

EXHIBIT A TO RESOLUTION NO. 7, SERIES OF 2020

REVISED POLICY

May 26, 2020

**FOR PRIVATE USE OF TOWN RIGHTS-OF-WAY
WITHIN THE TOWN OF CARBONDALE BY LOCAL BUSINESSES
FOR OUTDOOR DINING OR RETAIL USES,
AND FOR THE EXECUTION OF REVOCABLE LICENSE AGREEMENTS
AUTHORIZING SUCH USES**

General Policy. The Town of Carbondale may allow outdoor, curbside dining or retail use of public rights-of-way within the Town of Carbondale from May 1st through October 15th of each year (or until such later date after October 15 as the Public Works Director may determine to commence preparation of streets for winter operations). Any applicant to use Town rights-of-way for these purposes must pay an application fee set by Town Staff, conform to this Policy, and execute a Revocable License Agreement that has been previously approved by the Town Attorney and the Board of Trustees (sample *attached*), subject to annual review.

Standards:

1. All outdoor dining or retail areas must be fully accessible to the physically handicapped.
2. The outdoor dining or retail area must be visually cohesive and well integrated with the rest of the Town's right-of-ways.
3. In order to promote safety in outdoor dining in or retail use of the Town right-of-way, all outdoor dining and retail areas must at all times include a passageway and emergency exit in the sidewalk corridor. To the extent the Town requires semi-permanent barriers around the perimeter of any outdoor dining area or retail area, such barriers must be able to withstand inclement outdoor weather and a prescribed amount of lineal force per square foot.
4. The applicant must provide required indemnifications and meet all insurance requirements as prescribed by the Town.
5. In addition to executing a revocable license agreement, all applicants for outdoor dining uses must procure any other required permits, licensing, or approvals from the State of Colorado and the Town in order to lawfully serve food and alcohol.
6. All applicants must establish plans for inclement weather that comply with all applicable public health orders, requirements and policies of the Town, Garfield County Public Health, and/or the Colorado Department of Public Health and Environment.

SAMPLE REVOCABLE LICENSE AGREEMENT

(REVISED MAY 26, 2020)

1. **THIS REVOCABLE LICENSE AGREEMENT** (hereinafter "Agreement") is made and entered into this ___ day of _____, 20__, by and between the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (hereinafter "Town") and _____ [legal name of business], a _____ [type of entity; e.g., "a Colorado limited liability company"] (hereinafter "Licensee").

2. **WHEREAS**, Licensee desires to obtain a revocable and non-exclusive license from the Town to use and occupy a portion of the _____ [insert street name] right-of-way for _____ [outdoor food and beverage service or retail use]; and

3. **WHEREAS**, the Town is willing to grant Licensee a revocable license for such purpose, upon the terms and conditions of this Agreement.

4. **NOW, THEREFORE**, the Town and Licensee agree as follows:

1. **Licensed Premises.** The Town hereby grants to Licensee a revocable and non-exclusive license to occupy and use, subject to all of the terms and conditions of this Agreement, the following described premises (the "Licensed Premises"): that portion of the _____ [insert name of street] right-of-way and sidewalk that is located adjacent to _____ [insert name and street address of business establishment], as more particularly described and depicted in Exhibit "A", attached to this Agreement and incorporated into this Agreement by reference.

2. **Term; Payment.** The license herein granted shall be effective upon the date of Town execution of this Agreement and shall continue until _____, 20__ unless this Agreement is sooner terminated as provided herein. Licensee shall pay for the license granted herein a non-refundable license fee of \$ _____, which fee shall be paid by Licensee within 15 days of receipt of a Town invoice for same.

3. **Purpose and Conduct of Use.** The Licensed Premises may be occupied and used by Licensee during the term of this Agreement for either ___ [check if applicable] (1) constructing, installing, operating, maintaining and repairing a temporary patio and/or Town-approved or provided barriers to separate an outdoor dining area for food and beverage service from other public street uses, or ___ [check if applicable] (2) for outdoor retail uses that similarly establish protective barriers from other street uses. In its use and occupancy of the Licensed Premises, Licensee shall strictly comply with the following standards and requirements:

- a. Outdoor dining service shall commence no earlier than ___ a.m. and end no later than ___ p.m. Outdoor retail uses shall commence no earlier than ___ a.m. and end no later than ___ p.m. The Town may also establish additional restrictions such that portions of the Licensed Premises may continue to be utilized for public street uses during certain days/times (e.g. the Town may determine to keep more public parking or driving areas available within the right-of-way from Sunday to

Thursday, and to allow more public right-of-way area to be utilized for private outdoor dining or retail uses on Fridays and Saturdays). The portions of the Licensed Premises that the Town reserves the right to periodically resume public use of are described as follows _____ and depicted on Exhibit A.

