

**CITY OF EL PASO, TEXAS  
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:**        **Engineering – Traffic Division**

**AGENDA DATE:**     **Introduction 9/22/09, Public Hearing 9/29/09**

**CONTACT PERSON/PHONE:** **Mirian Spencer, Planner, (915) 541-4482, spencermd2@elpasotexas.gov**

**DISTRICT(S) AFFECTED: 8**

**SUBJECT:**

An Ordinance granting a Special Privilege License to Plum City Lounge, LLC. permitting the encroachment of sixteen (16) canopies, two (2) stairways, an entryway, a handicap accessibility ramp, a wall sign, and an outdoor patio café with required fencing, located within a portion of public right-of-way located at 500 San Francisco Street and allowing the sale and service of alcoholic beverages as a permissible activity within the outdoor patio café area. Subject Property: 500 San Francisco Street. Applicant: Plum City Lounge, LLC. SPL09-00012, **(District 8)**.

**BACKGROUND / DISCUSSION:**

See attached information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

On May 13, 2009 the Development Coordinating Committee recommended approval.

\*\*\*\*\***REQUIRED AUTHORIZATION**\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

\*\*\*\*\*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO PLUM CITY LOUNGE, LLC. PERMITTING THE ENCROACHMENT OF SIXTEEN (16) CANOPIES, TWO (2) STAIRWAYS, AN ENTRYWAY, A HANDICAP ACCESSIBILITY RAMP, A WALL SIGN, AND AN OUTDOOR PATIO CAFÉ WITH REQUIRED FENCING, LOCATED WITHIN A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED AT 500 SAN FRANCISCO STREET AND ALLOWING THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES AS A PERMISSABLE ACTIVITY WITHIN THE OUTDOOR PATIO CAFÉ AREA.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign, on behalf of the City of El Paso, a Special Privilege License upon the following terms to Plum City Lounge, LLC. (the "Licensee") of the property located at 500 San Francisco Street:

1. The Special Privilege License shall be in the form that is attached hereto and incorporated herein as Exhibit "A".

2. The City Council finds that the grant of a Special Privilege upon the terms and conditions set forth in Exhibit "A" is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

3. The Special Privilege is to permit the License of a portion of public right-of-way as more particularly shown in the site plan attached hereto and incorporated herein as Exhibit "C", consisting of a portion of the sidewalk parallel to Durango Street and abutting the property described as 50 feet on San Francisco by 122.333 feet on Durango Street at the Northeast Corner of Block 51, Mills Addition, City of El Paso, El Paso County, Texas, more commonly known as 500 San Francisco Street and more particularly shown on the survey attached hereto and incorporated as Exhibit "B".

4. The licensee's use of the licensed area shall be limited to the following: sixteen (16) (4' x 4' x 1.5') canopies without signage or other attachments; two (2) stairways (4.79' x 6') and (5.5' x 5.75'); an entry way (11' x 1.5'); an accessibility ramp (19.75' x 6.5'); a wall sign (6.09' x 1.5'); and an outdoor patio café (40.83' by 16.58') including any fencing required by the Texas Alcoholic Beverages Commission.

5. As consideration for this Special Privilege, Licensee shall pay the City of El Paso the sum set forth in Section 4 of Exhibit "A," subject to the terms and conditions of this ordinance and Special Privilege License; and

6. The Special Privilege License shall not be assigned or sublet without the written consent of the El Paso City Council; and

7. The Special Privilege License shall be for an initial term of five (5) years with two renewal options, each for an additional five (5) year period.

8. The Licensee shall be allowed to sell and serve alcoholic beverages in the portion of the licensed area designated as the outdoor patio café if such sales and service are approved by the Texas Alcoholic Beverages Commission.

**PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

**THE CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
John F. Cook  
Mayor

\_\_\_\_\_  
Richarda Duffy-Momsen  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mark Shoesmith  
Assistant City Attorney

\_\_\_\_\_  
Ted Marquez, P. E.  
Assistant City Engineer

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**EXHIBIT "A"**  
**SPECIAL PRIVILEGE LICENSE**

This Special Privilege License (the "License") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF EL PASO**, hereinafter called "City," and **Plum City Lounge, LLC** (the "Licensee") for use of the Licensed Area described hereafter.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

**Section 1. REPRESENTATIONS AND WARRANTIES**

1.1. The Licensee is requesting the use of a portion of City right-of-way located along 500 San Francisco Street in the City of El Paso, El Paso County, Texas; and

1.2. The Licensee has requested permission from the City to install sixteen (16) (4' x 4' x 1.5') canopies without signage or other attachments, two (2) stairways (4.79' x 6') and (5.5' x 5.75') an entry way (11' x 1.5'), an accessibility ramp (19.75' x 6.5'), a wall sign (6.09' x 1.5') and an outdoor patio café (40.83' by 16.58') and such fencing as required by the Texas Alcoholic Beverages Commission ["TABC"] (hereinafter the "Improvements") onto portions of public rights-of-way at 500 San Francisco Street; and

1.3. The purpose of this License is solely for the encroachment, operation, and installation, maintenance and removal of the Improvements located within portions of public right-of-way located within the City of El Paso, El Paso County, Texas; and

1.4. The Licensee is requesting that this License include provisions to allow for the sale and service of alcoholic beverages within the portion of public right-of-way utilized for the outdoor patio café area; and

1.5. The City Council finds that the grant of a Special Privilege License upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way; and

1.6. If Licensee accepts the terms and conditions of this License as a limited liability corporation, each of the persons accepting on behalf of such Licensee warrant to the City that the corporate Licensee is a duly authorized and existing corporation, that the corporate Licensee is qualified to do business in the State of Texas, that the corporate

Licensee has full right and authority to accept the terms and conditions of this License and that each and every person signing on behalf of the corporate Licensee is authorized to do so. Upon the City's request, the corporate Licensee will provide evidence satisfactory to the City confirming these representations.

