

MAINTENANCE AGREEMENT

This agreement (this "Agreement") is made and entered into this 25 day of September 2023, by and between the City of Detroit, a Michigan municipal corporation, acting by and through its Department of Public Works (the "City"), and Whitney Building SPE, LLC, a owner ("Owner") whose address is 1117 Griswold St., #1416, Detroit, MI 48226.

NOW THEREFORE, for valuable consideration, including the covenants and undertaking herein contained, it is mutually agreed as follows:

1. **Purpose of Agreement:** Owner holds title to a certain parcel described in Exhibit A attached hereto (the "Parcel"). City owns certain property adjacent to the Parcel. Inasmuch as persons entering or exiting from the Parcel may use the City-owned property, and/or to the extent that certain services benefiting the Parcel (for example, water and sewer) are located in the City-owned property, Owner has agreed to improve and maintain a portion of City-owned property in the location (the "Maintenance Area") and manner detailed in the plan attached as Exhibit B for the Term, as defined herein.
2. **Financial Responsibility:** It is understood that during the Term, all physical improvements and repairs to the Maintenance Area, as set forth herein, shall be at the sole cost and expense of Owner, subject to any express limitations set forth in this Agreement.
3. **Indemnification and Hold Harmless:** Owner hereby agrees to indemnify, defend and hold the City harmless from all loss, costs, expense, actions, claims of action, damages and liability (including attorneys' fees and costs) for injury to or death of any person or persons and for the damage to or destruction of property caused by Owner's actions or omissions in the course of or resulting from the maintenance activities contemplated by this Agreement.
4. **Insurance:** Owner covenants and agrees, at its sole cost and expense, to maintain or cause to be maintained for the mutual benefit of it and the City comprehensive general liability insurance on an occurrence form against claims for bodily injuries (including, but not limited to, death) or property damage (including, but not limited to, destruction) at any time occurring in the course of or resulting from work carried out by Owner upon, in or about the Maintenance Area, at combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be cancelled or materially modified without prior written notice by certified mail to the City to the attention of City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226; Attention: Risk Management Division. Said coverage may

be evidenced by a certificate of insurance issued upon so-called "blanket" coverage, or by either a certificate or the original of an insurance policy effecting such coverage. The insurance shall be primary and any such insurance or self-insurance maintained by the City shall be secondary and non-contributory and excess. Owner shall be responsible for payment of all deductibles relating to such insurance. The provisions requiring Owner to carry or cause to be carried such insurance shall not be constructed as waiving or restricting the liability of Owner under this Agreement.

5. **Term:** The term of this Agreement (the "Term") shall commence on the date of this Agreement and continue for five (5) years thereafter unless terminated or extended pursuant to the following:
 - a. The City may terminate this Agreement prior to the end of the Term in the event the City has designed and has committed to implement a uniform scheme for the improvement of an area of City-owned property that encompasses the Maintenance Area and other adjacent City-owned property. The aforesaid may include widening of streets or sidewalks and relocation of water or sewer facilities.
 - b. Owner may terminate this Agreement prior to the end of the Term if it sells or ground leases the Parcel or grants a mortgage lien or security interest in the Parcel or portion thereof.
 - c. In the event a party elects to terminate this Agreement pursuant to Sections 5(a) or 5(b) above, such party shall deliver to the other party written notice of such election at least thirty (30) days prior to the date on which termination shall be effective.
 - d. Following the five-year expiration (but not the early termination) of this Agreement, this Agreement shall automatically continue on month to month basis subject to final termination by either party upon delivery of at least thirty (30) days' written notice to the other party.
6. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
7. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Any amendment to or modification of this Agreement shall be of no force or effect unless it is in writing and signed by an authorized signatory for each of the parties.
8. **Successors and Assigns:** This Agreement is for the exclusive benefit of the parties stated herein and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person. Notwithstanding the aforesaid, Owner shall have the right, without requiring the City's consent to assign this Agreement to any purchaser of the Parcel or any affiliate of Owner; provided that if Owner assigns this Agreement to any unaffiliated third party purchaser of the Parcel, Owner shall notify the City in

writing no later than thirty (30) days after such assignment, and the City may, by written notice to Owner within forty-five (45) days after receiving such notice from Owner (subject to reasonable extension due to City Council recess), terminate this Agreement. Unless terminated as provided above, this Agreement shall be binding upon the parties' successors and assigns.

