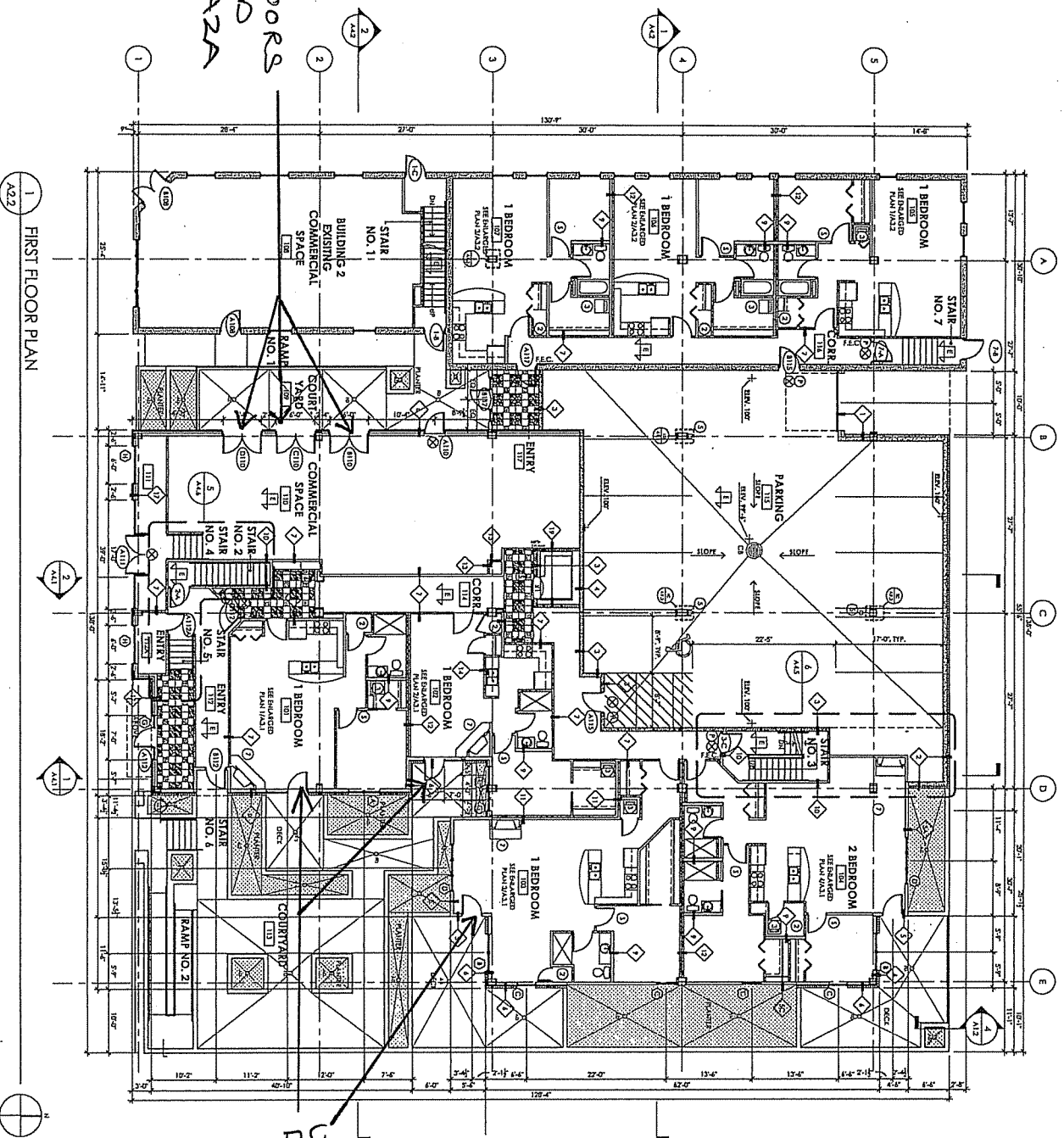


PATIO DOORS  
ADDED  
TO PLAZA

UNIT PATIO  
DOORS



1 FIRST FLOOR PLAN  
A2.2

**SUTTON**  
ARCHITECTURE  
301 First Street  
Madison, WI 53702  
Tel: 608.255.1234  
Fax: 608.255.1235

**PROJECT**  
THE RENAISSANCE  
Residential Condominiums  
834 Wisconsin Street  
Madison, Wisconsin

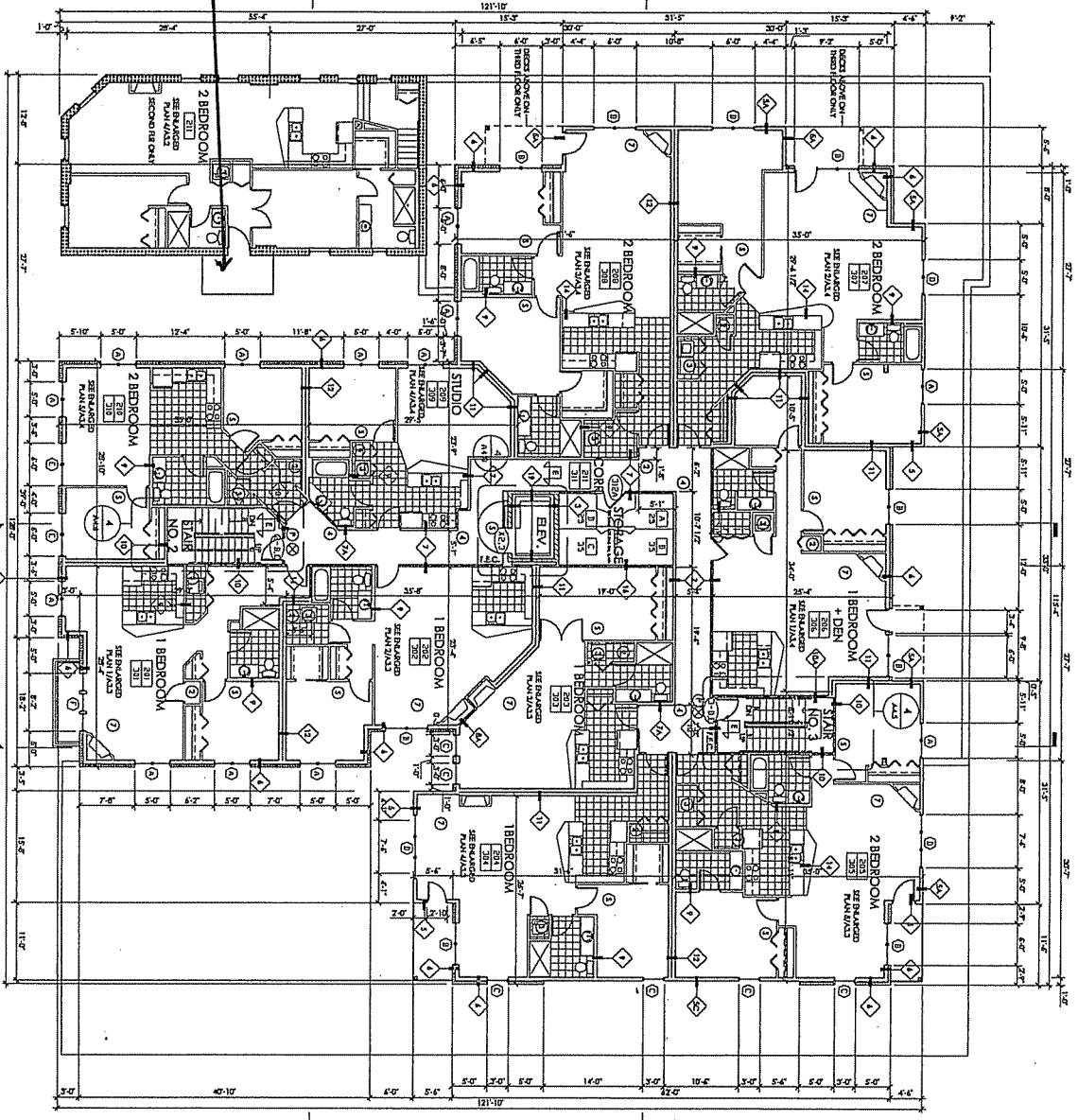
**DRAWING**  
FIRST FLOOR PLAN

**DATE**  
2007  
Scale  
As Shown  
Drawn by  
Sutton

A2.2

BALCONY  
ADDED

1 SECOND AND THIRD FLOOR PLANS  
SCALE 1/8" = 1'-0"



FLOOR PLAN GENERAL NOTES

1. ALL WORKING MEASUREMENTS TO FACE UNLESS NOTED OTHERWISE.
2. DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE TAKEN FROM THE ORIGINAL DRAWING.
3. ALL DIMENSIONS SHALL BE TAKEN FROM THE ORIGINAL DRAWING.
4. ALL DIMENSIONS SHALL BE TAKEN FROM THE ORIGINAL DRAWING.
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11. ALL DIMENSIONS SHALL BE TAKEN FROM THE ORIGINAL DRAWING.
12. ALL DIMENSIONS SHALL BE TAKEN FROM THE ORIGINAL DRAWING.

FLOOR PLAN RENOVES

- 1. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 2. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 3. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 4. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 5. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 6. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 7. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 8. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 9. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 10. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 11. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.
- 12. REMOVE EXISTING WALLS AND RECONSTRUCT AS SHOWN.

FLOOR PLAN LEGEND

- 1. BUILDING SECTION CUT
- 2. BUILDING SECTION CUT
- 3. BUILDING SECTION CUT
- 4. BUILDING SECTION CUT
- 5. BUILDING SECTION CUT
