

MAINTENANCE AGREEMENT

Re: Improvements to support a sidewalk cafe occupying a portion of the **E. Main Street** public right-of-way serving the adjacent property, which is legally described as follows:

Lots Six (6) through Thirteen (13) inclusive, Original Plat of Madison, Block 157, located in the City of Madison, Dane County, Wisconsin.

This Maintenance Agreement (the “Agreement”) is entered into by and between the **City of Madison**, a Wisconsin municipal corporation (the “City”) and **Common Wealth Development, Inc.**, a Wisconsin corporation, on this ____ day of _____, 2024.

WITNESSETH:

WHEREAS, the above-described property, located at **931 E. Main Street** (the “Property”), is owned by Common Wealth Development, Inc., a Wisconsin corporation (the “Owner”); and

WHEREAS, the City and the Owner are parties to an existing Encroachment Agreement, pursuant to Madison General Ordinance 10.31 Privilege in Streets, which was recorded as Document No. 4877617 on June 4, 2012 (the “Encroachment Agreement”) and allows for the construction of private permanent improvements in the E. Main Street right-of-way adjacent to the Property, consisting of a patio and permanent fencing (the “Improvements”); and

WHEREAS, the Improvements support a commercial tenant business operating a sidewalk cafe, with said café being governed by Madison General Ordinance 9.13 Street Vending Licenses, the approval of which results in an annual Sidewalk Café License; and

WHEREAS, the City recognizes that the overlapping ordinances and fees are duplicative and unnecessary, and is therefore undertaking an effort to terminate all Encroachment Agreements created for patio improvements supporting sidewalk cafes in the right-of-way upon their replacement with a no-fee Maintenance Agreement; and

WHEREAS, this Agreement pertains to only the permanent private improvements constructed in the right-of-way, while the non-permanent items required to support the sidewalk café will continue to be governed by Madison General Ordinance 9.13; and

WHEREAS, as a condition of this Agreement, ownership of the Improvements will be transferred to the City by resolution adopted by the City’s Common Council, in exchange for maintenance of the Improvements by the Owner, or Owner’s designee; and


WHEREAS, many business tenants are located at the Property, and a second tenant has requested permission to build patio improvements in the right-of-way adjacent to their business, like those included

RETURN TO: City of Madison
Economic Development Division
Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

TAX PARCEL NO.: 251/0709-134-0901-1

in the original Encroachment Agreement. The City is amenable to adding the second patio area to the defined Improvements, which will also become a part of this Agreement, subject to the terms and conditions contained herein.

NOW, THEREFORE, the City and the Owner enter into this Agreement, subject to the following terms, conditions, and obligations:

1. Maintenance Areas. Those certain portions of the E. Main Street public right-of-way to be used by the Owner, the Owners designee, or tenants, as generally located on attached Exhibit A, with the Improvements being depicted in attached Exhibit B. 
2. Ordinances. The Owner agrees to comply with all applicable Madison General Ordinances (“MGO”).
3. Removal.
 - a. If the City needs the right-of-way for a public purpose, or if the Improvements are no longer being used to support the sidewalk cafes, the Owner agrees to remove said Improvements upon ten (10) days written notice by the City.
 - b. The City may remove the Improvements if not property maintained, by giving the Owner sixty (60) days written notice prior to removal.
 - c. The Owner shall be entitled to no damages for removal of the Improvements, and if the Owner does not remove the same upon due notice, it shall be removed at the Owner’s expense and the cost therefore levied against the Property as a special charge for current service rendered.
4. Additional Requirements. The Owner understands that certain licenses and permits are or may be required to operate a sidewalk cafe in the Maintenance Areas or to perform work on the Improvements within the Maintenance Areas. It is the Owner and/or Owner’s tenant’s responsibility to obtain any necessary licenses or permits, some of which are described below. Failure to obtain these, when required, may result in penalty.
 - a. Sidewalk Cafe License. Required as a condition of this Agreement, the application for this license can be completed on the City of Madison Licenses & Permits portal.
 - b. Permit to Excavate in Public Right-of-Way. An application for this permit may be required for certain maintenance, repair and/or replacement activities for the Improvements. Applications can be obtained online or from City Engineering Division located at 1600 Emil Street, Madison, WI 53713.
 - c. Street Terrace Permit. If construction scope does not meet the threshold for the above-mentioned excavation permit, a Street Terrace Permit might be more appropriate. The Owner and/or Owner’s tenant shall coordinate construction activities with the City Engineering Division to determine permitting requirements.
 - d. Digger’s Hotline. The Owner or Owner’s designee is responsible for locating and marking all underground utility services in the Maintenance Areas prior to construction through coordination with Digger’s Hotline.

