

HOUDINI PLAZA LEASE AGREEMENT

This Lease Agreement (“Lease”) approved by the Appleton Common Council on _____, 2021 is made and entered into by and between the City of Appleton, Wisconsin, a Wisconsin municipal corporation (“Landlord” or “the City”) and Zuelke Flats LLC (“Tenant”), located at 103 West College Avenue and doing business as _____ (“Tenant’s Property”).

The City is the owner of land and improvements commonly known as Houdini Plaza located in the 100 block of West College Avenue.

The City makes available for lease approximately 480 square feet of the plaza designated as the area immediately south of the property owned by Tenant, as identified on attached diagram marked as Exhibit A (the “Leased Premises”).

The City desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from the City for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. **Term.**

A. The City hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from the City, for an initial term beginning at such time when all parties have signed this Agreement and ending on December 31, 2038 (the “Initial Term”). The Tenant shall have the option to extend the Lease for successive ten (10) year periods (each, a “Renewal Term”) provided a) the total term of this Lease shall not exceed 98 years, b) Tenant owns the Tenant’s Property as of the first day of each Renewal Period, c) the Landlord and Tenant reach mutually agreeable terms as to the Rental Payments for such Renewal Period as set forth herein.

2. **Consideration.**

A. As consideration, Tenant will provide to the City an annual payment (the “Rental Payments”) as follows: For 2021, 2022, 2023, 2024, and 2025 payments shall be waived; thereafter the annual payment shall be \$1,800 for 2026 and each subsequent year of the Term, the annual rental payment shall increase \$100; for example \$1,900 for 2027, \$2,000 for 2028, etc. Payments shall be due on or before January 31 each year. In addition, and as additional consideration, the City agrees to lease the Leased Premises to Tenant in exchange for Tenant’s conveyance of a portion of the previously vacated alley back to the City, pursuant to the terms of a separate Development Agreement. Rental Payments for subsequent Renewal Terms shall be negotiated by the parties and reflect an amount consistent with the payments made in the Initial Term taking into consideration inflationary increases and rates paid for similar leased City property at the time of establishing rates for the Renewal Term.

3. **Use.**

A. Tenant shall use the Leased Premises for the sole purpose of providing an outdoor recreational patio space.

B. Tenant shall allow the public access to and use of the Leased Premises for outdoor recreational purposes provided the Tenant may post reasonable rules for the use of the Leased Premises from time to time with approval from the City which shall not be unreasonably withheld.

C. Tenant shall not permit the Leased Premises to be used for any commercial purpose not in connection with or incidental to the Tenant's (and any commercial tenant(s) of Tenant) use of the Tenant's Property.

4. **Furniture and Other Improvements.**

A. Tenant will purchase and provide all furniture necessary for the Leased Premises said furniture subject to the reasonable approval by the Director of Parks, Recreation and Facilities Management prior to purchase and installation. Tenant shall be responsible for all furniture placed within the Leased Premises.

B. Tenant will provide the fencing necessary to separate the Leased Premises from the remainder of Houdini Plaza. Tenant shall first obtain street occupancy permits from the City if fencing, canopies or the like will be permanently affixed to the Plaza and all necessary City permits will not be unreasonably withheld provided the plans for the Leased Premises are in material accordance with the design shown on Exhibit B (provided Tenant may make non-material changes during construction). Fencing will be decorative in nature as depicted in the renditions attached hereto as Exhibit C. Tenant shall provide the City's Director of Parks, Recreation and Facilities Management with a sample of the proposed fencing for approval by the City prior to any installation thereof. Tenant shall also notify the City when fencing installation is scheduled so the City may meet with the fence installer prior to commencement of any installation.

5. **Property Maintenance.**

A. During the Lease Term, and in consideration of the opportunity to lease the space, the Tenant shall maintain all Leased Premises and immediate surrounding areas on a daily basis throughout the year. Such maintenance shall include but not be limited to waste, litter and cigarette butt disposal, walkway cleaning, and general site inspection, consistent with standards for operation of a mixed use residential building and those standards reasonably established by the City's Parks, Recreation and Facilities Management Department. In addition, to allow for ingress and egress during cold weather months, Tenant shall maintain a path clear of snow and ice from the rear doors of Tenant's Property up to the fence openings to Houdini Plaza.

B. Upon conclusion of this Agreement, the Leased Premises shall be left in a good and clean condition just as said premises was delivered to the Tenant at the start of this Agreement excepting the improvements made by Tenant, and for reasonable wear and tear. Tenant shall be permitted to remove its personal property from the Leased Premises.

