

Recording requested by and  
When recorded return to:

City of Merced, a California Charter  
Municipal Corporation  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

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(Space Above For Recorder's Use)

(RECORD AT NO FEE PURSUANT TO  
CA GOVERNMENT CODE SECTION 27383)

**AGREEMENT FOR USE OF CITY RIGHT OF WAY**

THIS AGREEMENT FOR USE OF CITY RIGHT OF WAY ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between MICHAEL DALE McCUTCHEON, Trustee of the Michael Dale McCutcheon Living Trust dated June 27, 2014 ("Owner") and the CITY OF MERCED, a California Charter Municipal Corporation ("City"). Owner and City are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

**RECITALS:**

The following recitals are a substantive portion of this Agreement:

A. Owner holds fee title to the real property at and commonly known as 515 West Main Street, Merced, California, APN 031-141-021, and more specifically described on the attached Exhibit "A" (the "Property").

B. City holds a public service easement as described on the attached Exhibit "B" (the "City Right of Way").

C. The Owner desires to install, use and maintain certain improvements within the City Right of Way, including a signage and overhead balconies from building on Main Street as delineated on Exhibit "C" (the "Encroachments").

**NOW, THEREFORE**, in furtherance of the foregoing Recitals, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and City hereby agree as follows:

1. Grant of Use and Nature of Agreement. City hereby grants Owner, its successors, assigns, licensees, suppliers, customers, tenants and employees the right to use the City Right of Way for the use, installation, repair and maintenance of the Off-Site Improvements as set forth more specifically in Exhibit "C" attached hereto. In so doing, and notwithstanding anything to the contrary in this Agreement, or pursuant to the course of dealings between the Parties, City expressly does not and shall not be deemed to have abandoned the City's Right of Way or waived any rights thereunder, and Owner, its heirs, successors, and assigns derive no basis for a claim of prescriptive, contractual, or other rights to maintain the Off-Site Improvements or otherwise utilize the City Right of Way except as expressly provided in this Agreement. This grant of right to use does not constitute a deed or grant of an easement or any other real property interest by the City.

2. Term of Agreement. This Agreement shall remain in full force and effect unless terminated. City may terminate this Agreement with or without cause upon thirty (30) days advance written notice. If the City vacates the City Right of Way in accordance with California law, then this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement, and upon written request by the City, the Owner shall remove all Off-Site Improvements from the City's Right of Way and restore the Property back to its natural state existing prior to use by the Owner.

3. Use of City Right of Way. This grant of permission shall be subject to and subordinate to the prior continuing right of the City to use the City Right of way for public services. Any Off-Site Improvements shall not interfere with the City's existing utilities or use. The balconies shall be free from garbage and debris. No personal property may be hung on or from balcony, including but not limited to, clothing, towels, rugs, flags, plants, etc.

4. Damage to City Right of Way. Owner shall be solely responsible for any damage to City streets, sidewalks, curbs, utilities, or other City owned property due to the installation, maintenance, repair, or removal of its Off-Site Improvements in the City Right of Way, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

5. Maintenance of Off-Site Improvements. Owner shall be solely responsible for any maintenance and/or repairs to the Encroachment. Owner shall maintain the Off-Site Improvements and surrounding area in good and safe condition and free from damage, to the reasonable satisfaction of the City.

6. Hazardous Materials. Owner agrees that Owner shall not bring onto the City Right of Way, or store or dispose of on the City Right of Way, nor knowingly allow others to bring onto, store or dispose on the City Right of Way, any hazardous material of any kind.

7. Insurance Requirements. Owner shall maintain a Commercial General Liability insurance policy against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such liability insurance available to Owner under Owner's combined insurance policies (including any excess or "umbrella" policies) actually maintained by Owner, whichever is greater.

7.1 The City, its officers, officials, employees, agents, and volunteers, are to be covered as additional insureds on Owner's Commercial General Liability insurance policy.

7.2 Owner waives any and all rights of subrogation against the City and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, which any insurer of Owner may acquire against the City.

