

MAINTENANCE AGREEMENT

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

Original Plat, Block 103, Northeast 48 feet of Lot 1, located in the City of Madison, Dane County, Wisconsin.

This Maintenance Agreement (“Agreement”) is entered into by and between the **City of Madison**, a Wisconsin municipal corporation and **121-123 East Main Street Limited Partnership**, a Wisconsin limited partnership, on this ____ day of _____, 2026.

WITNESSETH:

WHEREAS, the above-described property located at **121-123 E. Main Street**, Madison, WI 53703 (“Property”) is owned by **121-123 East Main Street Limited Partnership**, a Wisconsin limited partnership (“Owner”); and

WHEREAS, the Owner constructed patio improvements adjacent to the Property in the E. Main Street right-of-way, consisting of **eight (8) tables, a chain link fence supported by nine (9) posts, and decorative pavers** (“Improvements”) to support a sidewalk cafe, as depicted on attached Exhibit A (“Maintenance Area”); and

WHEREAS, the Improvements are allowed in the public right-of-way by that certain Lease with the City of Madison (“City”), recorded as Document No. 2519090 and amended by that certain First Amendment to Lease, recorded as Document No. 3235367 (together, the “Lease”); and

WHEREAS, per the terms of the Lease, the Lease shall terminate on December 31, 2018, with the potential for a one-year renewal upon mutual consent of the Owner and the City, or as a month to month hold over tenant upon the same terms and conditions of the Lease; and

WHEREAS, the Owner desires to continue the operation of a café on the Improvements in the public right-of-way, and the City conditionally supports this request provided the Owner and the City to enter into this Agreement, in lieu of a lease or an encroachment agreement; 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 the Owner’s designee.

NOW, THEREFORE, City and the Owner enter into this Agreement, subject to the following obligations, which are assumed by the Owner, its heirs, successors and assigns:

1. **Ordinances.** The Owner agrees to comply with all applicable Madison General Ordinances (“MGO”).

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

Tax Parcel No.: 251/0709-133-2726-3 (part of)

2. **Removal.** If the right-of-way is required for a public purpose, or if the Improvements are no longer being used for a sidewalk cafe, the Owner agrees to remove said Improvements upon ten (10) days written notice by City. The Owner, its successors and assigns 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.
3. **Required Licenses and Permits.** The Owner understands that certain licenses and permits are or may be required to operate a sidewalk cafe in the Maintenance Area or to perform work on Improvements or within the Maintenance Area. It is Owner and/or Owner's tenant's responsibility to obtain any necessary licenses or permits, including, specifically, a sidewalk cafe license, as described below.
 - a. Sidewalk Cafe License. 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.
4. **No Grade Change.** No change in the grade within the Maintenance Area shall be made without the prior written approval of the City of Madison Engineering Division ("City Engineer"), and coordination with the City's Traffic Engineer and Street Vending Coordinator to ensure consistency with the associated sidewalk cafe license.
5. **Maintenance.** The Owner agrees to complete the following maintenance, as needed, or as may be reasonably required by the City, within the Maintenance Area:
 - 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.

6. Revisions by Owner.

- a. The Owner may request the City allow changes to the Improvements within the Maintenance Area 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 Area.

- b. The Improvements include permanently affixed tables in the Maintenance Area. The City accepts ownership of said tables existing at the time this Agreement is executed. When the tables are at the end of their useful economic life, they shall not be replaced with new permanently affixed tables. Movable/storable tables shall be used from that point on, in accordance with MGO 9.13 and 9.135, which are required for all other City sidewalk cafe and roadway license holders.
7. **Revisions by City:** The City has the right to construct or reconstruct the Improvements in the Maintenance Area 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 Area 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.
8. **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 Area 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 Area 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 Coordinator to ensure consistency between this Agreement and the associated licenses.
9. **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 Area, 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 Area 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.
10. **Damage.** The City shall not be responsible for the repair of any damage to the Improvements, regardless of who or what caused said damage.
11. **Improvement Distances.** No solid structure or improvements higher than 24 inches within a minimum of 24 inches from the back of curb.