1.7. City Engineer shall mean the City Engineer or his designee.

## **Section 2. DESCRIPTION of the PREMISES, LICENSED AREA AND IMPROVEMENTS.**

**2.1 The Premises.** The *Premises* is the property described in the survey attached hereto and incorporated herein as Exhibit "B", commonly known as 500 San Francisco Street in El Paso, El Paso County, Texas, consisting 50 feet on San Francisco by 122.333 feet on the Durango Northeast Corner, Block 51, Mills, City of El Paso, El Paso County, Texas that abuts the Licensed Area.

**2.2. The Licensed Area.** The *Licensed Area* consist of the sidewalk area that is within the City right-of-way abutting the Premises consisting of an area that is 122.33 feet long and 14 feet wide, as more particularly shown in the site plan attached hereto and incorporated herein as Exhibit "C".

**Section 3. TERM.** The term of this License shall be for five (5) years from the date of execution of this agreement. The City shall have the sole option to renew this License upon the request of the Licensee for up to two (2) additional five (5) year terms. If the Licensee desires that the City renew this License for an additional five (5) year term, Licensee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of the then current term of this License. The term of this License may also terminate upon mutual agreement of all parties involved or by City for Licensee's failure to maintain the insurance required pursuant to Section 11.

3.1 This License shall expire without notice at the end of the initial term or either of the additional five-year terms, unless a request for renewal is submitted in writing to the City by the Licensee as herein required. Should the Licensee fail to submit such request for the renewal of this License to the City as herein required, the License shall expire upon the expiration date. Licensee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this License be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this License.

**Section 4. CONSIDERATION.** As consideration for this License, Licensee shall pay to the City, pursuant to the fee structures set forth in Section 15.08.120D of the El Paso City Code, Three Hundred Twenty and No/100ths Dollars (\$320.00) for the canopies, Three Hundred and No/100ths Dollars (\$300.00) for the outdoor patio café, Forty and No/100ths Dollars (\$40.00) stairs, Twenty and No/100ths Dollars (\$20.00) for the entry way, Twenty and No/100ths Dollars (\$20.00) for the wall sign, and Ten and No/100ths Dollars (\$10.00) for the handicap accessible ramp, for a total sum of Seven Hundred Ten and No/100ths Dollars (\$710.00) annually. The total sum of Seven Hundred Ten and No/100ths Dollars (\$710.00) for the First Year shall be due prior to the approval of this License by City Council.

4.1 The advance payment shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the City Engineer. If this License is disapproved by the City Council, the City Engineer shall make full refund of the advance payment within fifteen (15) days of the denial action.

4.2 Licensee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120 of the El Paso City Code or its successor City Code provision. Licensee expressly agrees to pay any additional amounts as consideration for this License, which could result from a re-computation or assessment of fees pursuant to enactment of future amendments to 15.08.120D.

**Section 5. USE OF PROPERTY.** This License is granted solely for the encroachment onto public right-of-way and installation, maintenance and removal of the Improvements and Licensee's use of the Licensed Area.

5.1 Licensee shall not commence construction under this License until the plans for construction comply with the following requirements:

A. The City Engineer has approved the plans for construction to ensure compliance with the adopted Union Plaza Design Standards in reference to the building material, color, and design of the outdoor patio café.

B. The services – Building Permits and Inspections Division has approved all plans for the construction and/or installation of the Improvements and issued all applicable permits for construction as appropriate under the applicable City ordinances and the terms of this License.

5.2 The licensed area, including but not limited to the out door patio café shall not be enclosed any improvements not specifically allowed in this License or by permanent

structures. Provided however, Licensee shall provide at its own expense wrought-iron fencing of a minimum four-foot (4') in height with a maximum of two-inch (2") spacing or such other height and/or spacing as may be required by TABC for enclosure of the portion of the outdoor patio café in which TABC allows the sale and service of alcoholic beverages. The wrought-iron fencing shall include sleeves at the base of the poles to allow for removal from city right-of-way if necessary. Licensee shall not remove the improvements approved by the City Engineer prior to the termination of this License without the written approval of the City Engineer.

5.3 The written approval from the Texas Alcoholic Beverage Commission is required for the fencing height and spacing, the sale and service of alcoholic beverages within the outdoor patio café area, and the location of any proposed outdoor serving stations prior to the issuance of a building permit by the Development Services Department – Building Permits and Inspections Division or such other permit required by the City.

5.4 Written approval from the City of El Paso Fire Marshall is required to ensure the Improvements conform to the current fire code requirements regarding ingress and egress points of access, capacities, and use of auxiliary outdoor heating devices.

5.5 The Improvements shall not prevent access to El Paso Water Utility, El Paso Natural Gas, or El Paso Electric Company easements, meters, manholes, or structures for maintenance and/or repair. The Improvements shall not prevent access to the El Paso Fire Department connections, fire hydrants, or fire escapes.

5.6 The Improvements shall not impede access to City of El Paso light fixtures or street furniture for maintenance and repair. Relocation of City of El Paso street furniture must be coordinated with and approved by the City of El Paso Street Department. Trees located within the outdoor patio café area shall be maintained at all times by the licensee and shall not have objects attached that will impede the growth or affect the life of the trees. The licensee is responsible for any damages to City of El Paso street furniture, light fixtures, and trees for the duration of this License.

5.7 This License shall not be construed to waive any City permit requirements. Licensee shall be responsible for all maintenance of the Improvements.