7.3 For any and all claims related to this Agreement, Owner's insurance shall be primary non-contributing.

7.4 Owner shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Owner's agreement with the City shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed or delivered to the City at 627 W. 18<sup>th</sup> Street, Merced, California 95340.

8. Defense and Indemnification. Owner shall indemnify, protect, hold harmless, and defend the City from any and all loss, cost, liability or expense, and from any judgments or damages to any person or property arising or resulting, directly or indirectly, from the condition of the Off-Site Improvements, or in connection with the installation and/or maintenance of the Off-Site Improvements.

9. Representations and Warranties. The Owner hereby represents and warrants that Owner has full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder.

10. Compliance With Laws. Each of the Parties shall at all times comply fully with all applicable governmental laws, ordinances, rules, codes, regulations, and permit requirements pertaining to the use of the City Right of Way and maintenance and repair of the Interceptors.

11. Waiver. The failure of any of the Parties or their successors to enforce any of the terms and provisions set forth herein shall not constitute a waiver of the right to enforce the same thereafter.

12. Entire Agreement. This Agreement constitutes the entire integrated agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended or terminated except by a writing signed by authorized signatories of all Parties.

13. Construction. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Wherever the context hereof may so require, the singular shall include the plural and the masculine shall include the feminine and neuter. This Agreement shall be interpreted pursuant to its plain and ordinary meaning, as though prepared by both Parties, and in accordance with the laws of the State of California.

14. Successors and Assigns. The rights and obligations of the Parties hereunder shall be binding on and inure to the benefit of the Parties hereto and the successors and assigns of the Parties hereto. These obligations shall run with the land.

15. Recordation of Agreement. Any of the Parties may cause this Agreement or a memorandum thereof to be recorded in the Office of the County Recorder of Merced County, California.

16. Governing Law and Venue. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Merced, California.

17. Attorneys' Fees. Should it become necessary to take steps to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys fees and costs related to the enforcement of this Agreement.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have made and executed this Agreement on the day and year first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
D. Scott McBride  
City Manager

ATTEST:  
D. SCOTT MCBRIDE, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

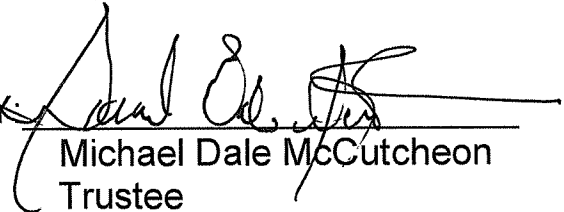
APPROVED AS TO FORM:  
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 2/17/2024  
City Attorney Date

ACCOUNT DATA:  
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: \_\_\_\_\_  
Verified by Finance Officer

PROPERTY OWNER  
MICHAEL DALE McCUTCHEON,  
Trustee of the Michael Dale  
McCutcheon Living Trust dated  
June 27, 2014

BY:   
Michael Dale McCutcheon  
Trustee

ADDRESS:  
484 E. PEBBLE BEACH DRIVE  
FRESNO CA 93730

TELEPHONE: 559.287.3200

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

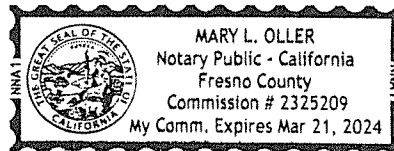
County of FRESNO

On MARCH 4, 2024, before me, MARY L OLLER NOTARY PUBLIC,  
a Notary Public, Personally appeared MICHAEL DALE MCCUTCHEON

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Mary L Oller

Notary Public

(seal)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_\_, before me, \_\_\_\_\_,  
a Notary Public, Personally appeared \_\_\_\_\_

\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Notary Public

(seal)