6. **Insurance and Indemnification.**

A. Tenant and the City shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Leased Premises with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. The City shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability

insurance, and Tenant shall provide the City with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of its insurers to notify the City that a policy is due to expire at least (10) days prior to such expiration. The City shall not be required to maintain insurance against thefts within the Leased Premises.

B. FOR GOOD AND VALUABLE CONSIDERATION, THE TENANT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY AND ITS OFFICERS, OFFICIALS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, CLAIMS, EXPENSES, COSTS (INCLUDING ATTORNEY'S FEES) ARISING OUT OF THIS AGREEMENT AND TENANT'S USE OF THE LEASED PREMISES CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE TENANT, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TENANT, GUESTS OR INVITEES OF THE TENANT OR ANYONE WHOSE ACTS THE TENANT MAY BE LIABLE FOR, EXCEPT WHERE CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

THE UNDERSIGNED TENANT HAS READ AND THOROUGHLY CONSIDERED THE ABOVE LANGUAGE, UNDERSTANDING THAT CERTAIN RIGHTS MAY BE FORFEITED AS A RESULT OF THIS LANGUAGE.

7. **Signs.**

A. Following the City's consent, Tenant shall have the right to place on the Leased Premises, at locations mutually selected, any signs which are permitted by applicable zoning ordinances and private restrictions. The City may refuse approval of any sign deemed too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises. In addition, Tenant consents and agrees not to display signs including, but not limited to, establishment advertising signs, signs of a political nature (whether supporting, against or otherwise taking a position regarding an elective office, candidate, incumbent or issue being considered by an elective body or referendum) or the like shall be displayed on the side of Tenant's Property facing Houdini Plaza with the exception of the establishment names appearing on canopies installed by Tenant.

B. In addition, the City agrees that Tenant shall at all times have the right to post signage stating that any and all use of the Leased Premises as a recreational facility is subject to the Wisconsin Recreational Immunity Statute set forth in Wisconsin Statute § 895.52.

8. **Notices.**

A. Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when (a) hand delivered to the party to whom the notice is addressed; (b) deposited in the United States mail by certified mail, postage prepaid return receipt requested; or (c) delivered by overnight courier delivery service (i.e., Federal Express, UPS, etc.), and addressed to the party at the address shown below:

To the City:

City of Appleton, Wisconsin
Department of Parks, Recreation and Facilities Management
Attn: Director
City of Appleton
1819 East Witzke Boulevard
Appleton, WI 54911

With a copy to:

City of Appleton, Wisconsin
Attn: City Attorney
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799

To the Tenant:

Zuelke Flats LLC
P.O. Box 6331
Fishers, IN 46038
Attn: Matt Cremer

Any party may change the address to which notices shall be sent by notice given in accordance with the terms of this paragraph.

9. **Waiver.**

No waiver of any default of the City or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by the City or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

10. **Compliance with Law.**

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. The City shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

11. **Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

12. **Transferability.**

This Lease is intended to be exclusively between the City and Tenant. It shall be non-transferrable to any other party without the City's written consent which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Tenant may assign this Lease to an affiliate, subsequent owner, or commercial lessee of the Tenant's Property and the City's consent shall not be unreasonably withheld, conditioned or delayed.

13. **Modifications To Contract Must Be In Writing.**

None of the covenants, provisions, terms or conditions of this agreement to be kept or performed by the City or the Tenant shall be in any manner modified, waived, or abandoned, except by written

instrument duly signed by both parties and delivered to the City and the Tenant. This document contains the whole agreement of the parties.

14. **Violations of Agreement.**

If Tenant violates any terms of this agreement, written notification of the violation shall be served upon Tenant personally, or by certified mail, and Tenant shall have ten (10) days from service or mailing of said notice to correct the violation. If, after ten (10) days the violation has not been corrected, the City shall have the right, at its option, to terminate the Contract without the termination being considered a breach.

15. **Governing Law.**

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Wisconsin.

16. **Termination.**

Tenant shall have the right to terminate this Lease upon written notice to City during any Renewal Term and Tenant shall be deemed to have paid to City as liquidated damages the Rental Payment for the year in which the termination occurs and Tenant shall have no right to any prorated portion of the Rental Payment for such year.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CITY OF APPLETON, WISCONSIN

By: _____
Jacob A. Woodford, Mayor

Attest: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this _____ day of _____, 2021, the above-named Jacob A. Woodford, Mayor and Kami Lynch, City Clerk to me known to be the persons who executed the foregoing document and acknowledged the same.

Printed Name: _____
State of Wisconsin, Outagamie County
My commission is/expires _____

Provision has been made to pay the liability that will accrue under this contract.