5.8 The Licensee shall not sell, barter, trade, store, or take orders for merchandise within the outdoor patio café, except for food or beverages to be consumed in the outdoor patio café that are also sold in the adjacent food-service establishment associated with the outdoor patio café.

5.9 Nothing contained herein shall grant or be construed to grant any real property interest to the Licensee, nor shall it give rise to any vested right in the Licensee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this License for any reason whatsoever.

5.10 Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance, or repair of the Improvements.

**Section 6. IMPROPER USE.** This License shall not permit or be construed to permit any other private use of the City's right-of-way, which may impair its function as a right-of-way. Licensee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

**Section 7. REPAIRS and COSTS**

7.1 Licensee shall be solely responsible for payment of all costs associated with the acquisition, installation, maintenance, replacement and removal of Improvements and the costs of restoration required because of such removal.

7.2 Licensee shall keep the property, Leased Area and Improvements in good condition and repair and in a clean, orderly, and attractive condition during the term of this License. Licensee shall be responsible for all maintenance of the Leased Area and Improvements and shall repair any damage to the Licensed Area and Improvements regardless of the cause of such damage, at Licensee's sole expense.

7.3 Licensee shall repair all right-of-way pavers damaged by the Improvements and use of the Licensed Area during the term of this License. Licensee shall repair all right-of-way pavers damaged during the relocation of the city's street furniture for the installation and use of the Improvements, as well as reinstallation of the city's street furniture at the end of the term of this License.

7.4 Licensee shall repair any damage to City right-of-way and/or property of the City of El Paso that is directly attributable to the Improvements, including but not limited to the outdoor patio café installation, maintenance, use, and repair. Damaged property of the City of El Paso and City right-of-way shall be replaced or repaired, at the option of the city, at the sole expense of the Licensee.

**Section 8. INDEMNITY- Licensee to indemnify, defend and hold the city harmless. As a condition of this License, Licensee shall**

indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all costs, claims, liens, damages, losses, expenses (including but not limited to attorneys' fees and costs), fees, fines, penalties, proceedings, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death or property damage, arising out of, resulting from or related to the LICENSEE'S activities under this License, including any act or omission by the LICENSEE, its agents, employees or subcontractors, all, without, however, waiving governmental immunity available to the City, hereafter, the "damages". This indemnification shall apply even where such damages described above involves the negligence or allegations of negligence on the part of the City, its officers, agents or employees. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the LICENSEE every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. LICENSEE shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the LICENSEE may deem expedient, and defend or cause to be defended on behalf of the City all suites for damages, even if

**groundless, false or fraudulent brought because of such damages. LICENSEE shall pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section, along with all attorneys' fees and costs incurred by the City, including interest accruing to the date of payment by LICENSEE and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. In addition, the LICENSEE shall promptly advise the City in writing of any claim or demand against the City or the LICENSEE known to the LICENSEE related to or arising out of the LICENSEE'S activities under this License. The City will not be responsible for any loss of or damage to the LICENSEE'S property from any cause.**

## **Section 9. INSURANCE**

**9.1. LIABILITY INSURANCE.** Licensee shall provide Commercial or Public General Liability, Property Damage Liability and Vehicle Liability Insurance naming the Licensee as insured for claims for damages for personal injury, including accidental death, as well as from claims for property damages related to or arising out of the LICENSEE'S activities under this License. The minimum limits of liability and coverage shall be for personal injuries and death growing out of any one occurrence Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person and Five Hundred Thousand and No/100 Dollars (\$500,000.00) in the aggregate and One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage for each occurrence and One Hundred Thousand and No/100 Dollars \$100,000.00 in the aggregate. These amounts are not a limitation upon the Licensee's agreement to indemnify and hold the City harmless.

9.2 Licensee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend

against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Licensee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants, and employees as additional insured to the full amount of the policy limits.

9.3 This License shall not be granted by El Paso City Council until Licensee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the City Engineer. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty days prior written notice to the City Clerk, with ten (10) days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of this License shall be grounds for cancellation of this License by the City following the procedures of Section 11.2 of this License.

**9.4. LIQUOR LIABILITY INSURANCE.** In addition to the insurance required above, Licensee shall obtain and maintain a liquor liability insurance policy, or the equivalent thereof, in the amount of One Million and NO/100 Dollars (\$1,000,000.00) and provide a certificate of insurance as required for other insurance policies in this Section and name the City, its officers agents, servants and employees as additional insured.

**Section 10. TABC LICENSE.** Licensee shall provide the city at all times during the term of this License the current copy of the annual mixed-beverage license issued by the Texas Alcoholic Beverage Commission for the sale and service of alcoholic beverages.

**Section 11. CANCELLATION.** Should the City at any time or for any reason decide that the right-of-way onto which any of the encroachments are being made is needed for public use, the City may upon thirty days (30) written notice, cancel this License at no cost to the City and may take possession of the public right-of-way. All rights of the Licensee in the Licensed Area shall then be terminated. Licensee may cancel this License, for any reason, upon thirty days (30) prior written notice to the City, and all rights of the Licensee shall then be terminated.

11.1 In addition, if, for a period of six (6) months Licensee ceases to use or occupy the property for the purposes herein contemplated, the City may cancel this License and take possession by giving Licensee ten (10) days notice prior to the effective date of the termination. All rights of the Licensee on the City right-of-way shall then terminate.

11.2 If Licensee defaults in any of his obligations under this License and fail to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this License and take possession. All rights of the Licensee on the City right-of-way shall then terminate.

11.3 Any waiver by the City of any breach of any of Licensee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Licensee.