5. No Grade Change. No change in the grade within the Maintenance Areas shall be made without the prior written approval of the City Engineer, City Traffic Engineer, and Street Vending Coordinator to ensure consistency with the associated sidewalk cafe license.
6. Maintenance. The Owner agrees to complete the following maintenance, as needed, or as may be reasonably required by the City, within the Maintenance Areas:
 - a. Snow and ice removal;
 - b. Cleaning of dirt and debris;
 - c. Graffiti removal or the correction of other vandalism;
 - d. Repair and maintenance of pavement and any pavement markings;
 - e. Repair and maintenance of the Improvements

Nothing in this Agreement shall prohibit the Owner from contracting with third parties to comply with its responsibilities under this Agreement.

7. Revisions by Owner. The Owner may request the City allow changes to the Improvements within the Maintenance Areas and shall be permitted to make such changes if the changes are approved in writing by the City Engineer. Said changes may require coordination with the City's Traffic Engineer and Street Vending Coordinator to ensure consistency with the associated sidewalk cafe license. The Owner shall obtain all necessary permits and approvals prior to reconstructing the Improvements within the Maintenance Areas.
8. Revisions by City. The City has the right to construct or reconstruct the Improvements in the Maintenance Areas and to construct in such a way that differs from the initial construction. In such event, the City has the right to levy special assessments on the Property for the Improvements inside the Maintenance Areas to the extent not covered (and paid for by the Owner) under this Agreement and all Improvements maintained by the City in accordance with City Policy and State Statutes.
9. Public Safety.
 - a. The City shall have the right to require the Owner to promptly construct or reconstruct any of the Improvements in the Maintenance Areas that are or become a safety problem, as reasonably determined by the City Engineer, when ordered in writing by the City Engineer to do so. Following receipt of the City Engineer's written order, the Owner shall effect the construction or reconstruction at the Owner's expense, even if the change results in modification of the Improvements previously approved by the City.
 - b. The Maintenance Areas exists to support a sidewalk and/or roadway cafe, which are governed by MGO 9.135 Sidewalk Cafe and Roadway Licenses. The owner understands that any construction or reconstruction of the Improvements may require coordination with City's Traffic Engineer and Street Vending Program Supervisor to ensure consistency between this Agreement and the associated licenses.
 - c. The Improvements shall not impede the flow of pedestrians in the right-of-way. The City reserves the right to terminate this Agreement in the event the patio operations create an unreasonable conflict with said pedestrian traffic.

10. Adjacent City Projects. The City has the right to construct and reconstruct streets, sidewalks, utilities, or other infrastructure, as well as maintain city-owned terrace trees adjacent to the Maintenance Areas, which may impact the Improvements that the Owner is responsible for maintaining under this Agreement.

- a. In the event of such construction or reconstruction impacting the Improvements, the Owner shall be obligated to restore, replace or reconstruct the damaged or altered Improvements at its sole cost and expense to the extent the costs and expenses to accomplish the same shall not be collectible by the City from adjacent property owners through special assessments, agreements between the City and the adjacent owners or otherwise.
- b. The Maintenance Areas shall be cleared by the Owner in advance of such City construction or reconstruction projects that may occur in the area adjacent to the Improvements.