9. Improvement Changes: Any changes to the Maintenance Area, except as contemplated by this Agreement, are subject to the prior approval of the City. Owner shall not install or construct in the Maintenance Area any structure, fixture, furniture, or equipment (including but not limited to signs, lighting, fixtures, shades, canopies, or awnings) as may obstruct or in any way encroach upon the Maintenance Area except as set forth in Exhibit B or otherwise properly permitted by the City.

10. Rights of City: The parties understand that this Agreement in no way limits the property rights of the City with regard to the Maintenance Area.

11. Certain Maintenance Obligations of Owner: During the Term, Owner shall be responsible for the improvement and maintenance activities set forth on Exhibit B.

IN WITNESS WHEREOF, the City and the Owner, by and through their authorized officers and representatives, have executed this Agreement as follows:

Whitney Building SPE, LLC _____
a owner _____

BY:  _____
(Signature)

PRINT NAME: James Van Dyke _____

ITS: member _____
(Duly Authorized Representative)

CITY OF DETROIT, through its Department of Public Works - City Engineering Division

BY: _____
(Signature)

PRINT NAME: _____

ITS: _____

EXHIBIT "A"

PROPERTY DESCRIPTION (PER PRO FORMA LOAN POLICY OF INSURANCE POLICY NO. 5011326-938976, PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY)

LAND IN THE CITY OF DETROIT, WAYNE COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 20, 21, 22 AND 23, INCLUDING THE VACATED 20 FOOT PUBLIC ALLEY LYING BETWEEN LOTS 20 AND 23 OF GOVERNOR AND JUDGES PLAN OF SECTION 8, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 34 OF DEEDS, PAGE 543 OF WAYNE COUNTY RECORDS.

ALSO DESCRIBED BY SURVEY AS FOLLOWS:

LOTS(S) 20, 21, 22 AND 23, INCLUDING THE VACATED 20 FOOT PUBLIC ALLEY LYING BETWEEN LOTS 20 AND 23 OF GOVERNOR AND JUDGES PLAN OF SECTION 8 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 34 OF DEEDS, PAGE 543 OF WAYNE COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 22 OF SAID PLAT, BEING ALSO A POINT ON THE WEST LINE OF WOODWARD AVENUE (120 FEET WIDE) AND THE SOUTH LINE OF PARK AVENUE (60 FEET WIDE); THENCE ALONG THE WEST LINE OF WOODWARD AVENUE, SOUTH 30 DEGREES 14 MINUTES 16 SECONDS EAST 124.50 FEET TO THE SOUTHEAST CORNER OF LOT 23; THENCE ALONG THE SOUTH LINE OF LOT 23, SOUTH 59 DEGREES 56 MINUTES 11 SECONDS WEST 71.25 FEET TO THE SOUTHWEST CORNER OF SAID LOT 23; THENCE ALONG THE SOUTH LINE OF THE VACATED PORTION OF THE 20 FOOT WIDE PUBLIC ALLEY, SOUTH 76 DEGREES 21 MINUTES 55 SECONDS WEST 20.01 FEET TO THE SOUTHEAST CORNER OF LOT 20; THENCE ALONG THE SOUTH LINE OF SAID LOT 20, SOUTH 89 DEGREES 34 MINUTES 39 SECONDS WEST 71.10 FEET TO THE SOUTHWEST CORNER OF SAID LOT 20, BEING A POINT ON THE EAST LINE OF WASHINGTON BOULEVARD (195 FEET WIDE); THENCE ALONG THE EAST LINE OF SAID WASHINGTON BOULEVARD, NORTH 00 DEGREES 13 MINUTES 37 SECONDS WEST 123.97 FEET TO THE NORTHWEST CORNER OF LOT 21, BEING A POINT ON THE SOUTH LINE OF PARK AVENUE; THENCE ALONG THE SOUTH LINE OF PARK AVENUE, NORTH 74 DEGREES 45 MINUTES 04 SECONDS EAST 93.28 FEET TO THE POINT OF BEGINNING.

EASEMENT PARCEL:

TOGETHER WITH A NON-EXCLUSIVE EASEMENT AS CREATED, LIMITED AND DEFINED IN THAT CERTAIN SECOND AMENDED AND RESTATED EASEMENT AND OPERATING AGREEMENT RECORDED IN LIBER 53046, PAGE 1036, WAYNE COUNTY RECORDS.