11.4 Upon termination of this License for whatever reason, the encroaching Structure shall become the property of the City and shall, at the option of the City, be removed by the Licensee without cost to the City.

**Section 12. LIENS AND ENCUMBRANCES.** Licensee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Licensee's use of the Licensed Area.

**Section 13. SUCCESSORS AND ASSIGNS.**

All of the terms, provisions, covenants and conditions of this License inure solely to the benefit the Licensee and City and shall not be a benefit for the successors and assigns of Licensee. This License shall not be construed as a covenant running with the Licensed Area or the Premises or any other real property owned or leased by Licensee or any other entity. Any assignee or sublicensee of Licensee shall not be entitled to operate under the provisions of this License without the express consent of the El Paso City Council.

**Section 14. MISCELLANEOUS.**

14.1 SIGNS: This License does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein. Permission to erect signage must be obtained by Licensee pursuant to applicable City Code and ordinance provisions and subject to the restrictions and requirements contained therein.

14.2 RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms and conditions of this License.

14.3 LAWS AND ORDINANCES: Licensee shall comply with all statutes, laws, codes and ordinances applicable to Licensee's construction, maintenance and use of the Licensed Area, except as specifically provided by the grant of this License. This License shall not be construed to grant permission for Licensee to erect the Improvements without first having obtained any required building permits from the City Development Services Department. In addition, Licensee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

14.4 NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso  
Attn: Joyce Wilson, City Manager  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to:

City of El Paso  
Attn: City Clerk  
#2 Civic Center Plaza, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-1196

and:

Plum City Lounge, LLC.  
Attn: Rafael Arellano  
500 San Francisco Street  
El Paso, Texas 79901

or to such other address as the parties may designate to each other in writing from time to time.

14.5 ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

14.6 SEVERABILITY: Every provision of this License is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this License.

14.7 LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances, and enforcement of this License and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

14.8 The City Engineer is the principal City official responsible for the administration of this License and Licensee recognizes that questions regarding the interpretation or application of this ordinance shall be referred to the City Engineer.

**Section 15. RESTRICTIONS AND RESERVATIONS.** This License is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this License, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Licensee's use of the Licensed Area, Licensee shall have the right to terminate this License upon giving the City prior written notice of its intention to do so.

**Section 16. EFFECTIVE DATE.** The effective date of this license shall be the date the License is signed by the last party to sign, and that date shall be entered in the space provided at the beginning of the License.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce Wilson  
City Manager

Date: \_\_\_\_\_

*(Signatures continued on the following page)*

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mark Shosmith  
Assistant City Attorney

\_\_\_\_\_  
Ted Marquez, P.E.  
Assistant City Engineer

**ACCEPTANCE**

The attached instrument, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**LEASEE: PLUM CITY LOUNGE, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_  
(Printed Name and Title)

**ACKNOWLEDGEMENT**

**THE STATE OF TEXAS )**

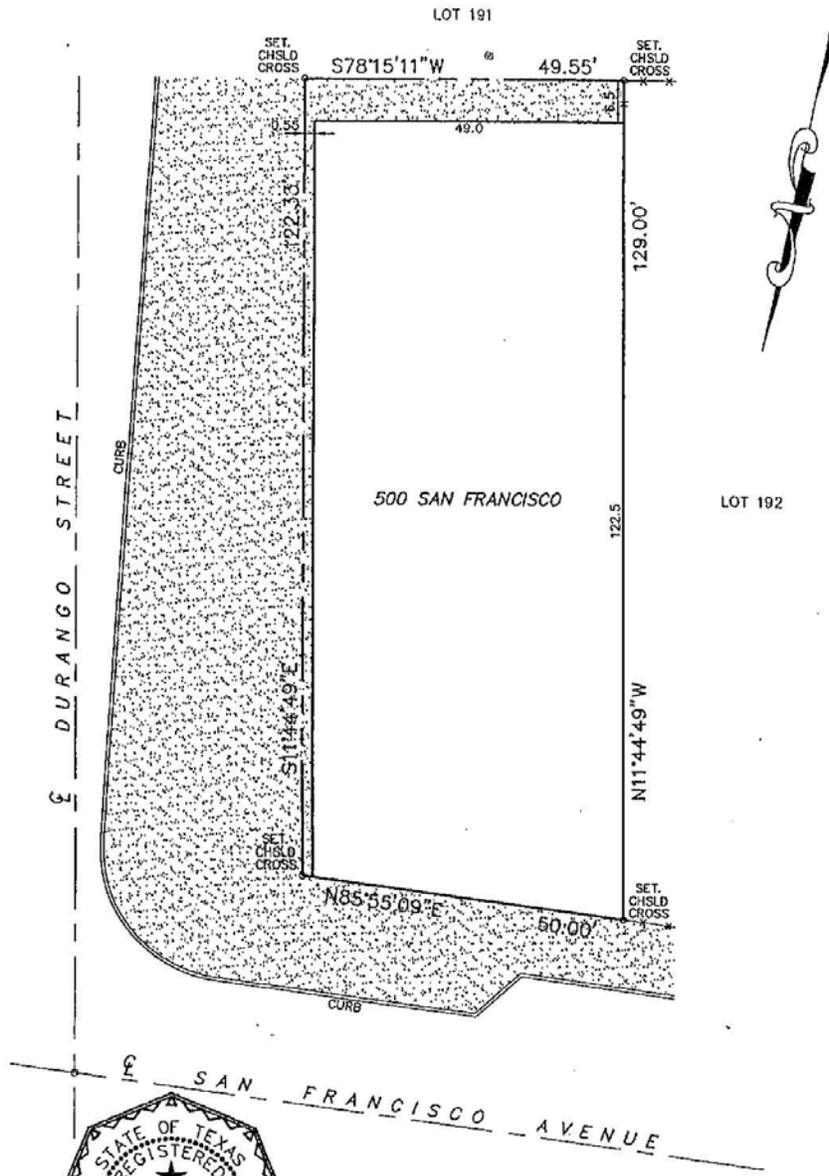
**COUNTY OF EL PASO )**

This instrument is acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, as \_\_\_\_\_, on behalf of PLUM CITY LOUNGE, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name:

\_\_\_\_\_  
My Commission Expires:



BEARING ORIENTATION AS PER PLAT OF MILLS ADDITION

This lot is not located in a flood hazard area as determined by the FIRM by U.S. Federal Emergency Management Agency National Flood Insurance Program.