- 6. BUILDING SECTION CUT
- 7. BUILDING SECTION CUT
- 8. BUILDING SECTION CUT
- 9. BUILDING SECTION CUT
- 10. BUILDING SECTION CUT
- 11. BUILDING SECTION CUT
- 12. BUILDING SECTION CUT

SUTTON  
ARCHITECTURE  
1111 East Hennepin Avenue  
Minneapolis, MN 55415  
Tel: 612.338.1111

PROJECT  
The Lullington  
Cordellina  
802/808 Wisconsin Street  
Madison, Wisconsin 53703  
DRAWING  
Second Floor Plan

DATE: 2014  
DRAWN BY: JLD  
CHECKED BY: JLD







AXLEY BRYNELSON, LLP

• • • • •

Steven A. Brezinski  
sbrezinski@axley.com  
608.283.6723

September 10, 2007

Via Electronic Mail

City of Madison Planning Commission  
215 Martin Luther King Jr. Blvd.  
Madison, WI 53703

RE: MoCo Market, LLC – Land Use Application  
Our File: 12453.56382

Dear Commission Member:

We represent Livingston Development, Inc., the developer of The Livingston Condominiums on Williamson Street. We have reviewed a document called "Opposition to Land Use Application by MoCo Market, LLC" submitted by David Bridgeford apparently on his own and on behalf of three other unit owners. We are well acquainted with Mr. Bridgeford and his position in this matter.

The document filed by Mr. Bridgeford is replete with legal and factual errors.

The patio adjacent to MoCo Market's unit was a limited common element and was always intended to be a limited common element.

Like all condominiums, the declaration and the plat of The Livingston Condominiums identify the common elements and limited common elements. The plat states that "exterior patios and decks are limited common elements."<sup>1</sup> Unfortunately, the plat also provides that limited common elements are to be shaded but the patio adjacent to MoCo Market's unit, along with two other patios and a deck, were not shaded. This does not make these areas common elements, but does create an ambiguity. It was a simple error.

