



Downtown Development Authority
City of New Buffalo
Board of Directors
Special Meeting Agenda
July 9, 2020
9:00 a.m.

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes, June 18, 2020
5. Public Comment
6. New Business
 - a. Outdoor seating temporary license
 - Jackie's Café - Temporary License Agreement for Restaurant/Bar Outdoor Service Area application
 - Bear & Bee, LLC - Temporary License Agreement for Restaurant/Bar Outdoor Service Area application
7. Old Business
 - a. Communication – JL, PR
 - comments
 - b. Community Outreach – DD, JS
 - comments
 - c. Operations – RK
 - comments
 - d. Economic Development – DR, CG, JV
 - **Any updates on AT&T repeaters at the beach**
 - **EV Charging Station locations discussion**
 - Comments



8. Member Comment

9. Adjournment

The Special Meeting for June 18, 2020 of the Downtown Development Authority (DDA) Board was called to order by Chair, Robert Kemper at **9:06 am** in a virtual meeting on Zoom.

Roll Call

Present: Mayor, Lou O'Donnell; Chair, Robert Kemper; Boardmembers; Joe Lindsay, J.V. Peacock, Pete Rahm, Doug Roch, Chad Gradowski, Jodi Sullivan

Absent - Dee Dee Duhn

Motion by Roch, second by Gradowski to excuse member, Dee Dee Duhn, from the meeting.

Staff present: City Manager, David Richards, City Clerk, Amy Fidler; Deputy Clerk, Nancy Griffin

Approval of Agenda

Motion by _____, seconded by _____ to approve the agenda. (no vote)

Approval of Previous Minutes

Motion by Rahm, second by Gradowski to approve the minutes of May 28, 2020. Roll call vote, motion passed, 7-1, Roch abstained (not present at the meeting)

Public comment: none

New Business

- Sidewalk dining and retail sales ordinance. Motion by Peacock, second by Rahm for the DDA to support and recommend to the City Council to approve the temporary ordinance submitted for sidewalk dining and retail with the following stipulations:
 - Temporary solution for the remainder of 2020
 - Safety of pedestrians and diners taken into account
 - Liability protection for the City and businesses.Roll call vote, motion passed, 6-2, member Lindsay and Mayor O'Donnell abstained. Mayor O'Donnell abstained because he is on the City Council.
- Parking during the temporary sidewalk dining and retail ordinance. Motion by Rahm, second by Roch to recommend 15-minute parking spaces with the following guidelines:
 - Business to request a 15-minute parking space
 - Not to exceed two 15-minute parking spaces per city block
 - Each city block may have two 15-minute parking spaces on one side of the street OR one space on each side of the street
 - 15-minute parking spaces must be removed when Executive Order is lifted, and restaurants and retail are at full capacity.Roll call vote, motion passed, 6-2, Lindsay and O'Donnell abstained.

Old Business

- **Communication** – Joe Lindsay, Pete Rahm - **None**
- **Community Outreach** – Dee Dee Duhn, Jodi Sullivan - **None**
- **Operations** – Robert Kemper - **None**

- **Economic Business Development** – Doug Roch, Joe Lindsay, JV Peacock, Pete Rahm - **None**

Member Comment

Member Peacock requested the weeds in the sidewalk be removed, whether it be by killing them with chemicals or with a weed eater.

Motion by Lindsay to adjourn, second by Peacock. Roll call vote, motion passed 8-0.

ng.

Robert Kemper, Chair

Nancy Griffin, Deputy Clerk

**TEMPORARY LICENSE AGREEMENT FOR
RESTAURANT/BAR OUTDOOR SERVICE AREA**

This License Agreement is made as of _____, 20____, between the City of New Buffalo, a Michigan municipal corporation, whose principal business address is 224 W Buffalo St., New Buffalo, MI 49117 (the "City") and JACKIE'S Cafe, a _____ of _____ (the "Licensee")