Approved as to form:

Anthony Saucerman, Director of Finance

Christopher R. Behrens, City Attorney

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

TENANT

ZUELKE FLATS LLC

By: _____

Printed Name: _____

Title: _____

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this _____ day of _____, 2021, the above-named _____ as _____ to me known to be the person who executed the foregoing document and acknowledged the same.

Printed Name: _____
State of _____
My commission is/expires _____

This instrument drafted by:
Christopher Behrens, City Attorney
Appleton, Wisconsin

CityLaw: A17-1014

EXHIBIT A

Legal Description and Diagram of Leased Premises

[To be verified by City Surveyor prior to recording]

All of the East 60.48 feet of a 20 foot wide Alley, being a part of Lot Three (3), Block 5, Appleton Plat (aka Second Ward Plat), all according to the recorded Assessor's Map of the City of Appleton, being located in the SE ¼ of the SW ¼ of Section 26, Township 21 North, Range 17 East, City of Appleton, Outagamie County, Wisconsin, containing 1,209 square feet of land m/l and being more fully described by:

Commencing at the Northeast corner said Lot 3;

Thence South 00°02'58" East 110.00 feet along the West line of Oneida Street and being coincident with the East line of said Lot 3 to the point of beginning;

Thence continue South 00°02'58" East 20.00 feet coincident with the East line of said Lot 3;

Thence South 89°59'06" West 60.48 feet coincident with the South line of said 20 foot wide Alley;

Thence North 00°02'58" West 20.00 feet to the North line of said 20 foot wide Alley;

Thence North 89°59'06" East 60.48 feet coincident with the North line of said Alley to the East line of said Lot 3 and the **point of beginning**.