**CERTIFICATION**

I hereby certify that the foregoing Boundary and Improvement Survey was made by me or under my supervision and that there are no encroachments except as shown. Only platted easements are shown.

*Manuel Calderon*

Manuel Calderon  
Registered Professional Land Surveyor No. 2564

E-Mail: CalderonEngineering@elpbizclass.com

Book -- Page -- Job No. 607-191

500 SAN FRANCISCO AVE., A PORTION OF BLOCK 51, MILLS ADDITION, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, SAID PORTION BEING 50 FEET WIDE ALONG SAN FRANCISCO AVE. BY 122 1/3 FEET ALONG DURANGO ST., BEGINNING AT THE NORTHEAST CORNER OF BLOCK 51, MILLS ADDITION

Field JM Office DD-CC Date 6-25-07 Scale 1"=20'

**CALDERON ENGINEERING**

3031 TRAWOOD DR.  
EL PASO, TEXAS 79936 (915) 855-7552  
E-Mail: CalderonEngineering@elpbizclass.com

Exhibit "B"

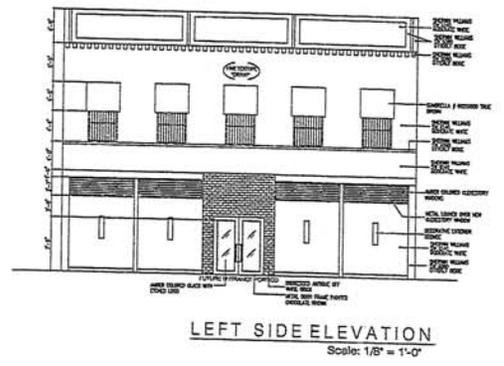
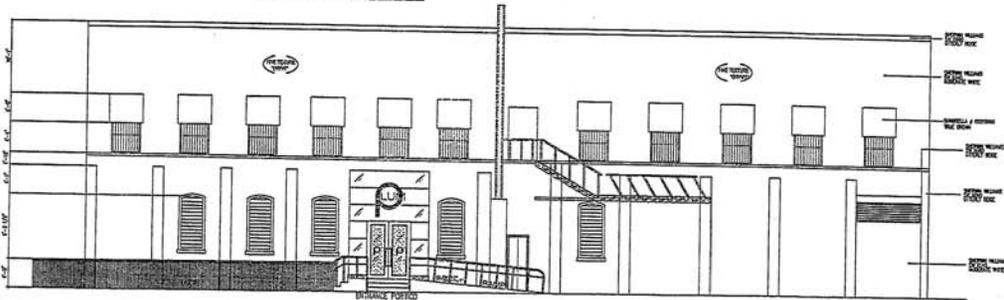
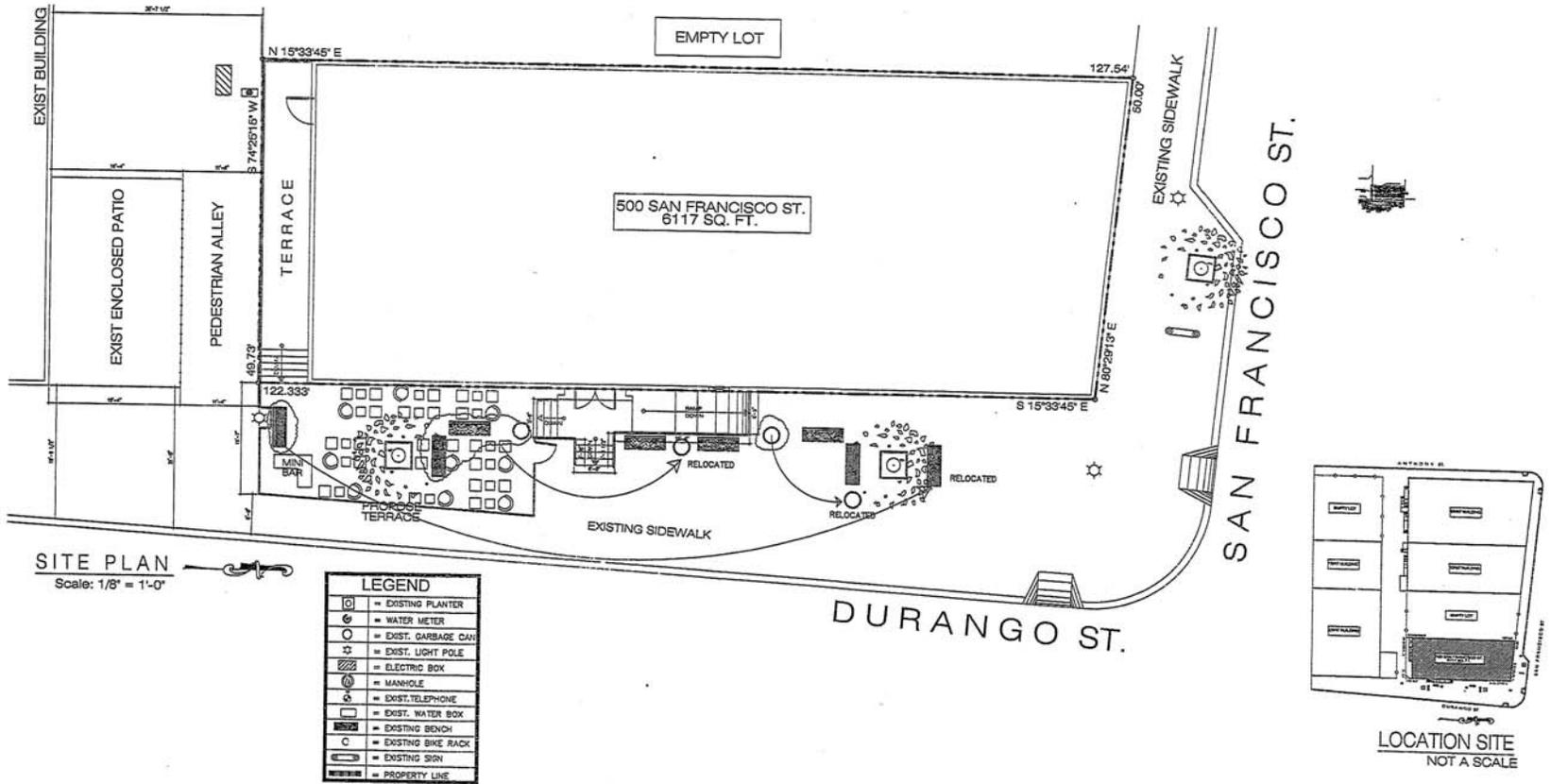
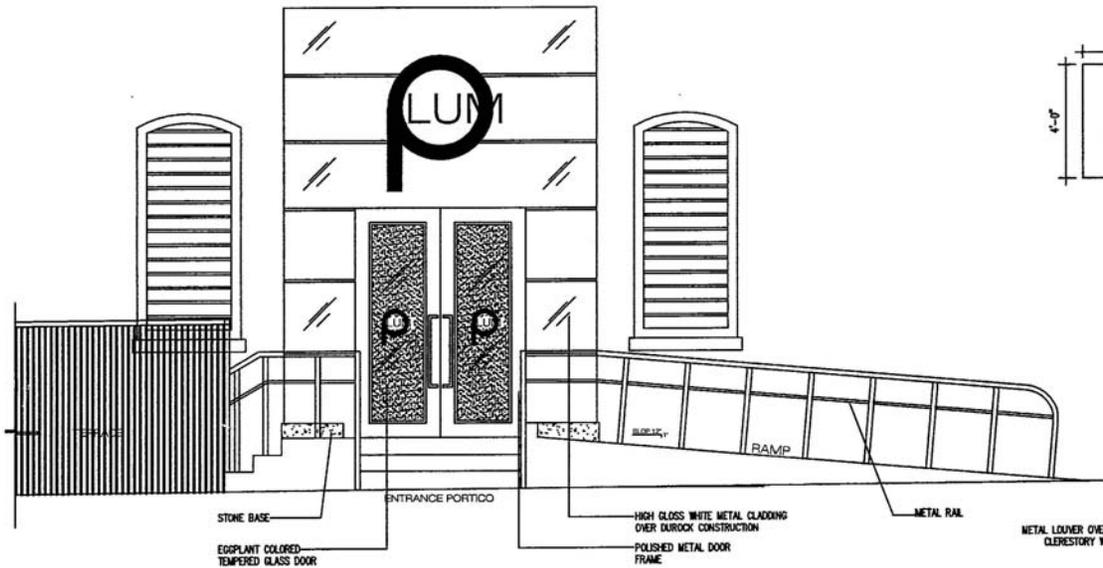
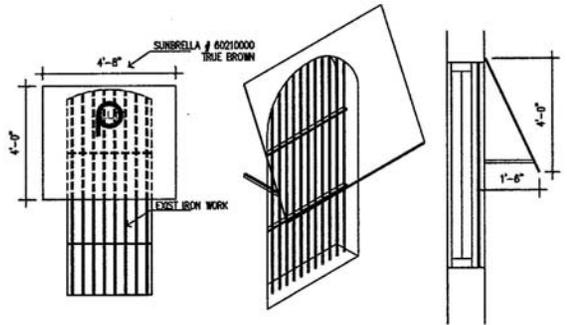