RECITALS

- A. The Licensee owns, leases, or otherwise occupies real property in the City of New Buffalo at the address of 801 W. Buffalo St, Tax I.D. No. 628200 (the "Property"), and operates a restaurant and/or bar therein. 0373 098
- B. There exists immediately adjacent to the Property a public right-of way or other public space controlled by the City.
- C. The Licensee wishes to temporarily use a portion of the adjacent public space as an outdoor service area and has requested the City's permission for such.
- D. In light of the ongoing COVID-19 pandemic and the restaurant capacity limitations now in place pursuant to the Governor's executive orders, the City is willing to accommodate the Licensee's request pursuant to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

Now therefore, in exchange for the consideration in and referred to by this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. License. The City licenses to the Licensee the public space designated on the drawing attached as **Exhibit 1** (the "Licensed Area") to operate an outdoor service area in a manner compliant with applicable ordinances of the City, subject to the terms and conditions of this Agreement and for no other purpose. The layout of the outdoor service area shall be in accordance with that depicted in Exhibit 1.
2. Term. The term of the license shall commence upon the date of this Agreement and continue until November 30, 2020, unless terminated early pursuant to the terms of this Agreement.
3. Maintenance. The Licensee shall, without cost to the City, maintain the Licensed Area as reasonably necessary to comply with applicable ordinances, policies, laws, rules, regulations, good practices, and to reasonably ensure its proper function, safety and general appearance.
4. Requirements of the Licensee. This license is subject to the following terms and conditions:
 - a. The Licensee shall clean the area of all trash, litter and food at the time of the service and not allow food or trash to enter other areas of the public right-of-way or other public spaces. The Licensed Area must be thoroughly cleaned at the time the outdoor service area each evening.
 - b. The Licensee shall arrange the outdoor sales and service area presentably for the public at the time business opens each day.
 - c. The Licensee shall not leave tables and chairs stacked in the Licensed Area or in other public spaces during hours that the restaurant is open.
 - d. The Licensee shall provide sufficient trash receptacles for patrons in order to prevent the accumulation of trash and litter in the public space. The use of public trash receptacles to satisfy this requirement is prohibited.

- e. The Licensee shall restrict the number of patrons to the number of chairs provided in the allotted space and must require patrons to wear shirts and shoes.
- f. No amplified music is allowed in the Licensed Area.
- g. The use of the right-of-way can be temporarily revoked as necessary for community events which may require use of the space, therefore the seating and other amenities should be reasonably portable.
- h. No alcoholic beverages shall be sold or consumed in the Licensed Area unless the area is also licensed by the Liquor Control Commission for outdoor service.
- i. The Licensee may begin conducting business in in the Licensed Area each day at 7:00 A.M. No customer shall be seated the Licensed Area after 10:30 P.M., and the Licensee shall ensure that no customers remain in the Licensed Area after 11:00 P.M.
- j. All tables, chairs, furniture, and other amenities placed in the Licensed Area under this Agreement shall be removed from the right-of-way at the time the outdoor space closes each evening.
- k. Outdoor bussing or service stations are prohibited.
- l. Outdoor food preparation is prohibited
- m. Outdoor service areas located on City sidewalks shall be arranged in such a manner as to maintain a minimum three feet of clear distance from the curb edge.
- n. Any use of public rights-of-way for private purposes shall fully comply with the Americans with Disabilities Act (ADA). By entering into this Agreement, the Licensee represents and warrants that its proposed layout is ADA compliant.
- o. Upon the termination or expiration of this Agreement, the Licensee shall, unless the City otherwise consents by resolution of the City Council, without cost to the City, remove any objects placed in the Licensed Area by the Licensee.
- p. The Licensee accepts the Licensed Area "AS IS" and with all faults. The City has not made, does not make, and has not authorized anyone else to make any representation or warranty as to the Licensed Area. Without limiting the generality of the previous statement, the City makes no representation about the presence or absence of any hazardous substances or materials or other contaminants and makes no representation about the suitability of the Licensed Area for any purpose or use.

5. Ownership. This license does not grant or convey to the Licensee any rights, title, or interest in the Licensed Area. The City retains all of its property rights in the Licensed Area. No provision of this Agreement shall be construed to limit the City's right to enter upon, control and/or perform work within the Licensed Area.