EXHIBIT A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

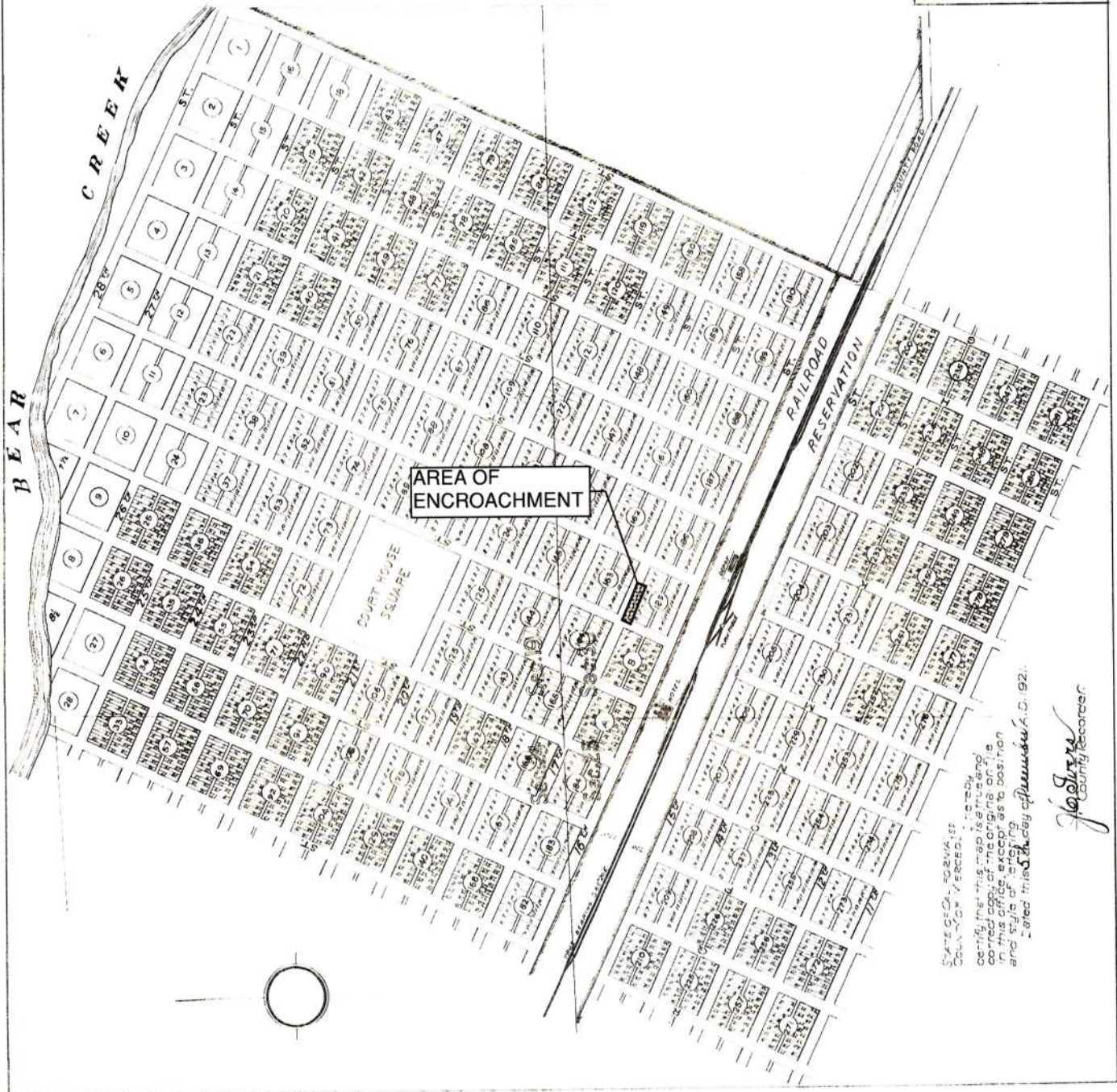
PORTIONS OF LOTS 12, 13, 14 AND 15 IN BLOCK 163 AS SHOWN ON THE MAP ENTITLED "SUPPLEMENTAL MAP TO TOWN OF MERCED" FILED FOR RECORD ON MARCH 4, 1869 IN THE OFFICE OF THE COUNTY RECORDER OF MERCED COUNTY, STATE OF CALIFORNIA, IN VOLUME 2 OF OFFICIAL PLATS AT PAGE 12, MERCED COUNTY RECORDS, SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID LOT 13; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT 12, NORTH 65° 20' WEST, 0.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG A LINE PARALLEL WITH THE NORTHWESTERLY LINE OF SAID LOT 13, NORTH 24°40' EAST, 94.67 FEET; THENCE ALONG A LINE PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOTS 12, 13, 14 AND 15, SOUTH 65° 20' EAST, 125.75 FEET TO AN INTERSECTION WITH THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO MONDO BUILDING LLC, RECORDED JUNE 20, 2003, AS DOCUMENT NUMBER 2003-038878 OF OFFICIAL RECORDS OF SAID COUNTY, THENCE ALONG THE LAST MENTIONED NORTHWESTERLY LINE, THE FOLLOWING COURSES: SOUTH 24°40' WEST, 19.67 FEET; NORTH 65° 20' WEST, 0.03 FEET; SOUTH 24° 40' WEST, 75.00 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 15; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOTS 12, 13, 14 AND 15, NORTH 65°20' WEST 125.72 FEET TO THE TRUE POINT OF BEGINNING.