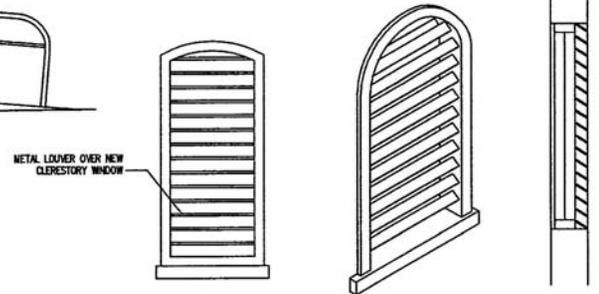
Exhibit "C"  
PG. 1 of 2



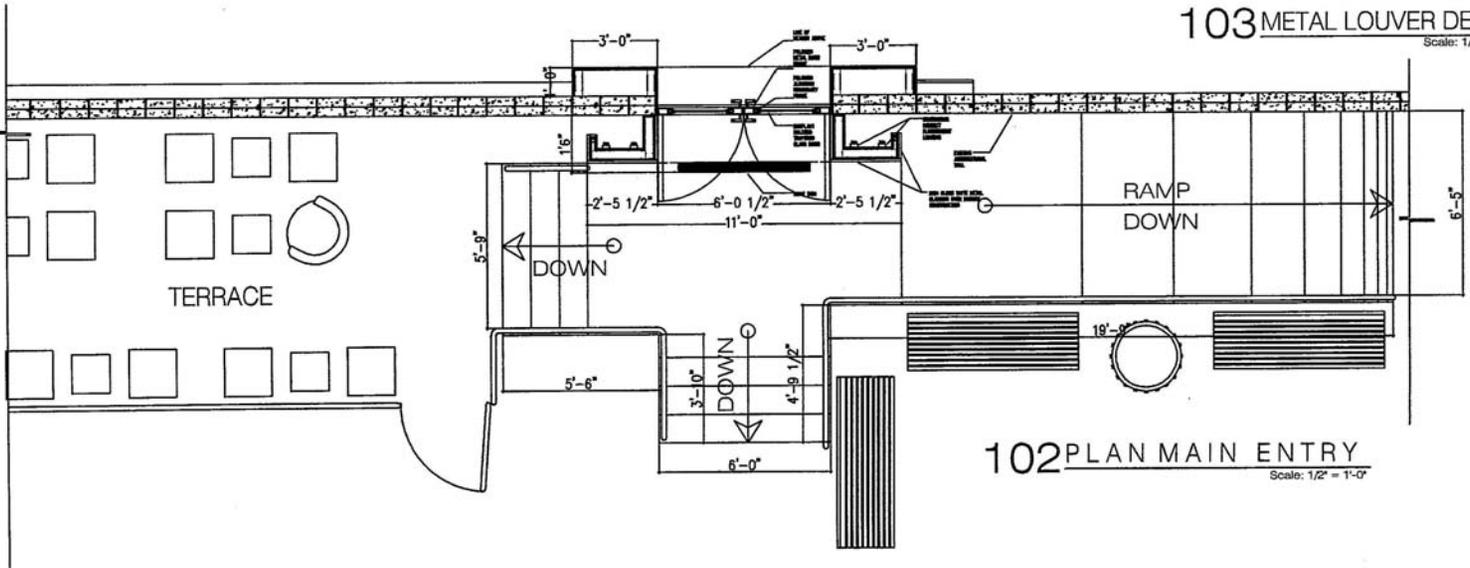
101 ELEVATION MAIN ENTRY  
Scale: 1/2" = 1'-0"



103 AWNING DETAIL  
Scale: 1/2" = 1'-0"



103 METAL LOUVER DETAIL  
Scale: 1/2" = 1'-0"



102 PLAN MAIN ENTRY  
Scale: 1/2" = 1'-0"

Exhibit "C"  
PG. 2 OF 2

## MEMORANDUM

**DATE:** September 14, 2009

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Mirian Spencer, Planner

**SUBJECT: SPL09-00012**

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The Development Coordinating Committee (DCC) on May 13, 2009 recommended **APPROVAL** of the Special Privilege License to permit the encroachment of sixteen (16) canopies, two (2) stairways, an entryway, a handicap accessibility ramp, a wall sign, and an outdoor patio café with required fencing located within portions of public rights-of-way at 500 San Francisco Street.

As part of the proposed Union Plaza Entertainment District approved by City Council on July 28, 2009, the Texas Alcoholic Beverage Commission requires City Council approval for the sale and service of alcoholic beverages within city right-of-way. The applicant submitted the written request to the Development Services Department in conjunction with the request to install the canopies, stairways, the entryway, handicap accessibility ramp and wall sign within portions of public right-of-way. The proposed encroachments are in the spirit of the Ordinance approved for the Union Plaza Entertainment by City Council.

The DCC recommended approval subject to the following:

- EPWU requires vehicular access for routine inspections, maintenance, and repair of the existing twelve-inch diameter water main located within the Overland Street and Stanton Street rights-of-way.
- Grantee is responsible for restoration of the premises to its original state upon removal of any of the encroachments.
- Grantee is responsible for all maintenance and any damages due to a failure to maintain.
- Grantee is responsible for obtaining all applicable building permits for the proposed construction.
- The special privilege terms are granted solely to the grantee and shall not be a benefit for the successors and assigns of the grantee. Any assignee or sublicense shall not be entitled to operate under the provisions of the license without express consent of the El Paso City Council.
- A five (5) year term with the City having the option to renew for one (1) additional five (5) year term upon the request of the Grantee.
- Annual consideration of \$710.00 has been paid prior to execution by City Council.
- The City may, upon thirty (30) days written notice, cancel the Special Privilege at no cost to the City and may take possession of the public right-of-way.
- Grantee may cancel the Special Privilege, for any reason, upon thirty (30) days prior written notice to the city, and all rights of the Grantee shall be terminated.
- Grantee is responsible for providing general and liquor liability insurance and a Texas Alcoholic Beverage Commission license throughout the term of the license agreement.
- Grantee will indemnify, defend, and hold the city harmless against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, demands, causes of action, liability, and suits of any kind and nature, arising out of, resulting from, or related to the activities under the license.