6. Assignment or Use by Others Prohibited. The Licensee may not assign this Agreement or its rights, privileges, duties or obligations under this Agreement without the City's prior written consent.

7. Indemnification. The Licensee shall hold the City (defined for purposes of this paragraph to include the City's officers and employees) harmless from, indemnify it for and defend it (with legal counsel reasonably acceptable to the City) against any demand, claim, judgment, award, legal proceeding or loss of any kind arising from the Licensee's use of the Licensed Area under this Agreement.

8. Breach and Remedies. All remedies in this Agreement are cumulative of all other remedies available at law or in equity. Remedies may be exercised simultaneously or sequentially. The failure to initially use any remedy is not a waiver of that remedy. To the extent not otherwise prohibited by law, the prevailing party in any action brought pursuant to or to enforce any provision of this Agreement shall, in addition to any other remedies, be entitled to recover its actual costs, including without limitation, actual reasonable attorney's fees, incurred to bring, maintain or defend such action from the first demand through any and all appellate proceedings, and jurisdiction and venue of any action brought pursuant to or to enforce this Agreement shall be solely in the state courts in Berrien County, Michigan. The failure of either party to act upon any breach of this Agreement shall not be deemed a waiver of that breach.

9. Termination. The license granted pursuant to this Agreement is terminable at the will of either the City Council of the City or the Licensee. Prior to terminating the license, the City shall first give the Licensee written notice that it is considering such action and the date and time of the City Council meeting at which such action will initially be considered so that the Licensee may address the City Council.

10. Binding Effect. This Agreement shall be binding upon the parties to this Agreement as well as their successors and permitted assigns.

11. Miscellaneous.

a. This is the entire agreement between the parties regarding its subject matter. There are no prior or contemporaneous agreements. It may not be modified or amended except in writing, signed by all parties. It shall not be affected by any course of dealing. The captions are for reference only and shall not affect its interpretation, however the recitals are an integral part of this Agreement. More than one copy of this Agreement may be signed, but all constitute but one agreement.

b. Any notices shall be made in writing to the addresses first written above or such other addresses as indicated by notice and shall be made by personal delivery or by postage prepaid United States first-class mail and shall be deemed completed when actually received or, if by first-class mail, three business days after mailing. The parties have caused this Agreement to be executed as of the date first above written.

c. The City Manager is authorized to enter into this Agreement on the City's behalf under the authority granted by resolution of the City Council, after review and approval of the proposed use by the City's Downtown Development Authority and payment of the applicable application fee, if any.

The parties have signed and entered into this agreement as of the date first stated above.