11. Damage. The City shall not be responsible for the repair of any damage to the Improvements, regardless of who or what caused said damage.

12. Improvement Distances.

- a. No solid structure or improvements higher than 24 inches within a minimum of 24 inches from the back of curb.
- b. The fence railing post shall be set back twenty-four inches from the edge of the sidewalk, and there shall be no fence openings on the E. Main Street frontage.
- c. The Improvements shall be located at least twelve feet from the existing driveway on the Property.
- d. There shall be no material within two feet of any signage adjacent to the Property, including the existing "No Parking" sign.
- e. Any retaining walls or railings shall be at least two feet six inches from the face of the E. Main Street curb.
- f. The Improvements shall be sloped to match the sidewalk and patio grades.

13. Indemnification. The Owner shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City, or its agents or employees, for damages because of bodily injury, including death at any time resulting therefrom, or sustained by any person or persons or on account of damage to property, including loss of use thereof, arising from, in connection with, caused by or resulting from: acts or omissions of the Owner or their contractors and subcontractors in the performance of the Owner's obligations under this Agreement, whether caused by or contributed to by the negligent acts of the City, its agents or employees; provided, however, that to the extent that any such negligent or willful acts of the City are attributable to third-party contractors of the City, nothing shall prevent Owner from asserting claims against such third-party contractors.

14. Insurance. The Owner agrees to carry or cause to be carried the following insurance coverages with respect to the Maintenance Areas and Improvements located therein:

- a. Commercial general liability insurance covering as named insured, the owner, and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, and apply on a primary and noncontributory basis. Any subcontractor of Owner engaged in providing labor and materials in relation to this Agreement shall be required to maintain a similar commercial general liability policy.
- b. Statutory workers' compensation insurance as required by the State of Wisconsin. Any subcontractor of Owner engaged in providing labor and materials in relation to this Agreement shall also be required to maintain workers' compensation insurance for all of the latter's employees. The Owner, and any subcontractor(s), shall also carry minimum Employers Liability limits of \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit.

As evidence of the above required coverages, the Owner shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, owner shall also provide copies of additional insured endorsements or policy. Such certificate shall list the following as Certificate Holder:

City of Madison
ATTN: Risk Management, Rm 406
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

The amounts listed above reflect the standard coverages and limits required today by the City. The required coverages are expected to change over time and the Owner shall increase the above required insurance limits and coverages when required by the City provided that the proposed increases or coverage changes are consistent with City policy for similar applications. All policies shall provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Agreement.

15. Termination. The City and the Owner agree that this Agreement may be terminated at any time upon written request from the Owner to the City, following removal of the Improvements.
16. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
17. Binding Effect. The covenants and conditions contained in this Agreement shall apply to and bind the City and the Owner and their heirs, legal representatives, successors and assigns. Nothing herein shall prevent the Owner from transferring their interests in the Property and, upon such transfer, the obligations of such Owner under this Agreement shall become the obligation of the transferee.

18. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Owner with respect to the subject matter hereof and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only in writing and must be signed by the Owner and the City.
19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
20. Waiver. The failure of either the City or the Owner to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of said party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
21. Run with the Land. All the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens, shall run with the Property and shall be binding upon and inure to the benefit of and be enforceable by the Owner and the City and their respective successors and assigns. This Agreement shall be recorded in the office of the Dane County Register of Deeds. In the event of the sale of the Property, the City shall be given notice of the change of ownership in accordance with the provisions of Paragraph 24.
22. Default/Remedies. If the Owner fails to complete any maintenance of the Improvements as required by this Agreement within a reasonable time period, the City has the right to complete the maintenance and charge the costs of such maintenance either as a direct charge to the Owner or a special assessment levied upon the Property.
23. Nondiscrimination. In the performance of the services under this Agreement the Owner agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The Owner further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
24. Notices. All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent or delivered to the addresses of the Owner and the City specified below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Agreement.