12. **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.
13. **Insurance.** The Owner agrees to carry or cause to be carried the following insurance coverages with respect to the Maintenance Area 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:

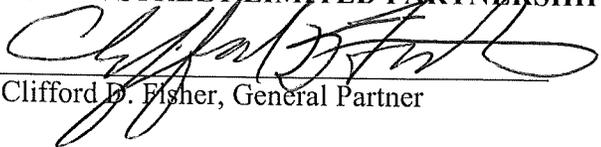
City of Madison
ATTN: Risk Management, Rm 406
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

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.

14. **Termination:** The City and the Owner agree that this Agreement may be terminated at any time upon written notice from the Owner to the City, following removal of the Improvements.
15. **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.
16. **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.
17. **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.
18. **Choice of Law, Venue, and Forum Selection.** This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin, without regard to conflict of law principles. For any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved informally, the venue shall be Dane County, Wisconsin, and the parties agree to submit themselves to the jurisdiction of a court of competent jurisdiction in said venue, to the exclusion of any other forum that may have jurisdiction over such a dispute according to any law.
19. **Wavier.** 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.
20. **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 23.
21. **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.

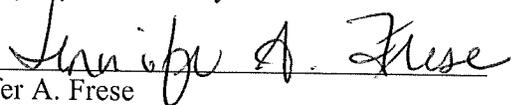
Dated this 29 day of JAN, 2026.

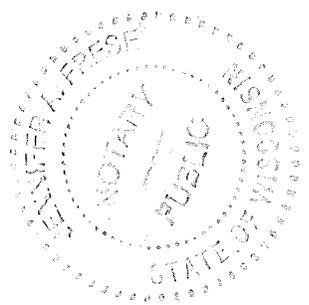
121-123 EAST MAIN STREET LIMITED PARTNERSHIP

By: 
Clifford D. Fisher, General Partner

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 29th day of January, 2026, the above named Clifford D. Fisher, General Partner of 121-123 East Main Street Limited Partnership, known to me to be the person who executed the above and foregoing instrument and acknowledged that they executed the foregoing instrument as such officer as the deed of such company, by its authority.


Jennifer A. Frese
Notary Public, State of Wisconsin
My Commission expires: 12/7/2029



Dated this ____ day of _____, 2026.

CITY OF MADISON, a Wisconsin municipal corporation

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Lydia A. McComas, City Clerk

AUTHENTICATION

The signatures of Satya Rhodes-Conway, as the Mayor, and Lydia A. McComas, as the City Clerk, on behalf of the City of Madison, are authenticated on this ____ day of _____, 2026.

Name: Doran Viste, Assistant City Attorney
Title: Member, State Bar of Wisconsin

Approved as to form:

Approved as to form:

David P. Schmiedicke Date
Director of Finance

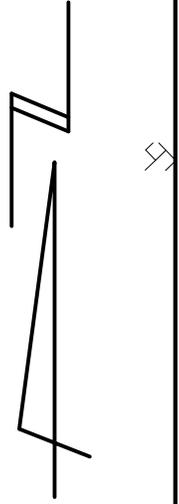
Michael Haas Date
City Attorney

Execution of this Agreement by the City is authorized by Resolution Enactment No. RES-26-_____, File ID No. _____, and adopted by the Common Council of the City of Madison on _____, 2026.