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<sup>1</sup> The legend on the reduced size version of the plat attached to and recorded with the declaration is required by the Register of Deeds when the typeface on a recorded document is too small. This legend is not on the recorded plat. Wisconsin law requires plats to contain written information. This was explained to Mr. Bridgeford and his persistence in continuing this absurd argument should reflect on his credibility.

F:\EAFDATA\12453\56382\00308246.DOC

The marketing materials for the units indicated that the patios were to be limited common elements. All of the unit owners believed that this was an area belonging to the MoCo Market unit at the time they purchased their unit. Mr. Bridgeford specifically stated at a meeting of the condominium association that he "assumed" that the patio was a limited common element attached to the MoCo Market unit at the time he bought his unit. No unit owner relied on any statement that any of the patios was a common element since no such statement was ever made. The current claims to the contrary are contradictory to prior statements and are simply not true.

When the ambiguity on the plat was discovered, a Correction Affidavit was recorded to address this error. Correction affidavits are specifically permitted to correct condominium plats by Wisconsin statute. For a reasonable unit owner this would have been the end of it. For all but four of the unit owners, this was the end of it, since the association and the great majority of other unit owners have consistently supported MoCo Market's application. Given that other minor revisions to the plat needed to be made (storage units were actually used for housing elevator equipment, for example), the developer offered to prepare an amendment to the plat to put this matter to rest once and for all.

Mr. Bridgeford's argument that "compensation" somehow has something to do with MoCo Market's application is incorrect.

In 1996, the Wisconsin Court of Appeals considered and rejected an argument similar to Mr. Bridgeford's in New Port Condominium Association vs. Concord-Wisconsin, 205 Wis. 2d 577, 556 NW 2d 775 (Ct. of Appeals, 1996) and specifically held that an amendment to a condominium declaration changing an area from a common element to a limited common element, was valid with approval of two-thirds of the condominium unit owners and that the issue of "compensation" had nothing to do with the validity of the amendment. This case did not involve the correction of an ambiguity, but a deliberate change in the rights of the owners to an area of condominium property. The section of the "opposition" discussing "compensation" is based on a misunderstanding or disregard of applicable law and should be ignored.

The PUD-SIP process is different from the condominium declaration and plat and does not affect the amendment to the declaration.

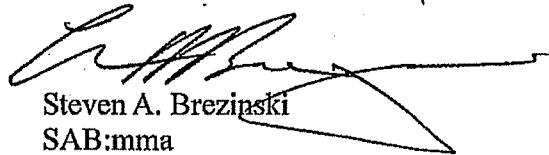
The City does not review condominium declarations or plats and the status of the patio as a limited common element is not a matter of concern to the City. According to the architect, the plan was always for doors to be included on the side of the MoCo Market unit adjacent to the patio but the type of doors was not specified until long after the plans and the condominium plat were recorded. There is nothing significant that has been changed from the plans previously submitted and, even if there were, this has nothing to do with MoCo Market's application.

A small group of unit owners should not be able to impede or derail the application process.

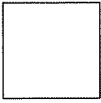
There is no merit in any of the arguments which the four unit owners make. To suggest that a court order needs to be obtained to resolve these illusory issues is ridiculous. The patio is and was always intended to be appurtenant to the MoCo Market unit as is apparent to even the most casual observer of the design of the building. The amendment to the declaration and the plat removes any doubt about the rights of MoCo Market in this area. It is unfair and improper to permit a tiny minority of unit owners to impede this process any further.

Sincerely,

AXLEY BRYNELSON, LLP



Steven A. Brezinski  
SAB:mma



September 7, 2007

Tim Parks, Planner  
Planning Unit  
215 Martin Luther King, Jr. Blvd.  
Madison, WI 53701

Re: 801 Williamson

Tim,

I am attaching the plans and elevations for the above project. This is how the building was constructed. I believe there were three items that were not clear in the approved PUD, and created the impression that there had been changes made.

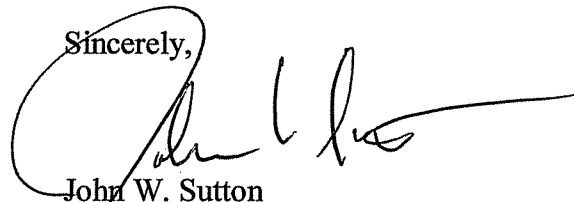
The first item is the second floor deck for the unit within the original Schlitz building. We actually had a metal deck existing that we wanted to replace due to size and construction.

The second was the change of solid glass to doors for the commercial space in the new construction. We weren't sure what kind of business was going to occupy this space and had debated how much access they would want. This was due solely to the limited size of the exterior space and we did not want to create unnecessary circulation. But we finally put in the doors, knowing the intent was always to have a connection between the two areas.

The third and final change was the patio doors on the east elevation for units 101 and 102. The PUD actually does show patio doors on the elevation, verses the windows shown in plan. The only reason I had drawn windows on the plan, was I had generated the upper plans first and reused them for the first floor. The windows hadn't been changed on the plan because again, I was having problems getting a final decision on what type of operable units we would use here.

If there are any other questions or concerns, please contact me.

Sincerely,



John W. Sutton



**Opposition to Land Use Application by Moco Market LLC**

**Madison Plan Commission**

**Project Address: 804 Williamson Street**

**Submitted By:**

David Bridgeford, 808 Williamson St., #309 (Owner)

Mark Dudzik, 808 Williamson St., #301 (Owner)

Katie Evers, 808 Williamson St., #210 (Owner)

Sherie Hohs, 808 Williamson St., #310 (Owner)

**Summary of Opposition**

Moco Market is seeking permission from the City to allow an outdoor commercial eating and drinking area on part of a condominium courtyard/patio. Moco Market also seeks a Class B combination liquor license from the ALRC. The condominium is zoned PUD-SIP. Several condominium owners are opposed to the Application. Most of the opposition has centered on the issue of noise. The courtyard/patio is 15 feet wide and 55 feet deep and is enclosed on three sides. The space is an acoustic echo chamber and the affected owners have shared that they can easily hear normal conversations on this courtyard word for word through closed windows. This area is extremely loud! There are five condominium owners with daytime windows on the courtyard. These are the owners primarily affected. Of these five owners, four are IZ homes.