For the City:

Economic Development Division
Office of Real Estate Services
Attn: Manager
P. O. Box 2983
Madison, WI 53701-2983
jfrese@cityofmadison.com and ores@cityofmadison.com

For the Owner:

Common Wealth Development, Inc.
Attn: Financial Manager, Ashley Hoeft
1501 Williamson Street
Madison, WI 53703
Ashley.h@cwd.org

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

Dated this 26th day of July, 2024.

COMMON WEALTH DEVELOPMENT, INC.,

By: Ashley Hoeft
(Signature)

By: Ashley Hoeft, Director of Workforce Development
(Print or type name and title)

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 26th day of July, 2024, the above named Ashley Hoeft (name), Director of Workforce Development (title) of Common Wealth Development, Inc., known to me to be the person who executed the above and foregoing instrument and acknowledged that he executed the foregoing instrument as such President as the deed of said corporation, by its authority.



Fernando Jones
Notary Public, State of Wisconsin

Fernando Jones
(Print or type name)
My Commission expires: 12/19/2026

[signature page to follow]

Dated this _____ day of _____, 2024.

CITY OF MADISON, a Wisconsin municipal corporation

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Maribeth Witzel-Behl, City Clerk

AUTHENTICATION

The signatures of Satya Rhodes-Conway as Mayor, and Maribeth Witzel-Behl as City Clerk for the City of Madison, are authenticated on this _____ day of _____, 2024.

Doran Viste, Assistant City Attorney
Member of the Wisconsin Bar

Execution of this Agreement by the City is authorized by Resolution Enactment No. RES-24-_____, File ID No. _____, and adopted by the Common Council of the City of Madison on the _____ day of _____, 2024.

This Agreement was drafted by City of Madison Office of Real Estate Services
Real Estate Project No. 9914