- b. Alcohol service within all Licensed Premises for outdoor dining shall be limited to retail sales of alcohol beverages by the drink. No alcohol tastings or private parties with alcohol service shall be permitted. Alcohol service requires and is subject to all other applicable State of Colorado and Town permits and/or licenses. Licensee acknowledges no assurance of any such approval or amendment to any existing approval has been made or relied upon.
- c. No chairs, tables, sales racks or any other Licensee improvements, equipment or facilities shall be placed within the sidewalk corridor depicted on Exhibit "A," which corridor shall remain open at all times for pedestrian passage.
- d. No amplified sound, signs, banners, utility connections, or hazardous materials shall be permitted or installed on the Licensed Premises.
- e. Licensee shall at its sole expense promptly remove from the Licensed Premises and any adjacent areas all trash generated by its operation of the patio facilities.
- f. Licensee shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the Licensed Premises.

4. Improvements. Licensee shall have the right to install on the Licensed Premises, or on portions of the Licensed Premises, improvements consisting of decking, fencing, tables, chairs, barriers and other necessary facilities, as specifically described and depicted in Exhibit "B," collectively, the "Improvements." Licensee shall be responsible at its sole expense for the construction, installation, operation, maintenance, repair and removal of the Improvements. All Improvements installed by the Licensee shall be completed in accordance with plans and specifications approved in advance by the Town. Any changes shall require additional advance approval by the Town. All work shall be completed in compliance with all codes, ordinances, rules and regulations of the Town. Except for the Improvements specifically authorized by the Town on Exhibit "B", Licensee shall not place, build, expand, or add to any structures or other items on the Licensed Premises.

5. General Use and Care of Licensed Premises. Licensee shall take such actions as are necessary to maintain the Improvements and the Licensed Premises in good and safe condition at all times. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the Town in Licensee's use and occupancy of the Licensed Premises.

6. No Estate in Licensed Premises. Licensee agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the

Licensed Premises, or any other interest in real property included in the Licensed Premises, by virtue of this Agreement or by virtue of Licensee's occupancy or use of the Licensed Premises.

7. Termination. The license granted by this Agreement may be suspended or terminated by the Town at any time for any reason. Licensee's consent shall not be required to suspend or terminate the license. To the extent reasonably practicable, and unless termination is due to an immediate issue of public safety, health and welfare, the Town shall provide written notice at least 45 days in advance of the termination date.

8. Compliance. If Licensee fails to comply with its obligations under this Agreement, the Town may, at its sole option, terminate the license or take such measures as it determines necessary to bring the Licensed Premises into compliance with the terms of the Agreement. The cost of termination or compliance measures shall be paid by Licensee.

9. Acknowledgment of General Condition. Licensee acknowledges that its use and occupancy hereunder is of the Licensed Premises in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the Town shall have no obligation to repair, replace or improve any portion of the Licensed Premises in order to make the Licensed Premises suitable for Licensee's intended uses.

10. Acknowledgment and Acceptance of Specific Matters. Licensee specifically acknowledges that the Licensed Premises may not currently meet standards under federal, state or local law for Licensee's intended use, including but not limited to accessibility standards under the Americans with Disabilities Act and Uniform Building Code and adopted and in force in the Town. Compliance with such standards, if required for Licensee's use, shall be at the sole cost and expense of Licensee. If Licensee determines that compliance with such standards for Licensee's use is not feasible or economical, then Licensee may terminate this Agreement and the parties shall be released from any further obligations hereunder.

11. Taxes. The Licensed Premises are presently exempt from any real property taxation. In the event the County Assessor determines that the Licensed Premises are subject to the lien of general property taxes due to Licensee's use or occupancy, Licensee shall be responsible for the payment of taxes, and hold harmless and indemnify the Town from any obligations related to the same.

12. Liens. Licensee shall also be solely responsible for, promptly pay, and hold harmless and indemnify the Town from and against any claims, for all services, labor or materials furnished to the Licensed Premises at the instance of Licensee. The Town may also discharge any liens or claims arising from the same and recover all costs and expenses from Licensee.