ALSO SHOWN AS PARCEL A BY RESOLUTION NO. 846 FOR BOUNDARY ADJUSTMENT NO. 04-06 RECORDED MAY 5, 2004 AS INSTR. # 2004-28886 OF OFFICIAL RECORDS AND AS AMENDED RECORDED JUNE 23, 2004 AS INSTR. # 2004-41036 OF OFFICIAL RECORDS.

20P12

# EXHIBIT "B"



RECORDED IN DECEMBER OF  
1912 IN BOOK 1185  
PAGE 1185  
BY THE COUNTY CLERK  
OF MERCED COUNTY  
CALIFORNIA  
9333

SUPPLEMENTAL  
MAP

TO

TOWN  
MERCED

SECT 24 & 25, T.7S.R.13E, SECT 19 & 30, T.7S.R.14E  
MERCED CO., CAL.

VISAL DIVISION  
CENTRAL PACIFIC RAILROAD

Scale 400 Feet to 1 Inch.

VOL. 2 PAGE 12

STATE OF CALIFORNIA  
COUNTY OF MERCED  
I, the undersigned, hereby  
certify that this map is a true and  
correct copy of the original on file  
in this office, except as to position  
and style of lettering  
dated this 1st day of November, A.D. 1921.

*John J. [Signature]*  
County Recorder

# THE LOFTS

515 W. Main Street  
Merced, CA 95340

Exterior Sign Package

R4 - 12.03.23







**ELEVATION VIEW**

## 42" LETTERS



**EXISTING VIEW**  
**SCALE: NTS**

**SCALE: NTS**

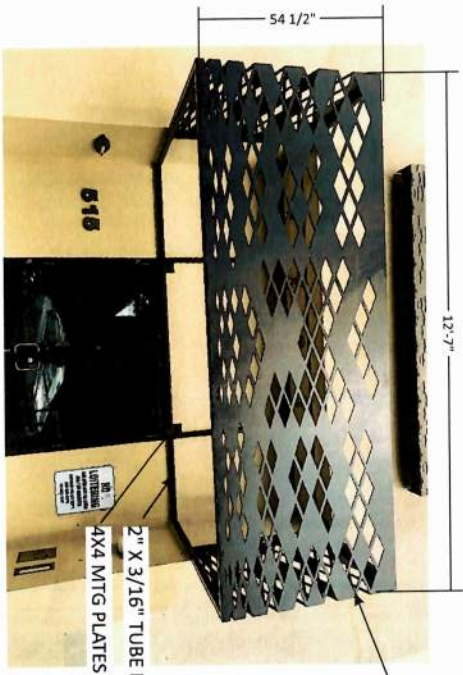


**PROPOSED VIEW**  
**SCALE: NTS**

**SCALE: NTS**

 <b>applied media</b>	<b>PROJECT: THE LOFTS - EXTERIOR SIGNAGE</b>		