EXHIBIT A
The Property

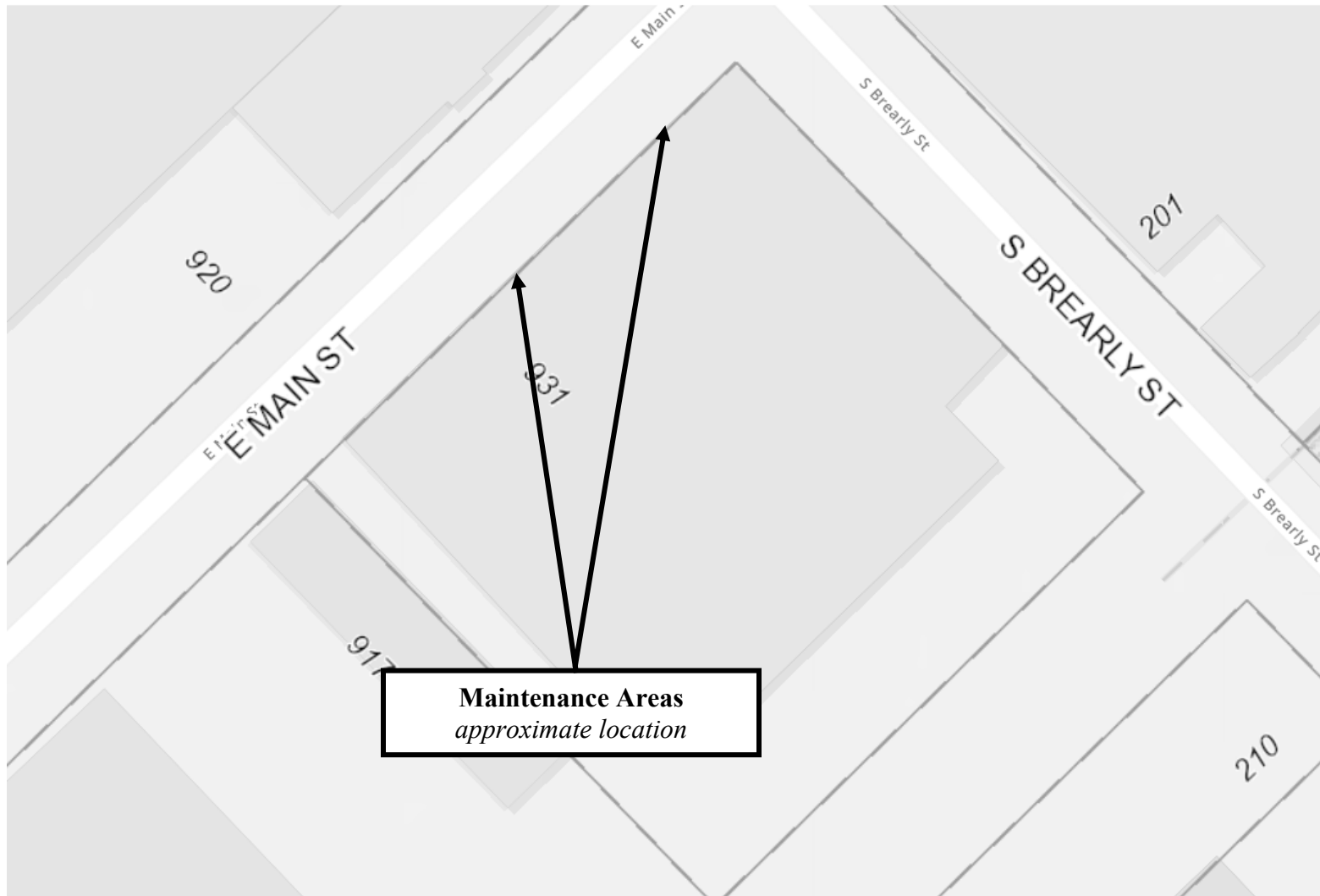


EXHIBIT B Old Sugar Distillery

If permanent fencing required then patio same as above but no permanent fencing within 2' of sidewalk.