13. Personal Property. The Town shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Licensed Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee. However, during any periods that portions of the Licensed Premises remain available for full public street use during certain days/times pursuant to sub-section 3(a), above, and provided that the Licensee

removes all private Improvements from such portions of the Licensed Premises during such public use periods, this section 13 shall not apply.

14. Right of Entry.

- a. Notwithstanding any other provisions of this Agreement to the contrary, the Town shall at all times have the right to enter the Licensed Premises to inspect, improve, maintain, alter, or utilize the Licensed Premises or an adjacent premises.
- b. In the case of an emergency, including but not limited to street repairs, water main breaks, and other utility problems, no notice shall be required, and the Town may suspend or terminate the license and utilize the Licensed Premises as long as necessary, in the Town's sole discretion, to adequately respond to such emergency. If such entry requires disturbance of any items placed upon the Licensed Premises under this Agreement, the Town shall not be required to repair or replace any such disturbance.
- c. In the case of non-emergency situations, including but not limited to Town special events, the shall provide one week notice of any temporary suspension of the license.
- d. The Town may also periodically resume public use of designated portions of the Licensed Premises pursuant to sub-section 3(a), above.

15. Indemnity and Release. Licensee shall be solely responsible for any damages suffered by the Town or others as a result of Licensee's use and occupancy of the Licensed Premises. Licensee agrees to indemnify and hold harmless the Town, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses arising out of, resulting from, or in any way connected with Licensee's use and occupancy of the Licensed Premises, the conduct of Licensee's operations or activities on the Licensed Premises, liens or other claims made, asserted or recorded against the Licensed Premises as a result of Licensee's use or occupancy thereof, or the rights and obligations of Licensee under this Agreement, including but not limited to any attorneys' fees, costs, or expert witness fees incurred by the Town in defense of any claim. Licensee hereby further expressly, releases and discharges the Town, its elected and appointed officers, agents, employees and insurers, from any and all liabilities for any loss, injury, death or damages or any person or property that may be sustained by reason of the use or occupancy of the Licensed Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the Town's officers or employees.

16. Insurance. Licensee shall at its expense obtain, carry and maintain at all times, and shall require each contractor or subcontractor of Licensee performing work on the Licensed Premises to obtain, carry and maintain, a policy of comprehensive general liability insurance insuring the Town and Licensee against any liability arising out of or in connection with Licensee's use, occupancy or maintenance of the Licensed Premises or the condition thereof. Such insurance shall be at all times in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence. If Licensee serves beer or liquor on the Licensed Premises, Licensee shall also at its expense obtain, carry and maintain at all times

host and general liquor liability insurance in the same amount. Such policies shall include coverage for liquor liability and such other endorsements and coverage as the Town may reasonably require. The Town, its elected and appointed officers, agents and employees shall be named as additional insureds on such policies. The policies required above shall be primary insurance, and any insurance carried by the Town shall be excess and not contributory insurance. Such policies shall contain a severability of interests provision. Licensee shall be solely responsible for any deductible losses under each of the policies required above. A certificate of insurance shall be completed by Licensee's insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by the Town prior to commencement of Licensee's occupancy of the Licensed Premises. As between the parties hereto, the limits of such insurance shall not limit the liability of Licensee. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the Town may immediately terminate this Agreement.

17. No Waiver of Immunity or Impairment of Other Obligations. The Town does not waive or intend to waive by any provision of this Agreement the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time to time amended, or otherwise available to the Town, and its officers and employees.

18. Restoration of Licensed Premises. At the termination of this Agreement by lapse of time or otherwise, Licensee shall deliver up the Licensed Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At the time of such termination, Licensee at its sole expense shall remove from the Licensed Premises all Improvements and other items placed on the Licensed Premises. If any such Improvements or items are not removed at the termination of this Agreement, the Town may remove them at Licensee's sole expense, and Licensee shall reimburse the Town for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a Town invoice for the same.

19. Notices. Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by facsimile transmission or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

TOWN:

Town of Carbondale
c/o Town Manager
511 Colorado Avenue
Carbondale, CO 81601

LICENSEE:

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

20. Existing Rights. Licensee understands that the license granted hereunder is granted subject to prior agreements and subject to all easements and other interests of record applicable to the Licensed Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such agreements or easements or other interests.

21. No Waiver. Waiver by the Town of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

22. Successors & Assigns. This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the Town, which approval shall be at the Town's sole option and discretion. The sale or transfer of Licensee's business shall result in automatic termination of this Agreement.