WASHINGTON BOULEVARD
(195 FT. WD.) (PUBLIC)

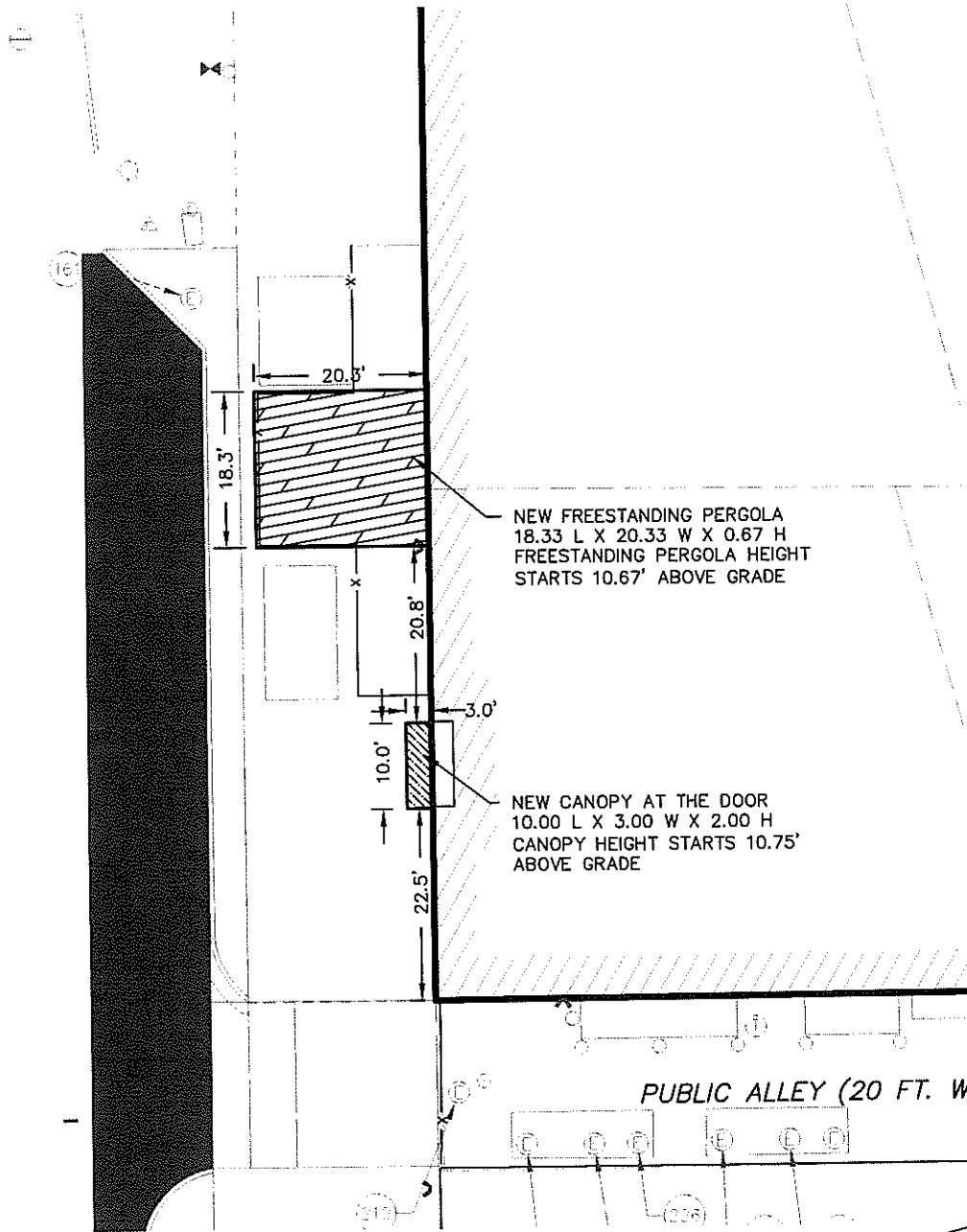

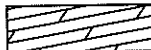
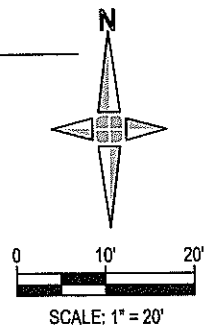


EXHIBIT B

LEGEND

-  PROPOSED ABOVE GROUND ENCROACHMENT FOR NEW CANOPY INTO WASHINGTON BLVD.
-  PROPOSED ABOVE GROUND ENCROACHMENT FOR NEW FREESTANDING PERGOLA INTO WASHINGTON BLVD.