CITY OF NEW BUFFALO

LICENSEE

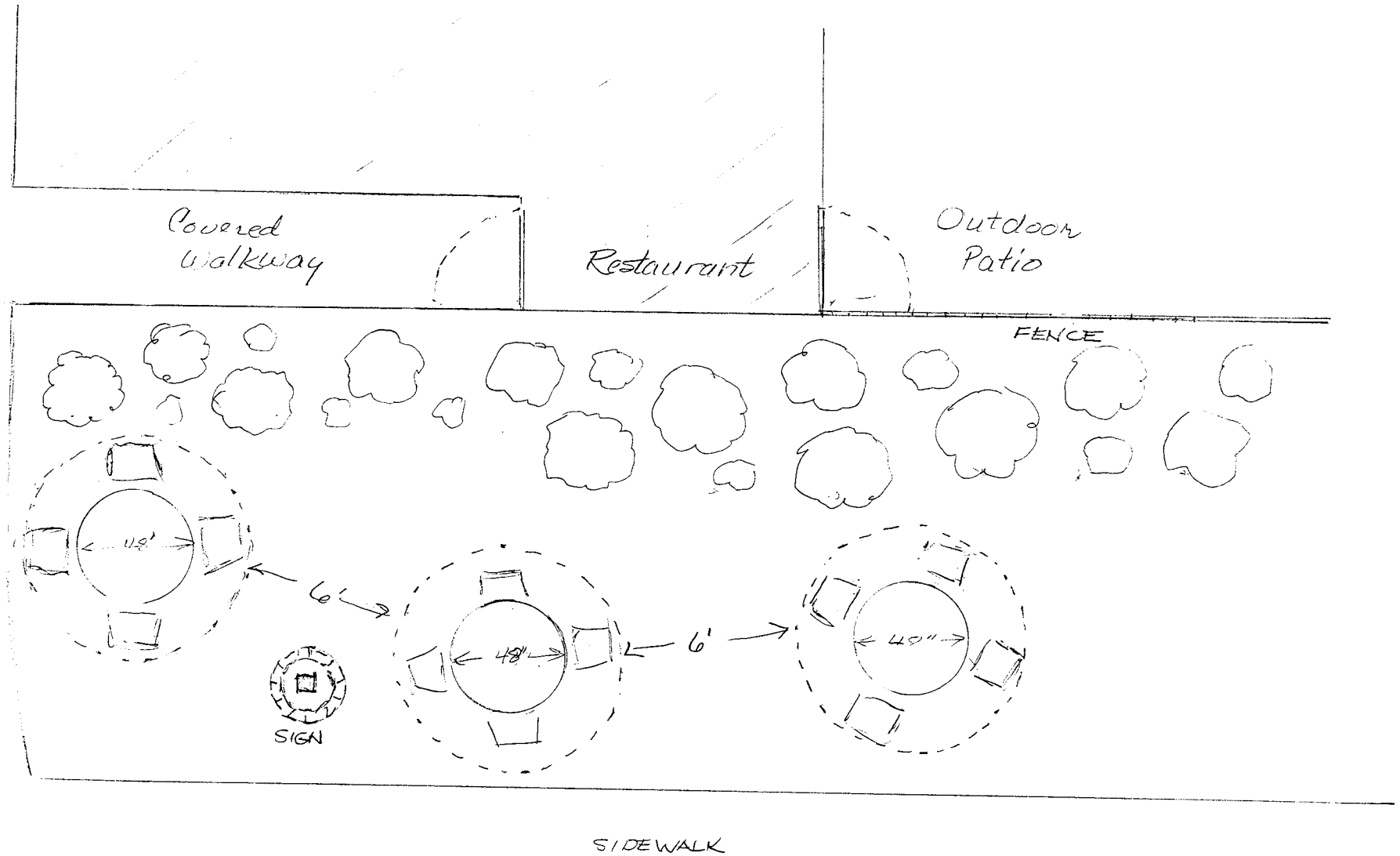
By: _____
Dave Richards, City Manager

By: _____

By: _____
Ann M. Fidler, City Clerk

Its: _____

Exhibit 1



SEATING IN FRONT OF
JACKIE'S CAFE

SCALE 3/16" = 1'

6/27/20

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RECITALS

- A. The Licensee owns, leases, or otherwise occupies real property in the City of New Buffalo at the address of 30 N Whittaker St, Tax I.D. No. 11-620340- (the "Property"), and operates a restaurant and/or bar therein. 0243-021
- B. There exists immediately adjacent to the Property a public right-of way or other public space controlled by the City.
- C. The Licensee wishes to temporarily use a portion of the adjacent public space as an outdoor service area and has requested the City's permission for such.
- D. In light of the ongoing COVID-19 pandemic and the restaurant capacity limitations now in place pursuant to the Governor's executive orders, the City is willing to accommodate the Licensee's request pursuant to the terms and conditions of this Agreement.

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- o. Upon the termination or expiration of this Agreement, the Licensee shall, unless the City otherwise consents by resolution of the City Council, without cost to the City, remove any objects placed in the Licensed Area by the Licensee.
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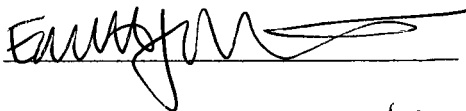
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CITY OF NEW BUFFALO