The public hearing on the Application was originally scheduled for April. The City Attorney's Office advised the Plan Commission to refer action on the Application because there was an unresolved dispute over ownership of the area Moco Market wanted to use for its business. The City Attorney's Office has asked Moco Market for a court order resolving the issue or, at the very least, an independent opinion of title. To our knowledge, neither of these has been provided to the City.

The Condominium Association (under threat of litigation by the Developer) recently amended the Plat. The Amended Plat now subdivides what was previously a common area and turns three quarters of it into a private patio and leaves the remainder of the area a common area. This is contrary to what was approved by no less than four City agencies and organizations when the Plans were reviewed and ultimately approved and recorded.

Moco Market hopes this Commission will look the other way regarding the activities of the Developer in this matter. Specifically,

1. The Developer constructed the building differently from the approved and recorded Plans. The Developer added three sets of double doors that exit out onto the courtyard/patio area from the commercial space that is owned by Moco Market. This space is shown to be an undivided open plaza area on the Plans that were approved by the Landmarks Commission, the Urban Design Commission, the Plan Commission and the Common Council. In the plans approved by these organizations, there were windows overlooking this open plaza area from the commercial space—not doors.

2. The Original Plat recorded by the Developer shows the area in question as an undivided common area. This Plat was in effect when the Developer sold 37 of the 38 units. Construction of the building was not complete when we purchased our homes. Several owners had been told that a law firm would occupy the commercial space when they purchased their property. When the Developer sold the commercial space to Moco Market the Developer attempted to change the courtyard by subdividing the area and making part of it a private patio for the owner of the commercial space. The Developer gave no notice to the condominium owners of this action, which was done six months after control of all condominium affairs was turned over to the Condominium Association.

In summary, the Application should be denied for two reasons.

1. The ownership of the property is in dispute. Specifically, the Condominium Association's decision to amend the Plat is illegal because it is contrary to what the City approved when it reviewed, approved and recorded the Plans for the Development. Further, the Condominium Association's decision to change the Plat is illegal because it takes property from those who previously owned it without providing just compensation.
2. Even if the legality of the Condominium Association's decision to change the Plat was not in dispute, the Application should be denied due to the negative impact on several affected owners.

#### Factual Background

On August 26, 2006 Megan Ramey, (owner of Moco Market) came before our Condominium Association and shared her plans to purchase one of the two commercial spaces at the Livingston from the Developer. She explained that the Developer of The Livingston planned to be an investor in her business. (The Livingston has 36 residential and 2 commercial units.) There was no objection to her business or purchase of the Unit at 804 Williamson Street. However, there was significant concern over her proposal to use the courtyard/patio adjacent to her unit for an outdoor commercial eating and drinking area. The courtyard/patio is about 15 feet wide and 55 feet deep 4 stories high and is enclosed on three sides. The courtyard/patio is adjacent to a condominium walkway and is accessible to anyone from this sidewalk or the exits from 802 or the exits of the commercial space. This long, narrow space has dramatically poor acoustics due to the hard brick and cement surfaces. (Certainly, none of us expected that this courtyard would be used for an outdoor commercial eating and drinking area when we purchased our property.)

Some unit owners at the meeting reported that normal conversations on the courtyard/patio could be heard word for word through closed windows, three stories up. There was one report by a homeowner that she could hear a homeless person on the courtyard/patio pee into a bag through closed windows three stories up. Another owner stated that conversations on the courtyard/patio sounded like they were taking place right

outside his windows on the third floor, both of which are on this courtyard/patio.

About 75% of the homeowners at The Livingston do not have windows or patios on this courtyard and some expressed interest in not interfering in the sale of the space. There was also discussion about whether the City would approve the use of the courtyard/patio for an outdoor commercial eating and drinking area. The members present took an informal and anonymous vote and approximately 40 percent of the members present were opposed to using the courtyard/patio for an outdoor commercial eating and drinking area.

Despite significant objections from the homeowners and uncertainty over whether the City would approve the use of the courtyard/patio for an outdoor commercial eating and drinking area, Moco Market purchased the property in December 2006. No attempt was made by Moco Market to get City approval for outdoor eating and drinking before finalizing the purchase of the property.

On February 21, 2007, Moco Market appeared before the ALRC to get a class B combination liquor and beer license to cover both the interior of its unit and the courtyard/patio. The application for the interior was approved, but the application for the courtyard/patio was denied based on concerns that the Plan Commission had not approved the use of the courtyard/patio for an outdoor commercial eating and drinking area and the disturbance that would result to many of the owners at The Livingston. The ALRC said it would reconsider the application if the Plan Commission approved the area for an outdoor eating and drinking area.

The Declaration and Plat of the Livingston Condominiums recorded January 11, 2006 by the Developer (Livingston Properties) provide that the courtyard/patio in question is a common element that is available for the use and enjoyment of all unit owners. This is consistent with the fact that about 40% of the Unit Owners do not have individual patios or balconies. None of the IZ Units have patios and they are all clustered close to this courtyard/patio.

On December 21, 2006 the Developer conveyed Unit 804 to Moco Market. There is no mention of the courtyard/patio in the deed. At the same time, the Developer signed a document that purported to subdivide this plaza area and change the courtyard/patio area from a common element to a limited common element. The intention was to give exclusive use of the courtyard/patio to Moco Market. This document was recorded as a "Correction Affidavit." In this document, the Developer states that the courtyard/patio on the condominium Plat "should have been identified on the Plat as a limited common element appurtenant to Unit 804." This document was signed and recorded after the Developer had sold the other 37 condominium units. We received no notice of this recorded document from the Developer.

