi) The City Manager shall provide written notice to the adjacent business establishment (tenant) and property owner on to whose frontage the sidewalk café proposes to expand. The notification shall include the following information: the name and address of the permittee/business establishment requesting the expansion; the approximate location and size of the area requested; and the name and address of the city official and/or employee to forward comments to, and the time period within which to forward said comments (which time period shall be no less than fourteen (14) days). Said notice shall be sent, as to the adjacent business establishment (tenant), to the name and address on file with the city for the establishment's occupational license and, for the property owner, to the name and address identified in the records of the Miami-Dade County Property Tax Appraiser's Office. Any objections not submitted and received by the city within the date provided in the notice shall be deemed waived.
(vii) The City Manager may also consider any history of violations and/or warnings pursuant to Section 82-371.

In the event of approval by the City Manager to expand a sidewalk café pursuant to this subsection (b), the additional square footage will be computed into the new permit fee.

Notwithstanding the City Manager's approval of a sidewalk café expansion pursuant to this subsection (b), in the event that the adjacent business establishment and/or property owner (on to which a sidewalk café has expanded) subsequently elects to apply for a sidewalk café permit to operate a café in front of its premises, that new applicant/permittee shall provide the City Manager with notice of such intent stating the applicant's name; the property address; the name of the business establishment and/or the restaurant (of which the café is a part of); and the anticipated opening date. The city will provide the

business establishment (tenant) and property owner which is currently expanding into the proposed new applicant/permittee's frontage with a courtesy copy of the notice. Following receipt of said written notice by the city, and provided that the new applicant/permittee obtains a sidewalk café permit, as well as any other required permits and/or licenses for operation of the business establishment and/or restaurant associated with the proposed new sidewalk cafe, then the City Manager's prior consent for expansion shall terminate, and the City shall provide written notice to the adjacent sidewalk café permittee advising it of such termination, and providing a termination date therefore. The city's notice shall provide the adjacent property owner with at least seven (7) calendar days prior to the effective date of termination of the expansion. Upon the termination date of the city's consent to expansion, the sidewalk café permit and the permit fee will be adjusted accordingly.

(c) In the case of sidewalk cafes on Lincoln Road, an expansion of a sidewalk café across the centerline of Lincoln Road Mall may also be permitted. The permittee shall make written application to the City Manager setting forth the reason for the proposed expansion and provide a site plan showing the proposed expansion. Requests for expansions pursuant to this subsection (c) shall be reviewed by the City Manager on a case by case basis. In reviewing such requests, the City Manager shall consider the following:

(i) the applicant/permittee would otherwise be significantly deprived of the use of the right of way for which the sidewalk café permit is sought;

(ii) there are special circumstances and conditions that exist, which were not self-created by the applicant/permittee, and are peculiar to that portion of the right of way, and are not generally applicable to other rights of way in the immediate area;

(iii) the granting of the expansion is the minimum that will allow the applicant/permittee's reasonable use of the area for its sidewalk café operations; and

(iv) the granting of the expansion will not significantly impair the ability of pedestrians on that particular portion of Lincoln Road Mall to walk comfortably from one side of the Mall to the other.

In the event of approval by the City Manager to expand a sidewalk café pursuant to this subsection (c), the additional square footage will be computed into the new permit fee.

Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

(a) The permittee shall take any and all actions to assure that its use of the public right of way in no way interferes with patrons of other sidewalk cafes, or limits their free, unobstructed passage thereto.

(b) Sidewalk cafes shall be located in such a manner that a distance of not less than five (5) feet is maintained at all times as a clear and unobstructed five (5) foot pedestrian path around public amenities and areas such as, by way of example, fountains, landscaped areas (excluding city planters), and seating/shade structures. Notwithstanding the preceding, the City Manager, in his reasonable judgment and discretion, and on a case-by-case basis, may approve and allow for a pedestrian path of less than five (5) feet where an applicant/permittee's sidewalk café operation would be significantly impacted. In considering such cases, and in determining whether an applicant/permittee is "significantly impacted," the City Manager may apply the criteria set forth in Section 82-384 (c)(i)-(iv).A five (5) foot pedestrian path shall also be required and established where the City Manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk café inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront.

(c) No tables, chairs, umbrellas, or other sidewalk café furniture shall be permitted within ten (10) feet of a bus bench and/or bus shelter. A distance of five (5) feet shall be maintained from taxi stands, fire hydrants, bike racks, directory signage/kiosks, and/or other similar public street furniture and/or fixtures.

(d) No tables, chairs, umbrellas or other sidewalk café furniture shall be permitted within five (5) feet of an alley, pedestrian crosswalk, or corner curb cut.

(e) The pedestrian path for Lincoln Road shall be a twelve (12) foot, clear path for emergency and maintenance vehicles, The exact location of the path on each block shall be determined by the City Manager, in his reasonable judgment and discretion, and shall be incorporated into the sidewalk cafe site map of Lincoln Road.

(f) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the public, or (in the case of Lincoln Road) which would have the effect of obstructing the pedestrian path or public access between the north and south sides of Lincoln Road.

(g) The area covered by a sidewalk café permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the City Manager. The permittee shall be responsible for pressure cleaning the floor surface on which the sidewalk cafe is located at the close of each business day. The city shall pressure wash the right-of-way from time to time in accordance with such schedule as shall be established in the reasonable judgment and discretion of the City Manager. In establishing said schedule, the City Manager shall use reasonable efforts to assure that the city's pressure cleaning of the public right of way occurs at such times as will cause the least disruption to sidewalk café operations.