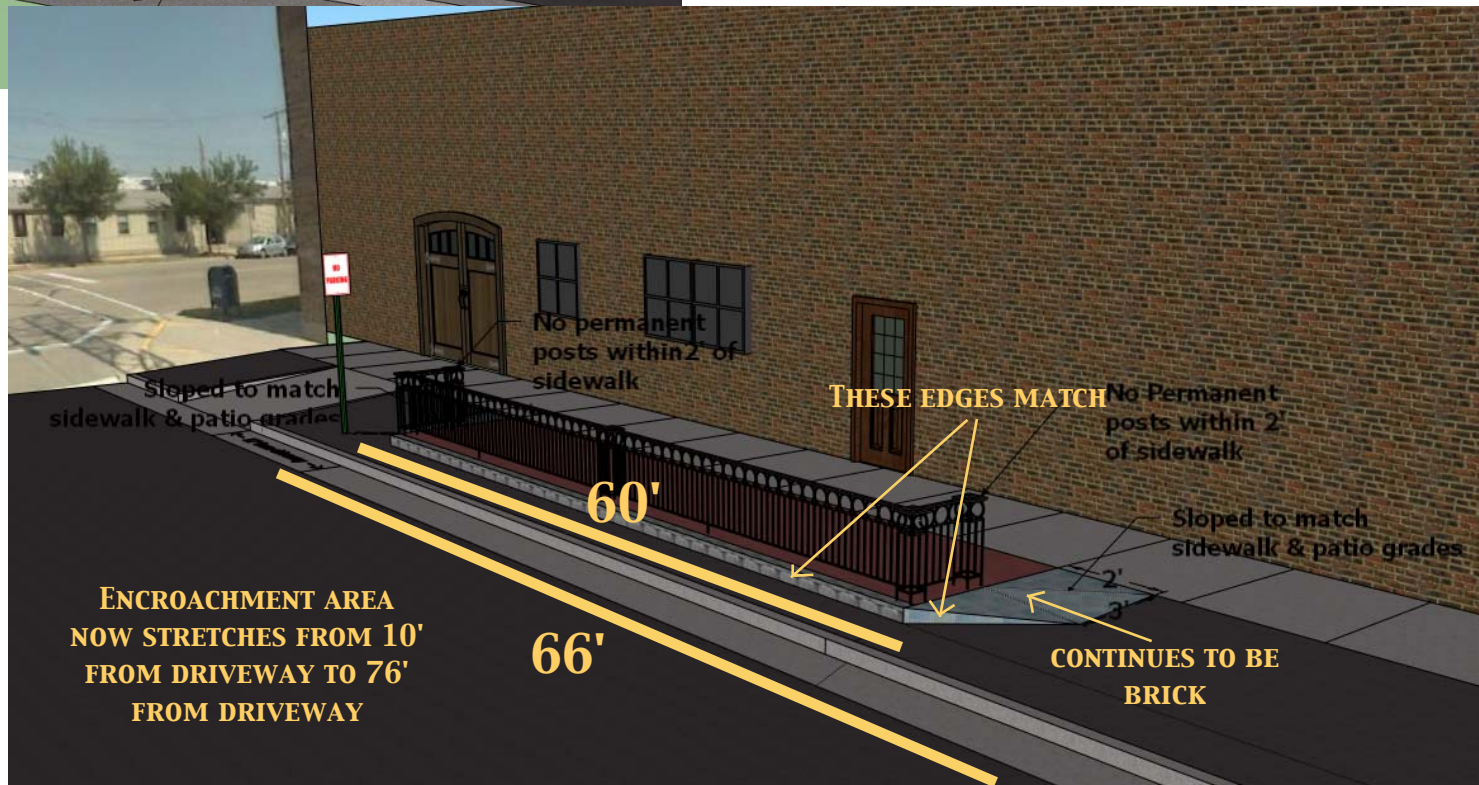
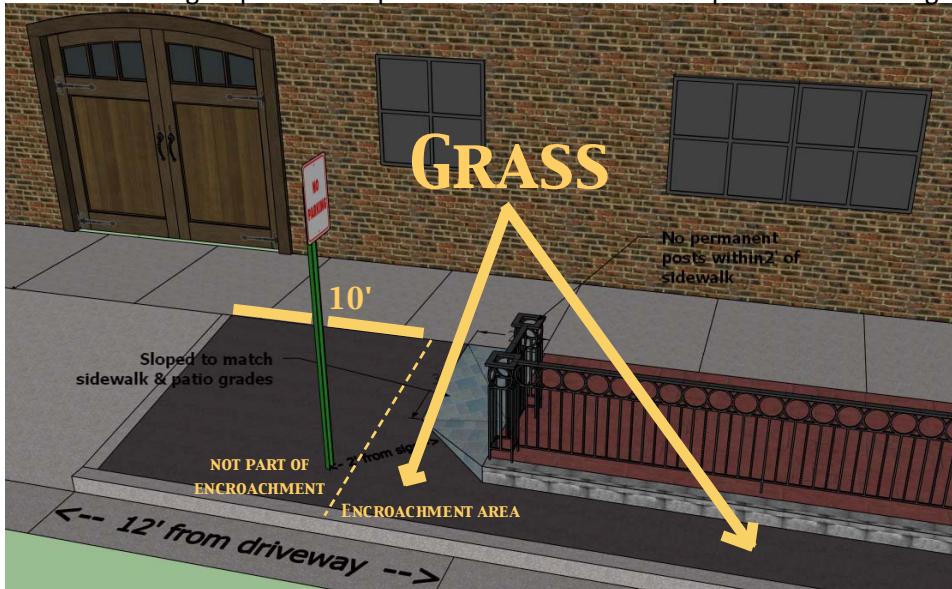
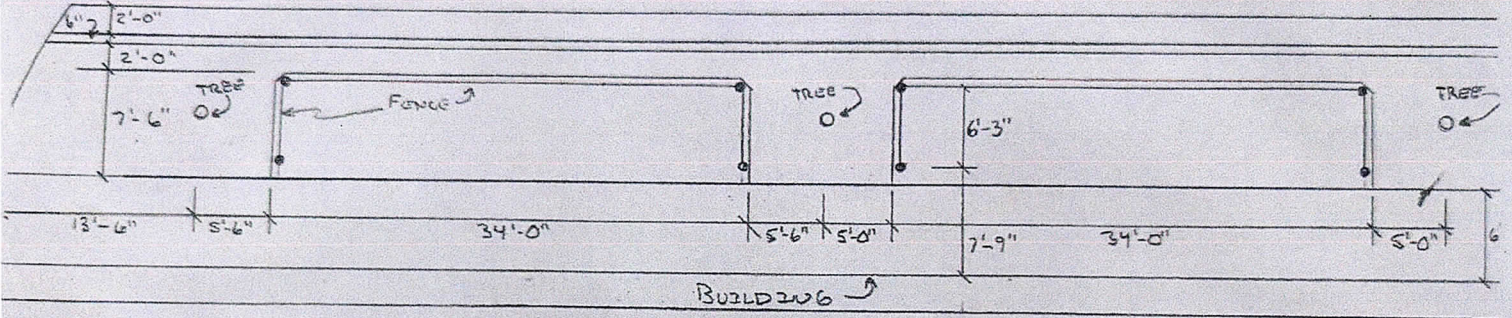