Although the Developer states in the Correction Affidavit that not identifying the courtyard/patio as a limited common element was an error, the site plans recorded with the approved PUD-SIP show the space as an open undivided plaza. In addition, the Realtor for the Developer distributed a floor plan that identified the space in question as an undivided courtyard. Also, the site plans submitted with the Livingston Railroad

Corridor PUD-SIP application on August 23, 2006 by the same Developer depict the space in question as an undivided plaza. It has been disclosed that Moco Market was aware that the property in question was an undivided courtyard prior to purchasing the condominium and that only after the Developer was "pressed" on this issue did the Developer agree to sign and record the "Correction Affidavit."

Although it turns out that the "Correction Affidavit" recorded by the Developer had no legal effect, the Condominium Association said that its decision to allow Moco Market to have exclusive use of the courtyard/patio area was final.

The Plan Commission referred this matter at its April 9, 2007 meeting based on an opinion from the City Attorney's Office that there was an unresolved dispute regarding ownership of this area. Assistant City Attorney James Voss expressed concern over whether Moco Market could "legally submit the application over the space in question." The City Attorney's Office recommended that Moco Market "should be required to provide either: a) an independent legal opinion of title which convincingly answers all of the key legal questions raised by the objecting property owners; or b) a court order or declaratory judgment which resolves the controversy." Mr. Voss stated that, under the circumstances, a court order would be preferable.

In May 2007, owners at the Livingston became aware that the Developer changed construction of the building in several respects after it received approval from the City and without seeking approval for any changes. In the courtyard area in question, the Developer built a 4' by 6' deck that juts out into the open space. The Developer also built three sets of double doors that open onto the open plaza area from the commercial space. (The Developer made other construction changes which impact the other larger open plaza area.) In the plans reviewed and approved by the Landmarks Commission, the Urban Design Commission, the Plan Commission and the Common Council windows from the commercial space overlook this open plaza area. The entrance to the commercial space is on Williamson Street, which is the front of the building.

It appears that these three sets of double doors and the large overhanging deck were added to make two units more marketable at the expense of this open plaza area. One can only speculate why the Developer did not ask the City for permission for these changes or why the architect submitted certificates of compliance with the City which state that the building was built according to the approved and recorded Plans.

In May 2007, the Developer prepared an amendment to the Plat that incorporated the unauthorized changes in the construction of the Development. The Developer's Attorney stated that the amendment was due to the fact that the building "actually built differs in some respects from the building which is depicted on the Plat." The President of the Condominium Association advised the owners that "the inconsistencies with the Original Plat and the final construction are why the present issue is before the Association." (The President of our Condominium Association owns the unit with the deck that juts out into this courtyard area.)

The Attorney for the Developer wrote a letter to the members of the Condominium

Association stating that the alternative to approving the amendment was to bring “the Association or its members into litigation and court action.” The Attorney for the Developer also attended a meeting of our Condominium Association and represented to all those present that the years of plan approval work that went into the final plans approved and recorded by the City of Madison was not relevant to the issue in front of the Association. Neither the Developer nor the Condominium Association sought approval from the City for the alterations to the PUD-SIP prior to amending the Plat.

The Association approved and recorded the amendment to the Plat with the knowledge that the Plat changes were based on changes to the PUD-SIP. As part of this approval process, the Developer’s Attorney contacted the individual lenders of the owners who consented. (Many owners did not consent.) The Developer’s Attorney explained to the various lenders that the reason for the amendment was that the Original Plat contained “errors.”

The Condominium Association’s Decision to Change the Plat Is  
Illegal Because it is Contrary to What the City Approved When it Reviewed,  
Approved and Recorded the Plans for the Development.

The Condominium Association is not writing on a clean slate. The Development Plans for the Livingston were in the process of City approval for several years. In every version of the Plans that were considered by the Landmarks Commission, the Urban Design Commission, the Plan Commission and the Common Council one thing is invariably true: the property in question is shown as an undivided open area with windows overlooking it from the commercial condominium. On the site plans recorded by the City on December 15, 2004 the entire courtyard is identified as a plaza.

There is not one document, plat, proposed or revised plan, or floor plan which shows the property in question as a private, subdivided area at any point in the process. The Urban Design Commission specifically referred to this plaza in a report dated April 21, 2004. After describing how the new building would be combined with the renovation of the existing two-story building, the Commission specifically stated: “A small plaza area is proposed between the new structure and the renovated structure at the Williamson Street frontage.”

In fact, even the site plans submitted with the pending Application show the entire area as undivided. The City stated in a Planning Division Report on April 4, 2007 that the “proposed outdoor eating area will be located on a portion of a common patio located adjacent to the proposed market space.”

Once Moco Market, the Developer and the Condominium Board of Directors became aware that there was no legal authority for the Condominium Association to allow Moco Market to conduct its business on a common courtyard/patio, everyone started revising their view of the recorded Plans and Plat in this matter. That is what lead to the Condominium Association’s decision to subdivide this open plaza area and make part of it private. It is important to remember that this decision to subdivide this area makes no sense if the building had been built according to the plans approved by the City.

Further, we are very much opposed to any attempt to alter the PUD-SIP to allow these construction changes in this open plaza area since they clearly change the aesthetics and intended use of this area. When we bought our property, the Plat showed this area as an undivided common area. In addition, the PUD-SIP showed this plaza area as undivided with windows from the commercial condominium overlooking this area. There was also no deck either constructed or approved which jutted out into this open common area.

Altering the PUD-SIP after the fact would reward the Developer for its behavior. It would also punish the people who bought their property assuming the Developer would construct the building according to the approved and recorded Plans. We certainly had every right to rely on a floor plan distributed by the realtor that depicts this area as a courtyard. We also had every right to rely on the Plat and the Declaration that were in effect when we purchased our property that depict the area as an undivided common area. Both the Plat and the Declaration were incorporated into our deeds and our title insurance policies. If the City changes the PUD-SIP after the fact under these circumstances, a hornets' nest of legal problems will be the outcome.