23. Entire Agreement; Authority. This Agreement is the entire agreement between the Town and Licensee and may be amended only by written instrument subsequently executed by the Town and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

24. Survival. All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive termination of this Agreement.

25. No Third Party Beneficiaries. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

TOWN OF CARBONDALE, a Colorado home rule
municipal corporation

By: _____
Title: Town Manager

ATTEST:

Town Clerk

LICENSEE: _____

By: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF COLORADO)

) ss

COUNTY OF GARFIELD)

The above and foregoing signature of _____, as
_____ of _____, was subscribed and sworn to before
me this ____ day of _____, 20__.

Witness my hand and official seal.

My commission expires on: _____

Notary Public

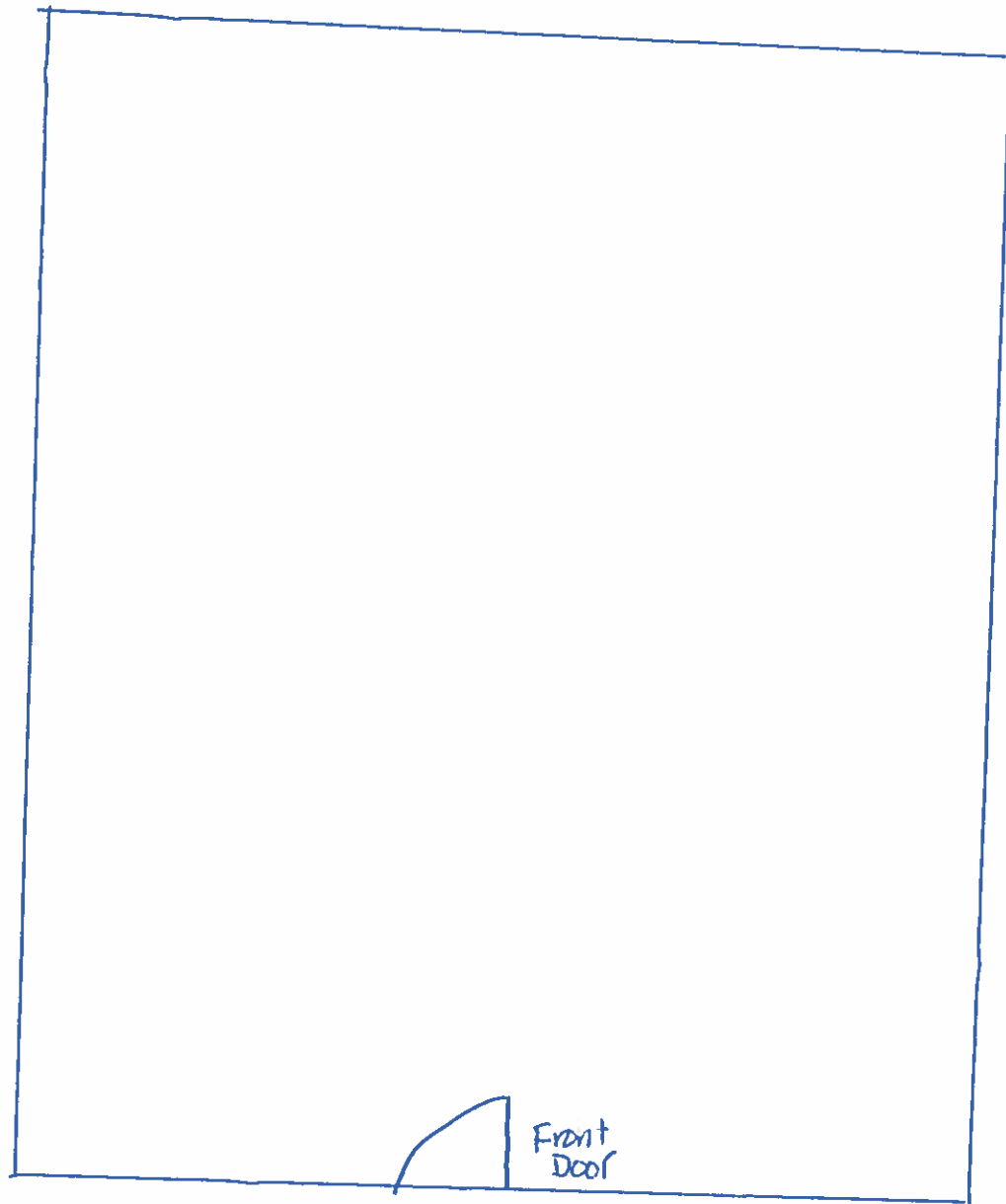
**EXHIBIT A
OF
SAMPLE REVOCABLE LICENSE AGREEMENT**

Description and Depiction of Licensed Premises

Sample

Carbondale Cafe
Exhibit A

20'