	<b>REVISION</b>	<b>DATE</b>	<b>DESCRIPTION</b>
	01/01	01/01	ISSUE FOR PERMIT
	02/01	02/01	REVISION: ADD SIGNAGE FOR THE LOFTS
	03/01	03/01	REVISION: ADD SIGNAGE FOR THE LOFTS
	04/01	04/01	REVISION: ADD SIGNAGE FOR THE LOFTS
			<b>APPROVALS</b>
			<div> <div>   ALEX         </div> <div>   GERT         </div> <div>   LETICIA         </div> </div>
			<p><b>CONCEPTUAL DRAWINGS ONLY.</b></p> <p>Any use of these drawings for construction or fabrication without the written consent of Applied Media is strictly prohibited and constitutes a violation of the terms of the license granted to you.</p> <p><b>2021 APPLIED MEDIA CONCEPTS, LLC. ALL RIGHTS RESERVED</b></p>
			<p><b>2 OF 5</b></p>

## B ENTRANCE ELEVATIONS



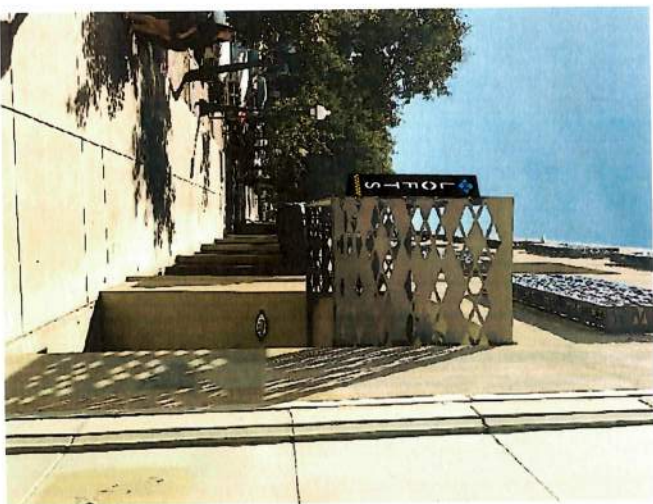
**CANOPY FRONT - EXISTING VIEW**  
**SCALE: NTS**



**CANOPY FRONT - PROPOSED VIEW**  
**SCALE: NTS**

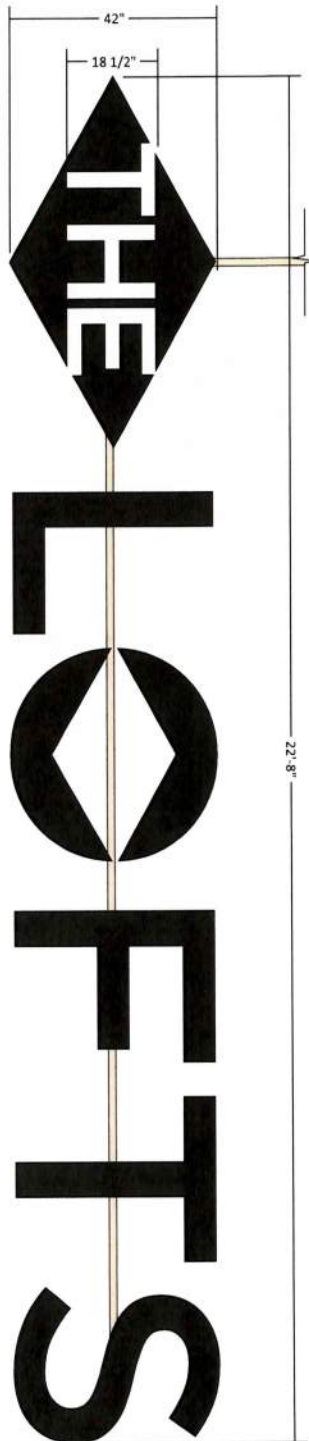


**CANOPY SIDE - EXISTING VIEW**  
**SCALE: NTS**

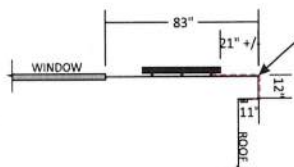


**CANOPY SIDE - PROPOSED VIEW**  
**SCALE: NTS**





POWER SUPPLY TO BE LOCATED  
BEHIND PARAPET AND ELECTRICAL WILL BE  
INSTALLED OVER THE TOP OF WALL AND  
DOWN TO LETTERSET