The Association's decision to privatize part of the plaza also violates the usable open space requirements of the Zoning Code. The Recorded Zoning Text for the PUD-SIP provides that "usable open space will be provided as shown on the approved plans." The Plans show the area as an undivided open plaza area. There are two exits from the residential condominiums onto this area as well as a walkway from the street. This open plaza area is around 800 square feet. (Moco Market's condominium is less than 1500 square feet.)

One of the important aspects of the plan approval process is to provide for usable open space for the occupants of the building. Section 28.03(2) of the Zoning Code defines usable open space: "Usable open space is that part of the ground level of a zoning lot . . . unobstructed to the sky except for greenhouses or swimming pool domes. This space of minimum prescribed dimension shall be available to all occupants of the building . . ."

Section 28.09(1)(g) describes generally the usable open space requirements in commercial districts. The minimum size for usable open space is 200 square feet with no dimension less than 10 feet. The Code goes on to provide that balconies of certain minimum sizes may be "credited" towards usable open space. It further provides that certain roof top areas may also be "credited" as usable open space provided they are "available for safe and convenient use to all occupants of the building."

Finally, in section 28.04(6)(a) the Zoning Code provides that "the maintenance of yards, courts, usable open spaces and other open spaces and minimum lot areas legally required for a building shall be the continuing obligation of the owner of such building."

It is quite obvious that the Condominium Association could not transfer or subdivide the other larger open plaza area at the Livingston for exclusive business or private use. This would run afoul of the approved and recorded plans and the Zoning Code. There is no logical way or reason to treat these two open plaza areas differently.

The Condominium Association's decision to subdivide and privatize part of the open plaza area is contrary to the approved and recorded plans and violates the Zoning Code. Accordingly, the amended Plat cannot be the basis for the pending Land Use Application.

A court of law has not reviewed any of the issues in this matter. Even if the City were to determine that the amended Plat does not violate the Zoning Code, a court of law could decide the matter differently.

The Condominium Association's Decision to Change the Plat is  
Illegal Because it Takes Property From Those Who Previously Owned It  
Without Providing Just Compensation.

Although Wisconsin Condominium Law does provide a way to transfer common area property, the Wisconsin Code requires compensation to the affected owners. (See Section 703.09(3) of the Code.)

The Developer has taken the position that the owners are not entitled to compensation. First, the Developer states that the Original Plat was ambiguous and that the owners never owned this property to begin with. Secondly, the Developer states that the failure to identify this property as belonging to the commercial condominium was "merely an error." Let's deal with each of these arguments.

First, the common areas on the Plat are shown graphically. All areas outside the Unit boundaries are common elements unless they are shaded in grey as a "limited common element." (The Original Plat is attached as an exhibit.) State Law requires common elements to be shown "graphically to the extent feasible" on the condominium plat." (See Wisconsin Code, Section 703.11(2)(c)). The property in question is shown graphically as a common area.

The Developer however states that the property was labeled a patio and that there is a printed text note that patios and decks are "limited" common elements. However, right on the face of the Plat there is a disclaimer that states: "Please be advised that the document grantor hereby directs viewers to ignore the printed text material on this map. Only the spatial relationships of the illustrations are being presented for your information." The Attorney for the Developer signed this disclaimer. Thus, only the spatial depictions on the Plat are relevant. There is no ambiguity. (This disclaimer has been deleted from the amended Plat.)

However, even if there were an ambiguity on the Plat, Wisconsin Condominium Law resolves it in favor of the area being a common element. The Wisconsin Condominium Law Handbook published by the State Bar of Wisconsin states: "Common elements must be shown 'graphically to the extent feasible' in the condominium plat. . . . The attorney should review the declaration and plat to ascertain that limited common elements are appropriately described and identified as to the unit to which they are appurtenant. If limited common elements are not adequately identified, they will not qualify as limited common elements under the statute and will revert to the status of simple common

elements.” Accordingly, we shared common ownership of the property in question when we purchased our property.

Secondly, the Developer (and Moco Market) rest the entire foundation of their position on the assertion that identifying the property in question as a common area on the Plat was “merely an error.” There is no question that a court of law could easily disagree with this assertion given all the contrary evidence in this matter. It is worth repeating that there is not one document, plat, proposed or revised plan, or floor plan which shows the property in question as a private, subdivided area at any point in the process!

Even if the Legality of the Condominium Association’s Decision to Change  
the Plat Was Not In Dispute, the Application Should Be Denied Due to  
the Negative Impact on Several Affected Owners.

Finally, and most importantly, even if the Condominium Association’s actions were legal, it is clear that the Commission has complete discretion to deny the application. Although the zoning text for the PUD-SIP lists outdoor seating for restaurants as a permitted use, outdoor commercial eating and drinking is of such unique and varying characteristics that it is considered on a case-by-case basis.

The Zoning Code requires the Plan Commission to consider the impact of the proposed use on the neighbors and the need for this use at the particular location. Clearly, the proximity of the proposed use to several residential owners and the echo chamber acoustics of the courtyard/patio could cause a reduction in the property values of the affected owners. Also, several owners have expressed concern about the diminished enjoyment of their property. There are also security, safety and legal liability issues to consider.

In addition, Moco Market has not shown the need for an outdoor commercial eating and drinking area in the space. According to Scott Lewis’ PUD-SIP submission for the Livingston Railroad Corridor, which is directly to the north of The Livingston, there are 21 restaurants and 3 coffee shops within a 4-block area. Many of those restaurants have outdoor dining in more suitable spaces. We can think of no other outdoor commercial eating and drinking area in Madison that presents such an obvious conflict between diners and property owners. Under these circumstances, the Commission should deny the application for an outdoor commercial eating and drinking area.