(h) Tables, chairs, umbrellas and any other sidewalk cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times.

(i) All sidewalk café furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public.

(j) Only the sidewalk cafe furniture specifically shown on the approved sidewalk café site plan shall be allowed in the permit area.

(k) All tables, chairs, umbrellas, and any other sidewalk café furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right of way.

(l) The stacking, or piling up, of chairs shall be prohibited on the right of way. Tables, chairs and closed-up umbrellas may remain on the right of way as long as they are placed in an orderly manner. Tables and

chairs may remain set up for business on sidewalk cafes on Lincoln Road Mall that are set up and open for business before 11:00 AM. Any sidewalk cafes not set up and open for business before 11:00 AM shall remove all chairs, and all other sidewalk café furniture, at the close of each business day and store them inside the premises. The permittee may maintain approved sidewalk café furniture such as rolling service stations, service carts, and bussing stations in the permit area only during hours of operation; provided however, that planters that cannot be readily removed may remain within the permit area subject to the provisions of subsection (s) hereof. On Lincoln Road Mall, rolling service stations, service carts, and bussing stations shall not be permitted to be placed within five (5) feet of the walls, columns, or posts of the Lapidus structures, city planters, or in front of other storefronts and/or business establishments. The City Manager may require a permittee to store its tables, chairs and/or umbrellas off of the right of way if, in his reasonable judgment and discretion, the City Manager determines that the sidewalk café permit area and immediately adjacent public right of way are not being adequately maintained in accordance with this division.

(m) No storage of dishes, silverware or other similar sidewalk cafe equipment shall be allowed in the permit area, or in any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located, during non-business hours.

(n) There shall be no live entertainment or speakers placed in the permit area unless expressly permitted as a special event. Conditions such as hours and days of operation and audio levels will be regulated by the city's special events office, and these may vary during the year.

(o) One menu board and one specials board shall be permitted, per sidewalk café, for every fifty (50) feet of frontage.

(p) No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right of way.

(q) No food displays shall be permitted on the public right-of-way. No advertising signs or business identification signs shall be permitted on the public right-of-way except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six (6") inches in height.

(r) Umbrellas shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six feet eight inches (6'8") above the right of way. Two or more umbrellas

may not be clipped, zipped or otherwise fastened together in order to form a tent-like structure. Clear plastics or other materials may not be fastened, rolled or otherwise be attached to umbrella edges in order to create an enclosure.

(s) The City Manager may permit the use planters manufactured of terra-cotta or polymer materials, with the number and size to be reviewed at time of application. Placement of planters within sidewalk cafe areas shall be five feet (5'-0") apart or greater. It shall be the permittee's responsibility to immediately remove planters, upon written and/or verbal notice from the City Manager, in case of emergency or other circumstances as provided in this division. Maximum size of planters shall not exceed the following:

(1) Rectangular planters: 30 inches long, by 15 inches wide by 20 inches high.
(2) Round planters: 24 inches diameter by 24 inches high.
(3) Planters 20 inches or higher shall be on rollers or on rolling bases.
(4) The combination of planters and plant height should not exceed a table height of 34 inches.

Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed. Water drainage from any plants onto the sidewalk shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage.

(t) Permittees may make written request to the City Manager to use city electricity for powering floor fans during the summer months. Summer months are defined as the period beginning on May 1st, and ending on September 30th. The City Manager will make electrical outlets operable upon payment of a flat fee, which fee shall be determined, and may be adjusted from time to time, in the reasonable judgment and discretion of the City Manager, for each of the calendar days during the summer months. City electrical outlets will be restricted to powering floor fans only. Using the electrical outlets for powering lights, menu board lighting, and any other electrical device is strictly prohibited. Permittees violating this restriction will have the electrical boxes deactivated and forfeit any monies paid for electrical use. Fans must be UL approved for outdoor use. Extension cords are not allowed.

(u) No permit shall be granted on Lincoln Road in an area designated in the sidewalk café site map as restricted for special and cultural events; provided however, that the City Manager may approve temporary use

of such area(s), on a case by case basis, and only for a defined, limited time.

Sec. 82-386. Indemnification and insurance.

(a) The permittee agrees to indemnify, defend, save and hold harmless the city, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the permittee's activity on the public right of way.

(b) The permittee agrees to meet and maintain for the entire permit period, at its own expense, the following requirements:

(1) Commercial general liability insurance in the amount of $1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.

(2) For sidewalk cafes which serve alcoholic beverages, liquor liability insurance in the amount of $1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.

(3) Workers' compensation and employers' liability as required by the state.

(c) All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.

(d) The city must receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.

(e) The permittee must provide and have approved by the city an original a certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.

(f) Failure to comply with these requirements shall be deemed to be operating without a valid permit and shall cause an immediate suspension or revocation of the permit.

SECTION 2. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect the 22nd day of March, 2008.

PASSED and ADOPTED this 12th day of March, 2008.

ATTEST:

* MATTI HERRERA BOWER
MAYOR

* ROBERT PARCHER
CITY CLERK

* Original signatures on file in the City Clerk's Office