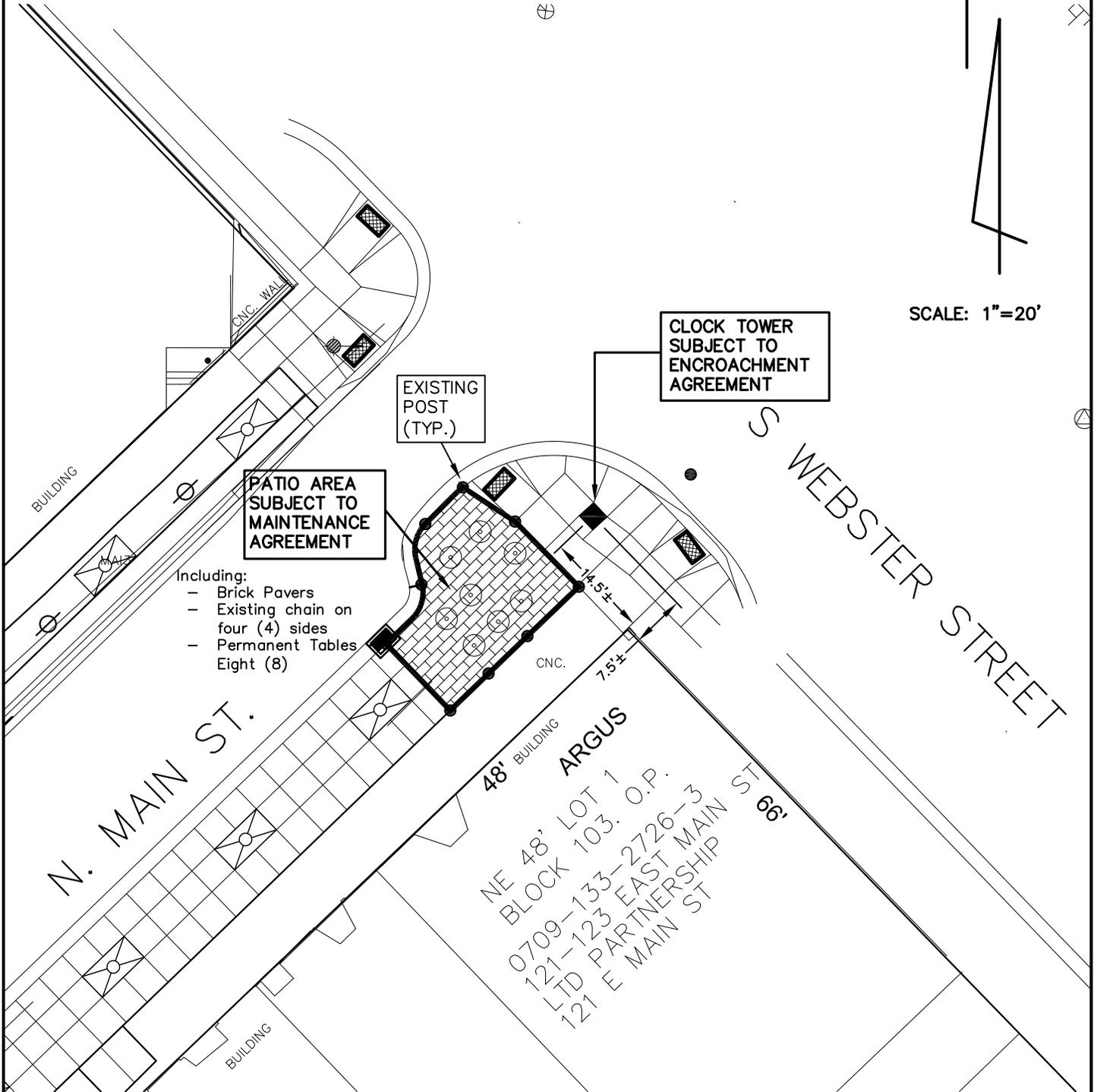
This Agreement drafted by City of Madison Office of Real Estate Services
Real Estate Project No. 2403

EXHIBIT "A"

Maintenance Area



SCALE: 1"=20'



**PATIO AREA
SUBJECT TO
MAINTENANCE
AGREEMENT**

- Including:
- Brick Pavers
 - Existing chain on four (4) sides
 - Permanent Tables Eight (8)

**EXISTING
POST
(TYP.)**

**CLOCK TOWER
SUBJECT TO
ENCROACHMENT
AGREEMENT**

N. MAIN ST.

S WEBSTER STREET

48' BUILDING

ARGUS

NE 48' LOT 1
BLOCK 103. O.P.
0709-133-2726-3
LTD PARTNERSHIP
121 E MAIN ST

66'

BUILDING

BUILDING

CNC WALL

CNC.

14.5'±

7.5'±