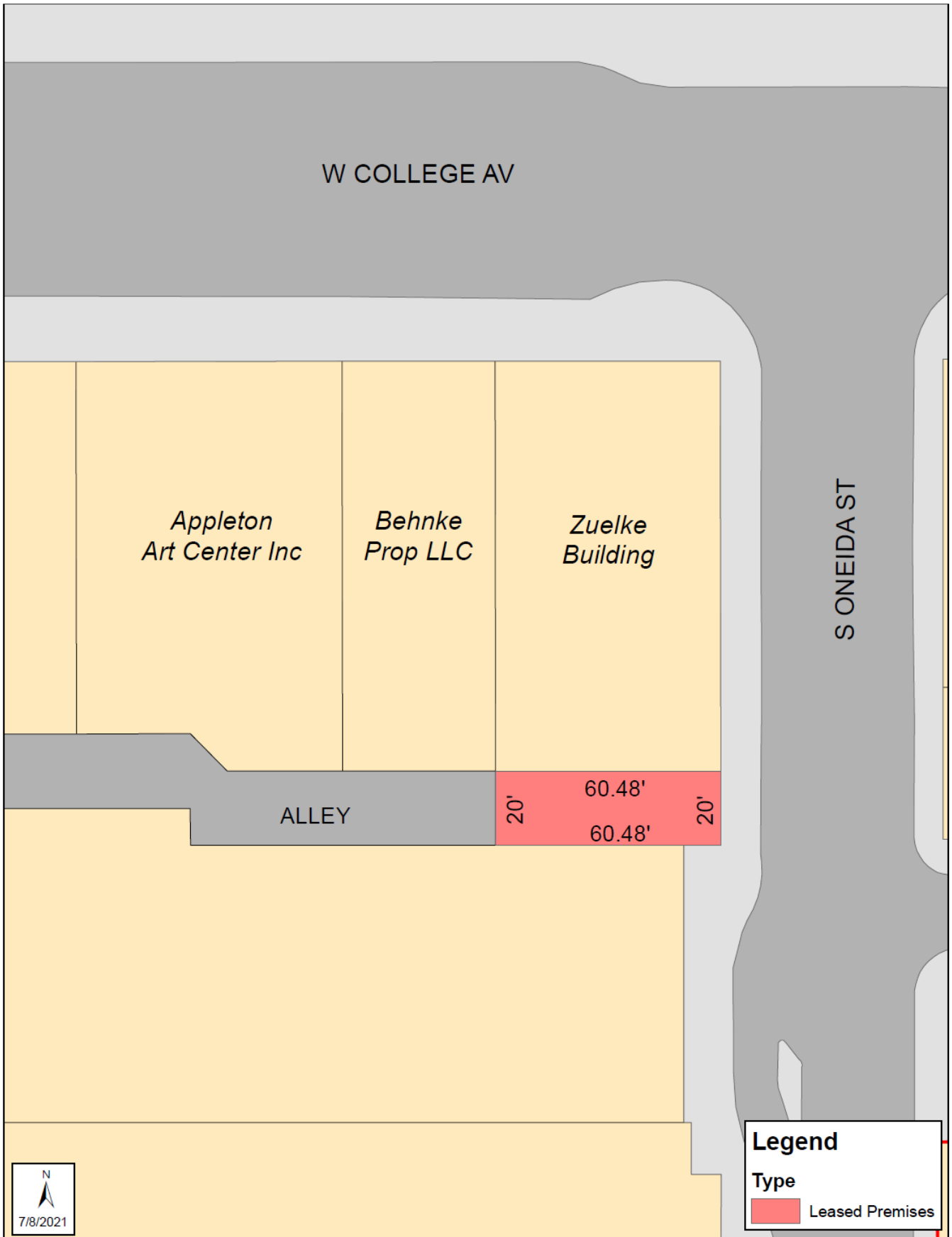


EXHIBIT B

Design of Proposed Use in Lease Space

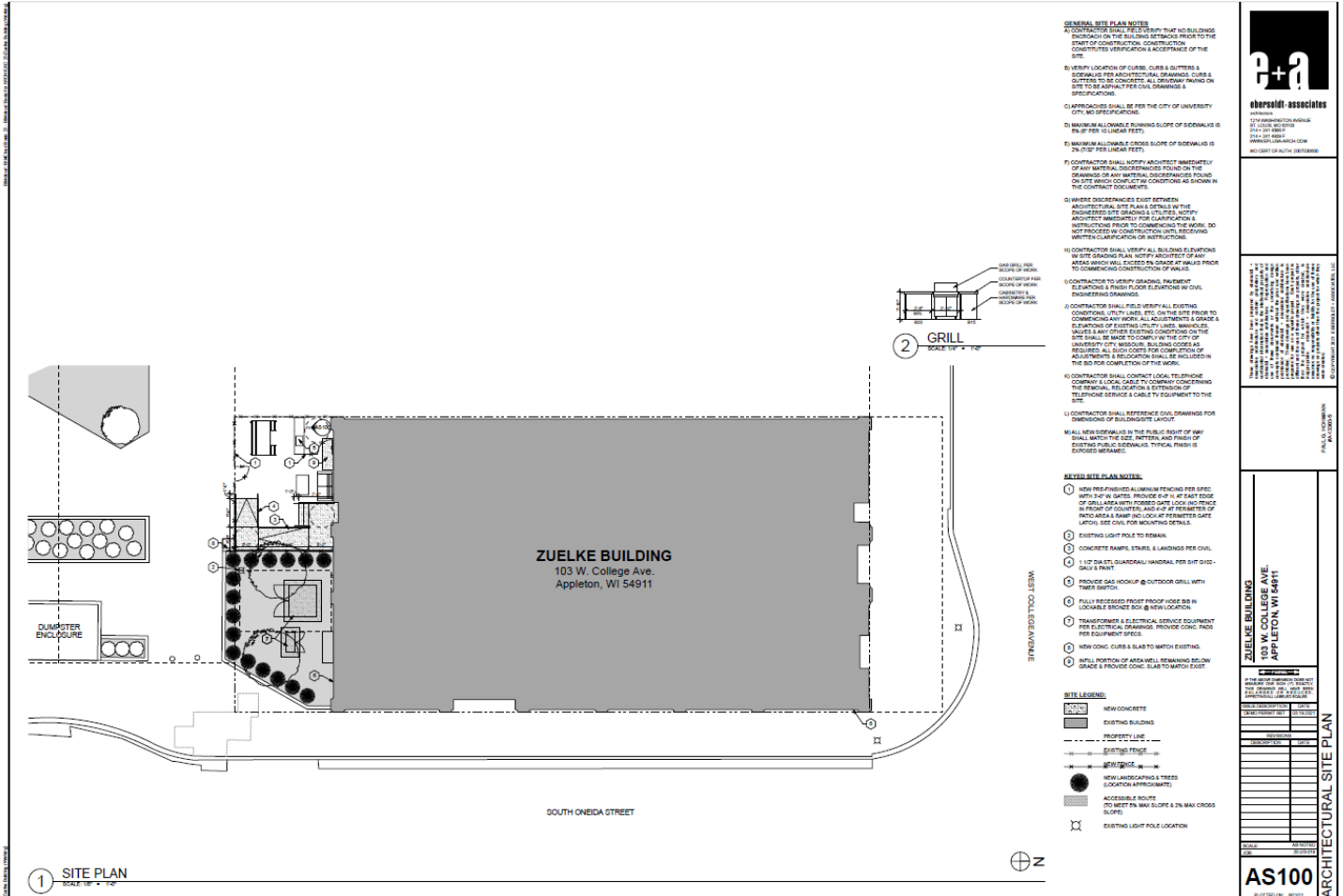


EXHIBIT C

Rendering of Proposed Fencing to be used in Leased Space