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V:\18197_04D David Whitney Bldg Site Improvements\Design\CAD\Work Sheets\RCW\Petition Exhibit\Encroachment Exhibit.dwg

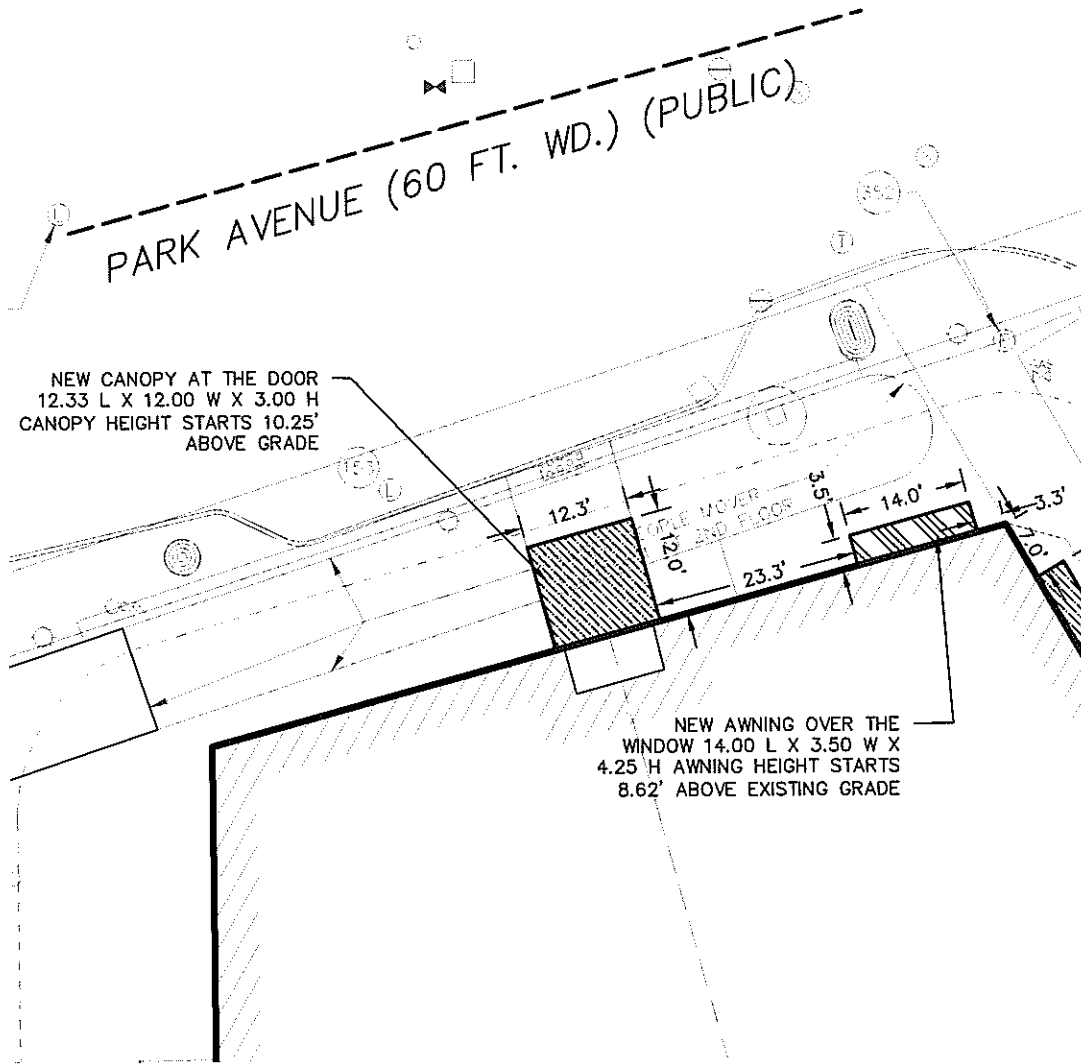
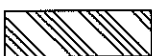

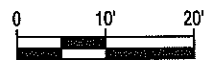
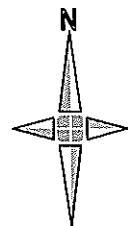


EXHIBIT B

LEGEND

 PROPOSED ABOVE GROUND ENCROACHMENT FOR NEW AWNINGS INTO PARK AVE.

 PROPOSED ABOVE GROUND ENCROACHMENT FOR NEW CANOPY INTO PARK AVE.