By: _____
Dave Richards, City Manager

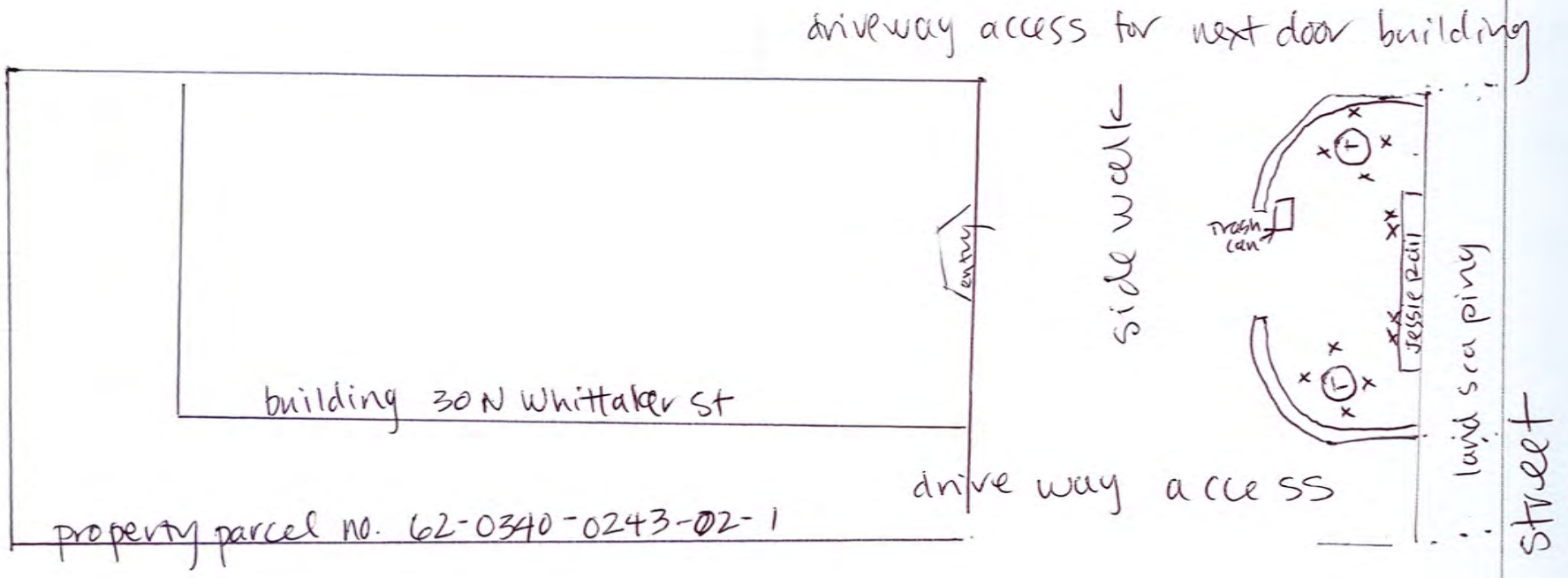
By: _____
Ann M. Fidler, City Clerk

LICENSEE

By:  _____

Its: Emma J. Brewster
member,

Bear and Bee, LLC, owner and operator of David's Delicatessen & Coffee, and The False Front, at 30 N Whittaker St, New Buffalo, MI, hereby seeks the expansion of outdoor service. The public right of way and sidewalk immediately adjacent to the parcel at 30 N Whittaker St (62-0340-0243-02-1) includes an outdoor seating area. We hope to secure permission to serve food, and at the discretion of the Michigan Liquor Control Commission, alcohol in the clearly delineated seating area. Currently the seating area includes city owned property, specifically 2 tables, 8 chairs and 1 Jessie rail. We hope to use these items for our service, with 4 additional bar stool type seating for the Jessie rail. We are also happy to provide other furniture should that be required. We would care for and clean city owned furniture as if it were our own. Further, in accordance with resolution 2020-17 we would provide a garbage receptacle for our customers.