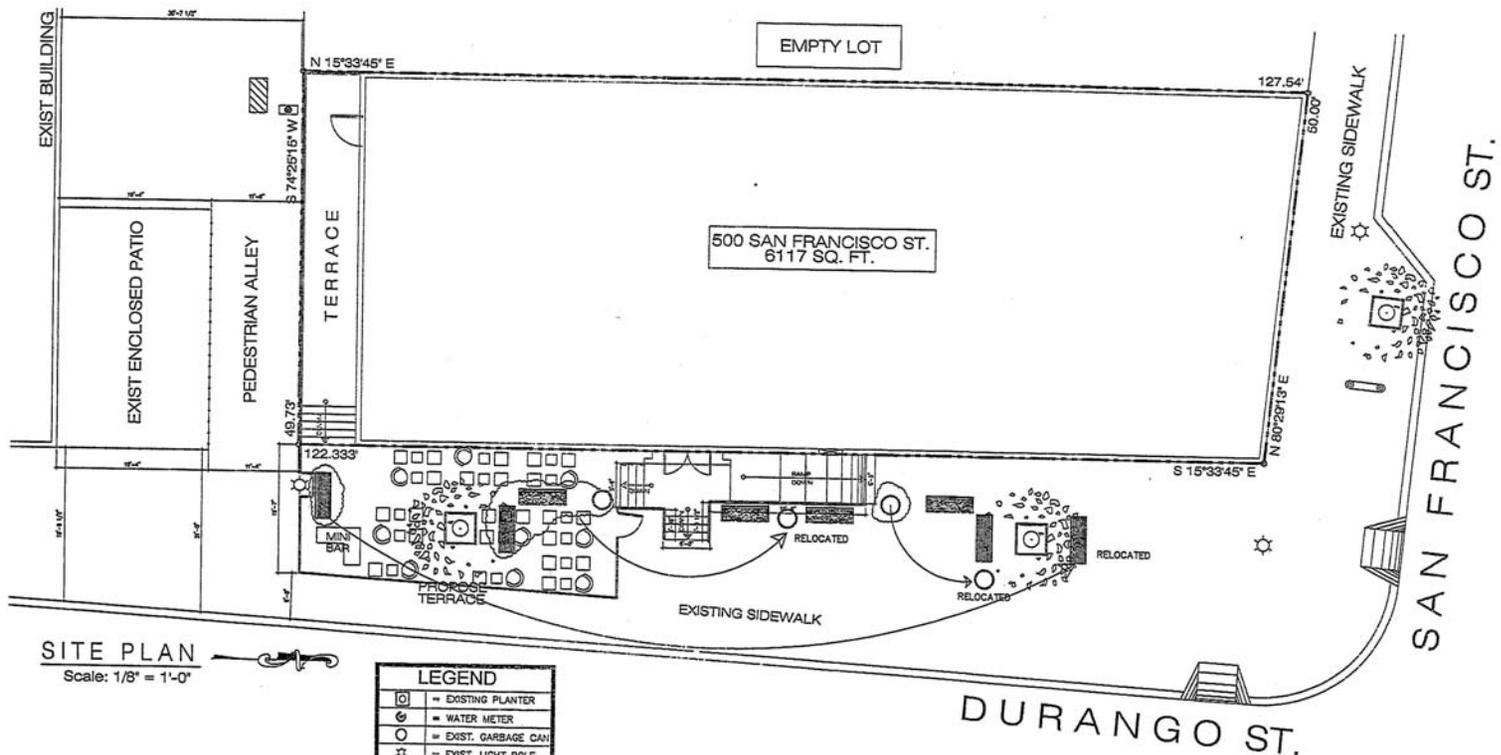
**Attachment:** Zoning Map, Aerial Map, Location Site Plan, Renderings



AERIAL MAP

SPL09-00012

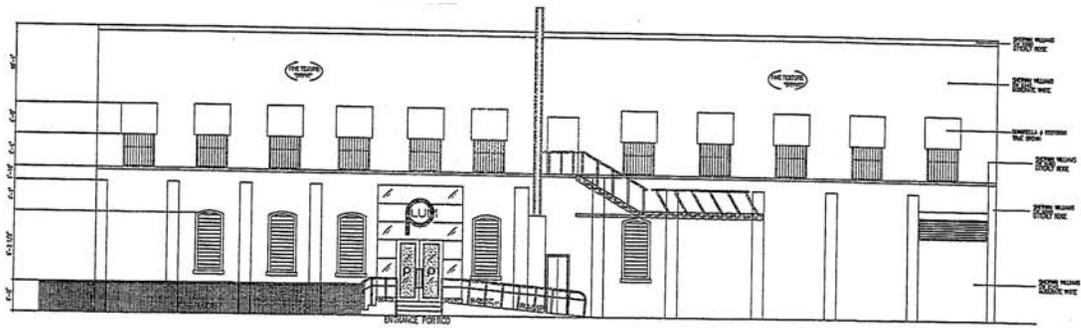




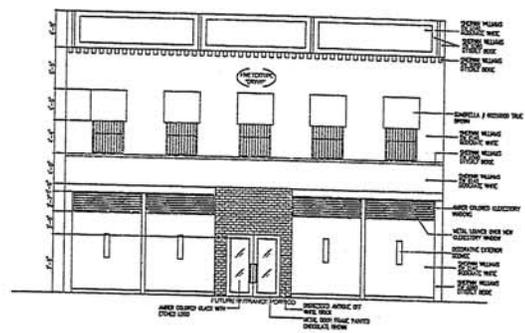
**SITE PLAN**  
 Scale: 1/8" = 1'-0"

LEGEND	
	= EXISTING PLANTER
	= WATER METER
	= EXIST. GARBAGE CAN
	= EXIST. LIGHT POLE
	= ELECTRIC BOX
	= MANHOLE
	= EXIST. TELEPHONE
	= EXIST. WATER BOX
	= EXISTING BENCH
	= EXISTING BIKE RACK
	= EXISTING SIGN
	= PROPERTY LINE

**LOCATION SITE PLAN**



LEFT SIDE ELEVATION  
Scale: 1/8" = 1'-0"



LEFT SIDE ELEVATION  
Scale: 1/8" = 1'-0"

BUILDING ELEVATIONS