With the approval of the PUD-SIP for both The Livingston on Williamson Street and the Livingston Railroad Corridor on Livingston Street, the Plan Commission has changed the area from 32 units per acre under C2 zoning to around 90 units per acre. With these changes in density comes a responsibility to insure that residents and owners are not intruded on in ways that can easily be avoided.

Although the Condominium Association has shown a strong interest in supporting a successful business in this commercial space, the Association cannot violate City or State Law. Nor can it decide for the City whether to grant the Application. The Condominium Association has acted all along as if it has the authority to make the final decision



regarding the use of this area. It is important to remember that the vast majority of the condominium owners will not be impacted by this decision.

In summary, the City should strongly consider requiring Moco Market to obtain a court order resolving the various legal issues in this matter. This is the approach initially recommended by the City Attorney's Office and the one that makes the most sense. If the Plan Commission does decide this matter, the Application should be denied on the merits because the Condominium Association's decision to subdivide and privatize part of the common plaza area is contrary to the approved and recorded plans and violates the Zoning Code. The bottom line is that under all of the circumstances in this case, allowing this area to be used for an outdoor commercial eating and drinking area would be very unfair.

Respectfully Submitted,

David Bridgeford, 808 Williamson St., #309 (Owner)

Mark Dudzik, 808 Williamson St., #301 (Owner)

Katie Evers, 808 Williamson St., #210 (Owner)

Sherie Hohns, 808 Williamson St., #310 (Owner)

Attached Exhibits:

1. Three photos of the area in question showing the unapproved construction changes.
2. Site plans from the recorded PUD-SIP showing the area as an undivided Plaza.
3. The PUD-SIP from 301 Livingston showing the area as an undivided Plaza.
4. The Original Plat, which shows the space as an undivided common area.
5. The Amended Plat, which subdivides the area and makes part of it private.



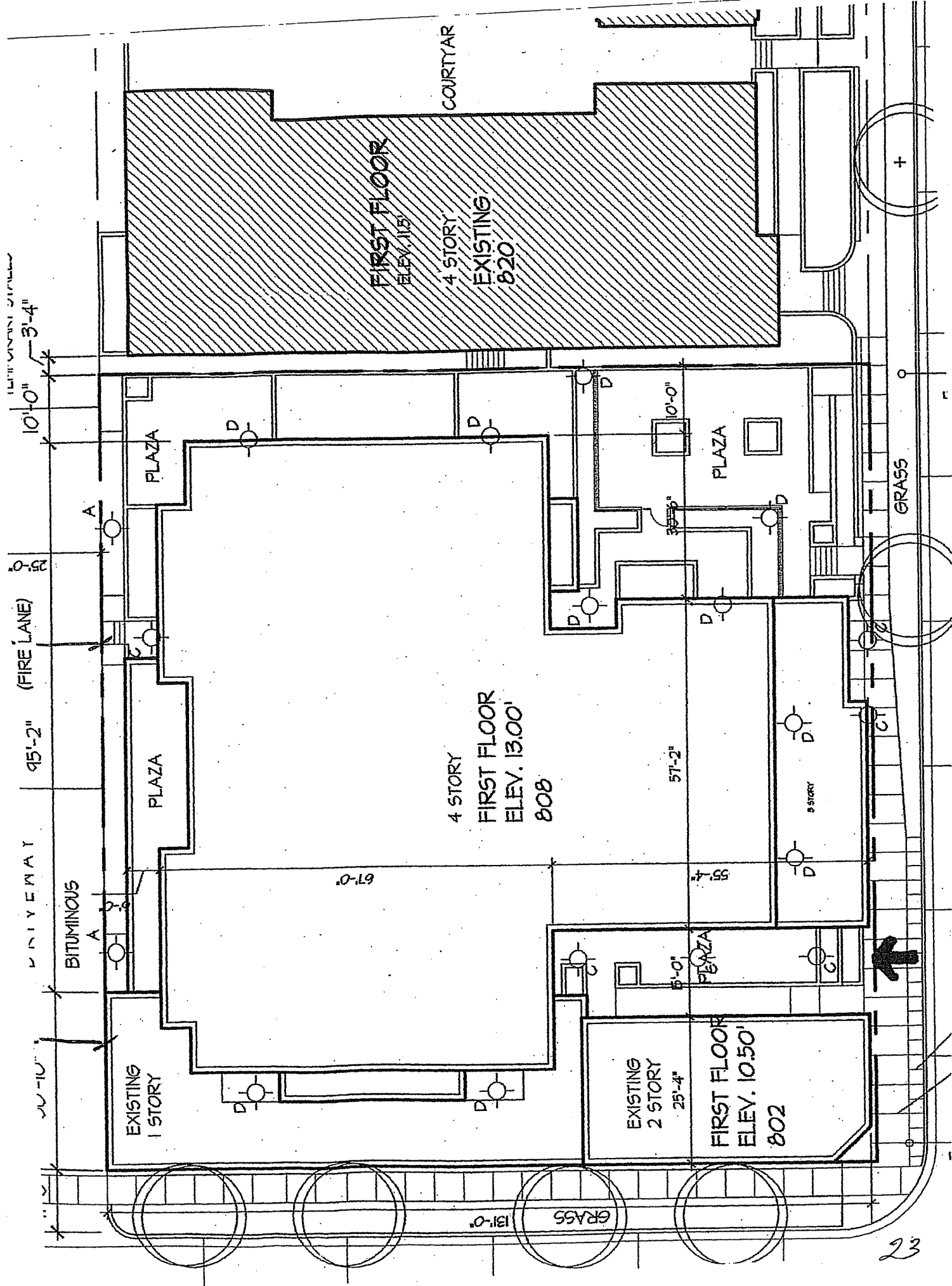
View from Williamson Street. This view shows the entrance to the Market on Williamson Street. It also shows the large overhanging deck in the plaza area. This deck was not in the Plans approved and recorded by the City.