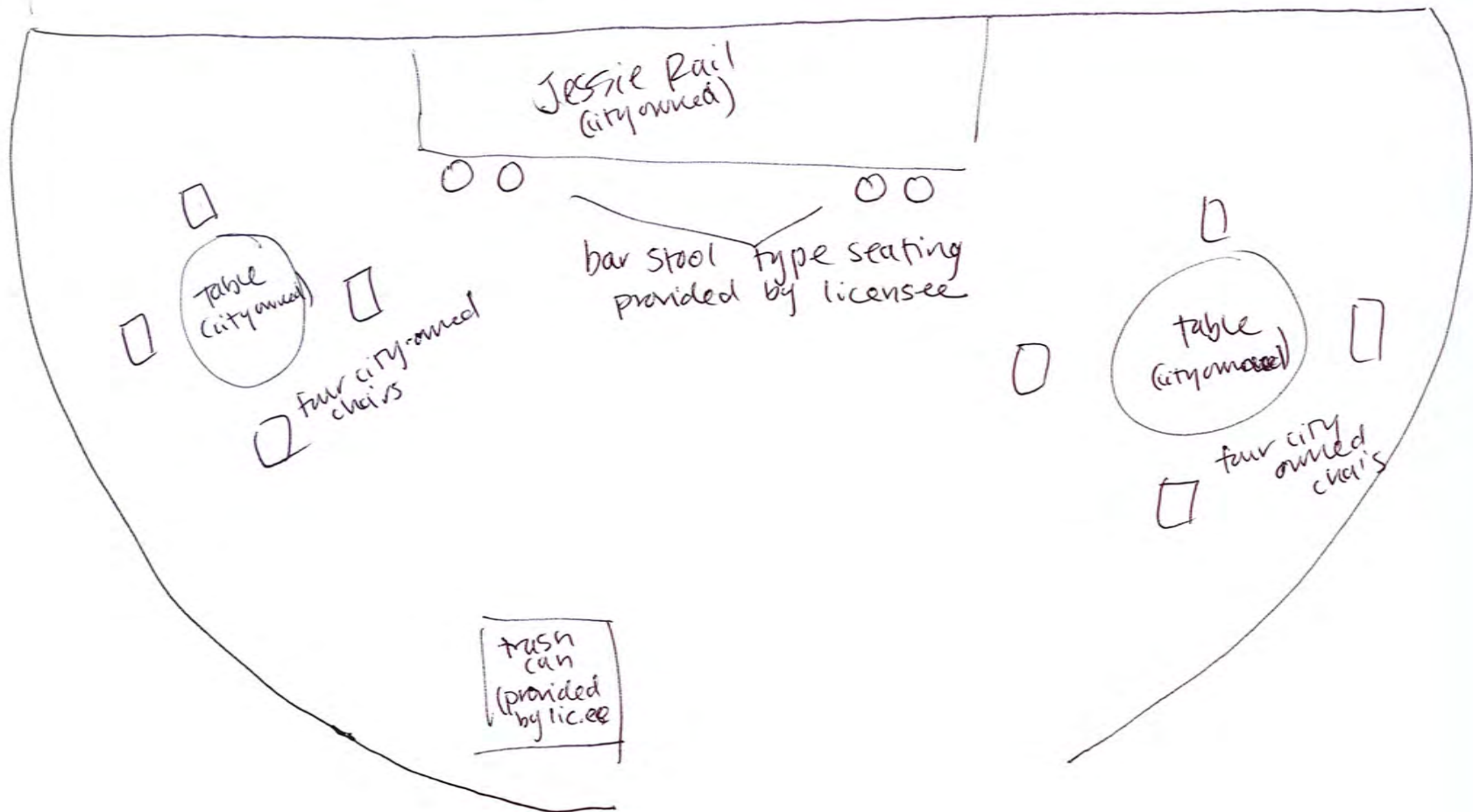


drawing an approximation - not to scale

drawing not to scale

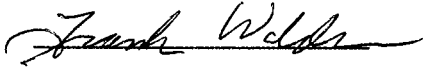
N Whittaker St.

landscaping



Red Bicycle LLC, owner of the property at 30 N Whittaker St, New Buffalo, MI hereby grants approval for the tenant Bear and Bee, LLC to seek permission for outdoor service on the adjacent city property.

Signed on this day 2 of July, 2020.

A handwritten signature in cursive script that reads "Frank Waldron".

Frank Waldron, managing manager Red Bicycle LLC