ELECTRICAL INFO (SIDE VIEW)  
SCALE: NTS

**A** HALO-LIT CHANNEL LETTERS - QTY 1 SET  
SCALE: 1/2" = 1'-0"

AREA: 79.3 SQ. FT.

1. EXISTING WALL SURFACE (FIELD VERIFY).
2. 1/8" ALUMINUM FACES WELDED TO .080" RETURNS PAINTED C-2
3. CLEAR LEXAN BACK
4. MOUNTED TO WALL W/ ATTACHMENT ANCHORS AND 1 1/2" STANDOFFS
5. HALO-LIT W/ WHITE LED'S
6. REMOTE POWER SUPPLY W/ DISCONNECT MOUNTED BEHIND PARAPET
7. ELECTRICAL TO RUN OVER THE TOP OF PARAPET AND DOWN TO CHANNEL LETTERSET. VISIBLE WIRING WILL BE COVERED WITH CONDUIT PAINTED C-2

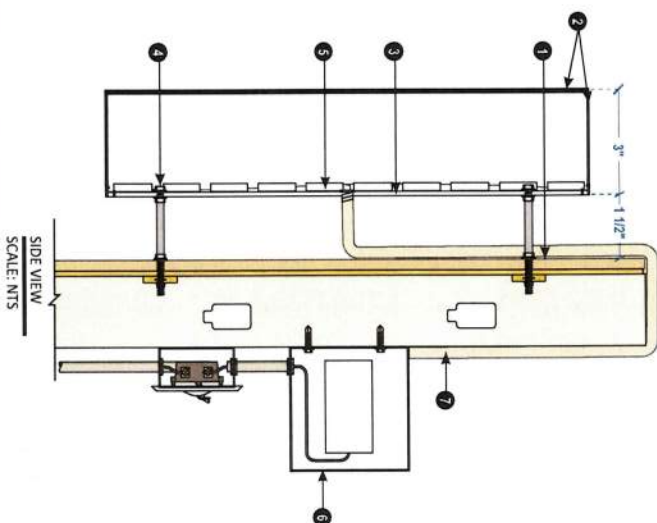
**ADDITIONAL NOTES:**  
- PRIMARY ELECTRICAL BY OTHERS  
- CONFIRM IF LETTERS ARE TO HAVE A DAY/NIGHT PHOTOCELL OR WILL BE CONTROLLED BY TIME CLOCK INSIDE THE BUILDING

**COLORS:**  
■ C-1 MP SATIN BLACK  
□ C-2 COLOR TBD (MATCH WALL COLOR)



ALL DIMENSIONS, ACCESS,  
AND CONDITIONS TO BE  
FIELD VERIFIED  
PRIOR TO MANUFACTURE

LIT VIEW - NTS



PROJECT: THE LOFTS - EXTERIOR SIGNAGE		REVISION		APPROVALS		SHEET
DATE	DESCRIPTION	DATE	DESCRIPTION	DATE	DESCRIPTION	
10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	4 OF 5
10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	
10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	4 OF 5
10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	
10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	4 OF 5
10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	10/15/2023	ISSUED FOR PERMITTING	