12'

Before Modification

**EXHIBIT B
OF
SAMPLE REVOCABLE LICENSE AGREEMENT**

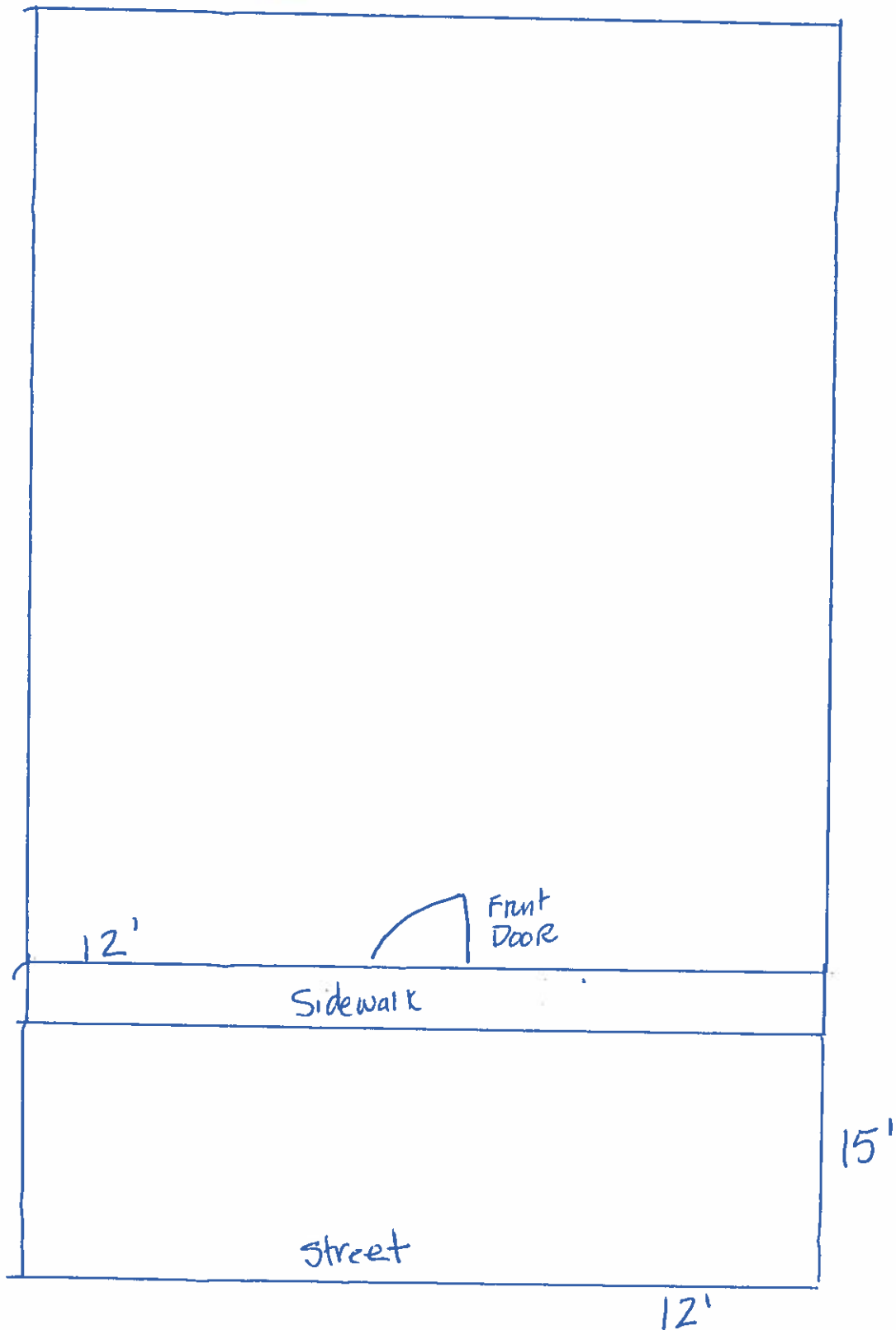
Detailed description of Improvements

14690284_1

Sample

Carbondale Cafe - Exhibit B

20'



After Modification