This is a closer view from Williamson Street. The three sets of double doors to the right were not in the approved and recorded Plans. These sets of double doors are now part of the Applicant's condominium.



View from one of the exits to the Condominium.



12" MINIMUM CLEARANCE

10'-0" 3'-4"

95'-2" (FIRE LANE)

BITUMINOUS

EXISTING 1 STORY

EXISTING 1 STORY

PLAZA

PLAZA

67'-0"

4 STORY  
FIRST FLOOR  
ELEV. 13.00'  
808

EXISTING 2 STORY  
25'-4"

FIRST FLOOR  
ELEV. 10.50'  
802

PLAZA

57'-2"

PLAZA

FIRST FLOOR  
ELEV. 11.5'

4 STORY  
EXISTING  
820

COURTYARD

GRASS

13'-0" GRASS



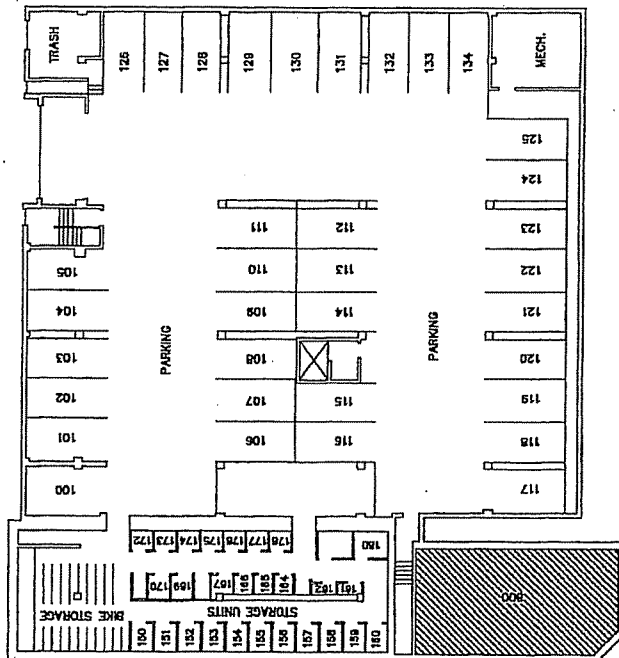






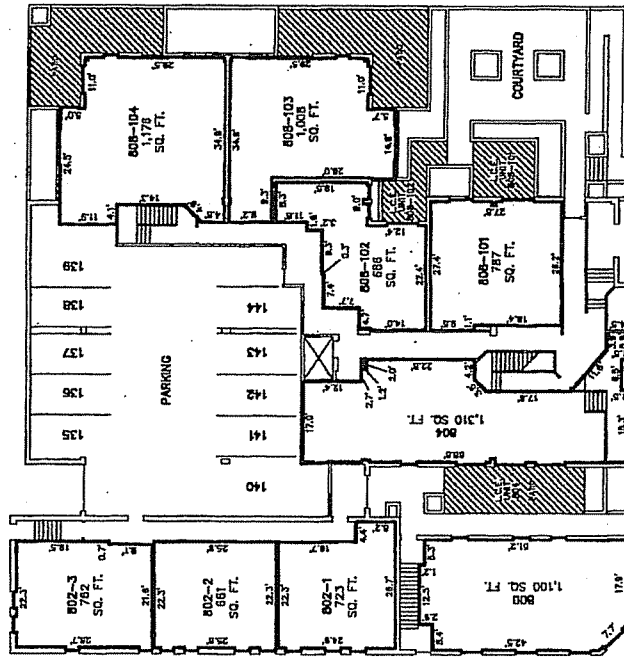
# THE LIVINGSTON CONDOMINIUMS FIRST ADDENDUM

LOTS 17 AND 18 AND THE SOUTHWESTERLY FIVE (5) FEET OF LOT 16, BLOCK 147, MADISON ORIGINAL PLAT, IN THE CITY OF MADISON, DANE COUNTY, WISCONSIN AND LOCATED IN THE SE 1/4 OF SECTION 13, T7N, R9E, CITY OF MADISON, DANE COUNTY, WISCONSIN.




**BASEMENT FLOOR PLAN**  
NOT TO SCALE

STORAGE UNIT SIZES  
STORAGE UNIT 100-106 47'x6'1"  
STORAGE UNIT 107-109 24'x5'1"  
STORAGE UNIT 110-117 47'x6'1"  
STORAGE UNIT 118 47'x6'1"  
STORAGE UNIT 119 47'x6'1"  
STORAGE UNIT 120 47'x6'1"  
STORAGE UNIT 121 47'x6'1"  
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STORAGE UNIT 131 47'x6'1"  
STORAGE UNIT 132 47'x6'1"  
STORAGE UNIT 133 47'x6'1"  
STORAGE UNIT 134 47'x6'1"



**FIRST FLOOR PLAN**  
NOT TO SCALE

- NOTES:**
- 1) EXTERIOR PATIOS AND DECKS ARE LIMITED COMMON ELEMENTS.
  - 2) EACH RESIDENTIAL UNIT WILL HAVE THE RIGHT TO USE ONE (1) PARKING UNIT WHICH WILL BE ASSIGNED BY THE CONDOMINIUM ASSOCIATION.
  - 3) EVERYTHING OUTSIDE OF THE UNIT BOUNDARIES ARE COMMON ELEMENTS.
  - 4) UNIT AREAS GIVEN ARE APPROXIMATE AND DO NOT INCLUDE THE PATIO OR DECK.
  - 5) ALL MEASUREMENTS ARE FROM OUTSIDE WALL TO OUTSIDE WALL OF EACH UNIT.

 L.C.E. - LIMITED COMMON ELEMENTS

SURVEYED BY:  
CALKINS ENGINEERING, LLC  
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MADISON, WI 53718  
(608) 838-0444