SCALE: 1" = 20'

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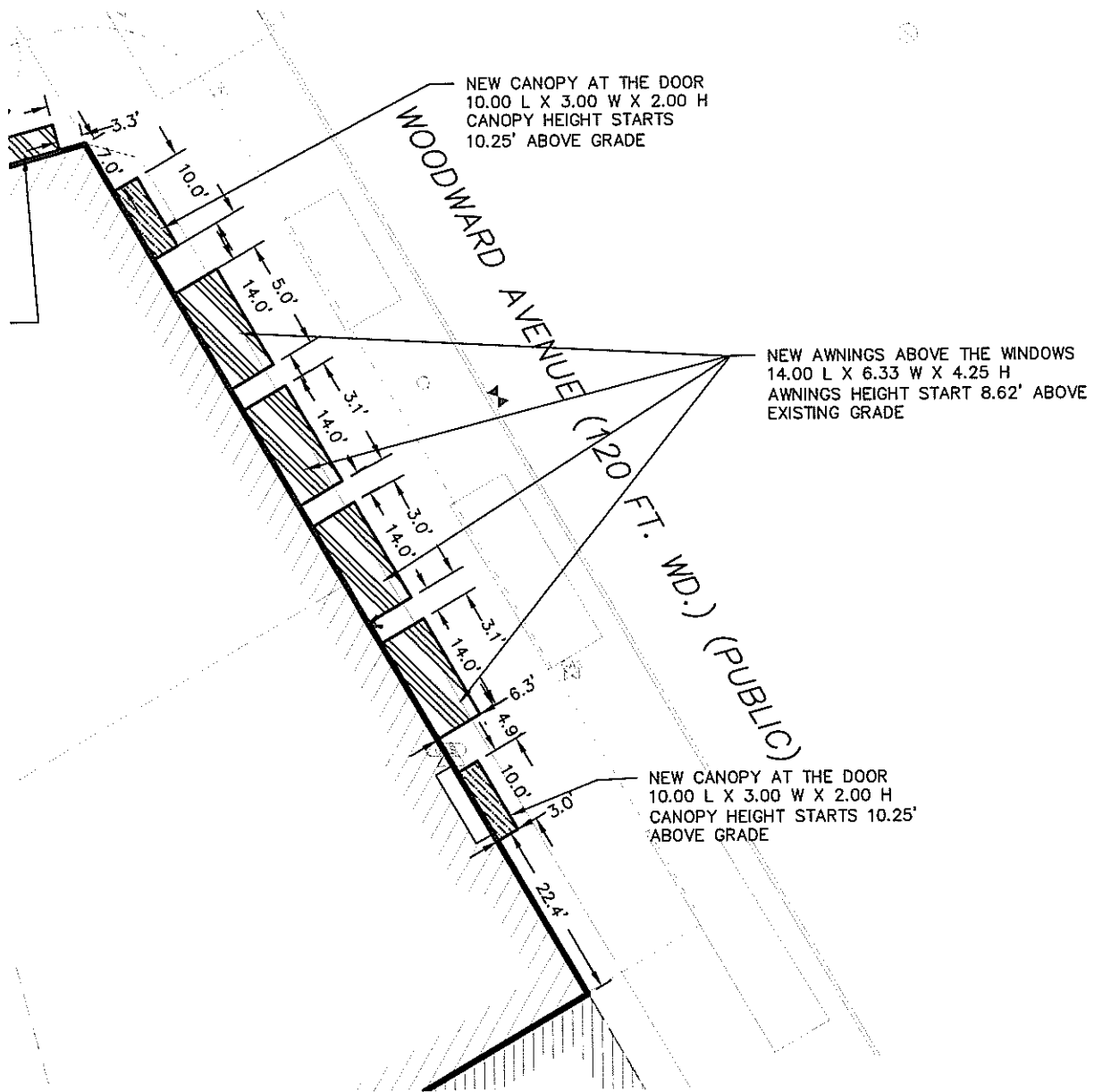


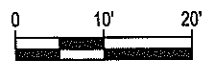
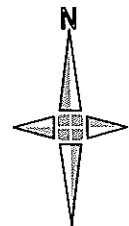


EXHIBIT B

LEGEND

 PROPOSED ABOVE GROUND ENCROACHMENT
FOR NEW AWNINGS INTO WOODWARD AVE.

 PROPOSED ABOVE GROUND ENCROACHMENT
FOR NEW CANOPIES INTO WOODWARD AVE.



SCALE: 1" = 20'

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