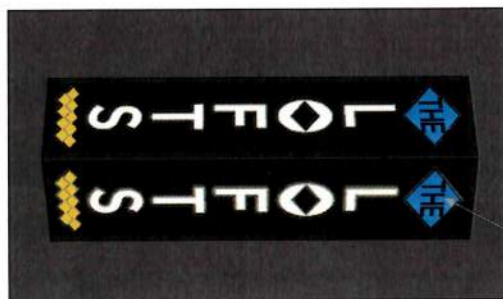
applied media

2023 APPLIED MEDIA CONCEPTS, LLC. ALL RIGHTS RESERVED

GRAPHICS TO BE AT LEAST  
1 1/2" AWAY FROM OUTER  
EDGE OF SIGN



"THE" TO BE BLACK  
BLOCKOUT VINYL



BOTH FACES HAVE THE SAME ARTWORK

STRAIGHT ON / NIGHT VIEW - NTS

**B TWO-FACED ILLUMINATED WALL SIGN W/ ROUTED & PUSH-THRU GRAPHICS - QTY 1**  
SCALE: 1" = 1'-0"

**SPECIFICATIONS**

1. FABRICATED ALUMINUM WALL SIGN PAINTED C-1
2. ROUTED W/ CLEAR ACRYLIC PUSH-THRU GRAPHICS, C-2, C-3 & C-4 TRANSLUCENT VINYL & C-5 BLOCKOUT GRAPHICS APPLIED TO ACRYLIC FACES, ACRYLIC TO PROJECT 1/2" PAST SIGN FACE
3. INTERNALLY ILLUMINATED W/ WHITE LED'S
4. FLUSH MOUNTED TO METAL CANOPY W/ CUSTOM ANGLE BRACKET PAINTED C-5 AND FASTENERS BEST SUITED FOR CONDITIONS, EXPOSED FASTENERS PAINTED TO MATCH BRACKET

**NOTES**

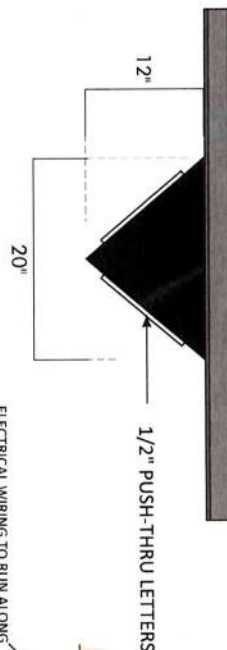
- PRIMARY ELECTRICAL BY OTHERS
- SIGN WILL BE LESS THAN 40LBS

**COLORS / FINISHES**

- C-1 MIP'S SATIN BLACK
- C-2 MATCH PMS 300C BLUE
- C-3 MATCH PMS 124C GOLD
- C-4 TRANSLUCENT WHITE
- C-5 BLACK
- C-6 COLOR TBD (MATCH CANOPY COLOR)

**FOONTS**

CLIENT SUPPLIED LOGO



TOP VIEW  
SCALE: 1" = 1'-0"

ELECTRICAL WIRING TO RUN ALONG  
PERIMETER OF CANOPY AND  
ATTACH TO DEDICATED ELECTRICAL  
LINE AT THE FRONT OF THE BUILDING  
(SINGLE CIRCUIT, 120V)

ELECTRICAL INFO (TOP VIEW)  
SCALE: NTS

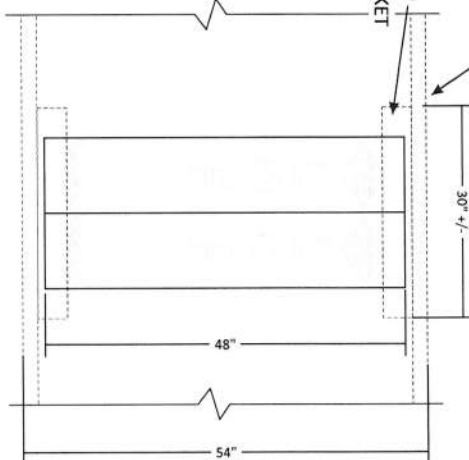
2" X 3/16" SQUARE TUBE FRAME  
(EXISTING ON CANOPY)

5/16" DECORATIVE PLATE  
WRAPPED AROUND FRAME

2X4X1/4"  
ANGLE BRACKET



MOUNTING - SIDE VIEW  
SCALE: 1" = 1'-0"



MOUNTING - FRONT VIEW  
SCALE: 3/4" = 1'-0"