Exhibit B
The Deliciouser

NOTE:

FENCE TO BE BLACK ALUM.
42" TO 45" HIGH
1" TO 2" GAP BETWEEN CONG. & BOTTOM RAZL
FENCING TO BE ON 3 SIDES OF EACH PATZO AREA

BLACK GRANIT STONE TO BE LAID
PENIN OVER WOOD BARRIER, AROUND PATZOS
SCALE - 1:10

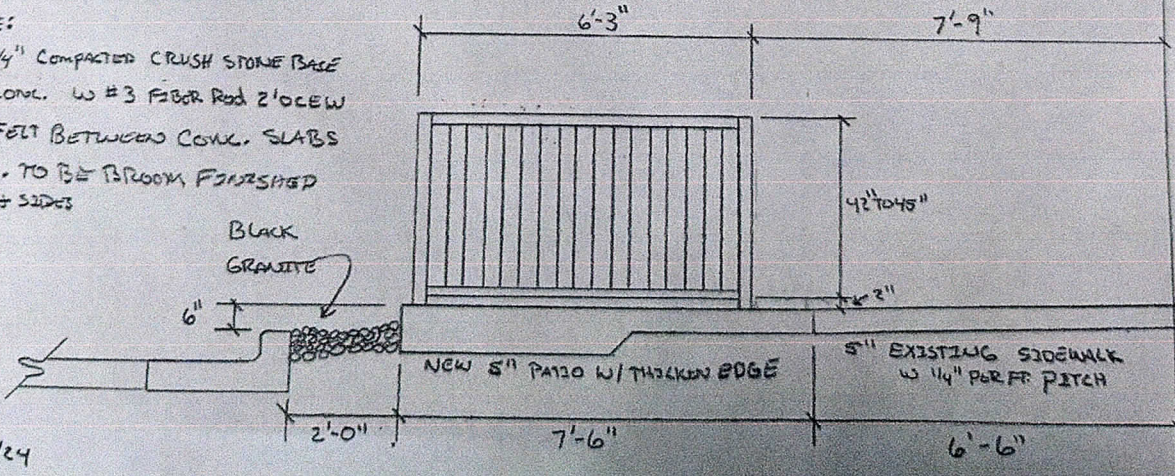


THE DELICIOUSER
931 EAST MAIN STREET

BUILDING

SCALE
3/8" = 1'-0"

NOTE:
6" - 3/4" COMPACTED CRUSH STONE BASE
5" CONG. W #3 FIBER ROD 2' OC EW
1/2" FELT BETWEEN CONG. SLABS
CONG. TO BE 3 ROOM FINISHED
TOP & SIDES



5/20/24