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 Attorneys for ERIK'S DELICAFÉ, INC.; GEORGE OW, JR., DAVID L. OW, AND TERRY L.
 11 OW, AS INDIVIDUALS, AND AS TRUSTEES OF THE GRANDCHILDREN'S TRUST;
 KING'S PLAZA SHOPPING CENTER, A CALIFORNIA PARTNERSHIP
 12

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**
 15

16 CHRISTINA ADAMS,

17 Plaintiff,

18 vs.

19 ERIK'S DELICAFÉ, INC.; GEORGE OW,
 JR., DAVID L. OW, AND TERRY L. OW,
 20 AS INDIVIDUALS, AND AS TRUSTEES
 OF THE GRANDCHILDREN'S TRUST;
 21 KING'S PLAZA SHOPPING CENTER, A
 CALIFORNIA PARTNERSHIP; AND DOES
 22 1-10, INCLUSIVE,

23 Defendants.

CASE NO. C08-03796 RS

**CONSENT DECREE AND ~~PROPOSED~~
ORDER**

24
25 **CONSENT DECREE AND ORDER**

26 1. Plaintiff CHRISTINA ADAMS ("Plaintiff") filed a Complaint in this action on
 27 August 8, 2008, to obtain recovery of damages for her alleged discriminatory experiences, denial
 28 of access, denial of civil rights, and to enforce provisions of the Americans with Disabilities Act

C08-03796 RS

CONSENT DECREE AND ORDER

1 of 1990 ("ADA"), 42 U.S.C. §§12101 et seq., and California civil rights laws against Defendants
2 ERIK'S DELICAFÉ, INC.; GEORGE OW, JR., DAVID L. OW, and TERRY L. OW, as
3 individuals and as trustees of THE GRANDCHILDREN'S TRUST; and KING'S PLAZA
4 SHOPPING CENTER, A CALIFORNIA PARTNERSHIP ("Defendants"), relating to the
5 condition of the public accommodations at Erik's DeliCafé, located at 1601 41st Avenue,
6 Capitola, California. Plaintiff has alleged that Defendants violated Title III of the ADA and §§51,
7 52, 54, 54.1, 54.3 and 55 of the California Civil Code, and §§19955 et seq. of the California
8 Health and Safety Code, by failing to provide full and equal access to the facilities at Erik's
9 DeliCafé.

10 2. Defendants deny the allegations in the Complaint and by entering into this Consent
11 Decree and Order do not admit liability to any of the allegations in Plaintiff's Complaint filed in
12 this action. The parties hereby enter into this Consent Decree and Order for the purpose of
13 resolving this lawsuit without the need for protracted litigation, and without the admission of any
14 liability.

15 JURISDICTION

16 3. The parties to this Consent Decree and Order agree that the Court has jurisdiction
17 of this matter pursuant to 28 USC §1331 for alleged violations of the ADA, 42 U.S.C. §§12101 et
18 seq. and pursuant to supplemental jurisdiction for alleged violations of California Health & Safety
19 Code §§19955 et seq., including §19959; Title 24 California Code of Regulations; and California
20 Civil Code §§51, 52, 54, 54.1, 54.3 and 55.

21 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
22 parties to this Consent Decree and Order agree to entry of this Order to resolve all claims raised in
23 the Complaint filed with this Court. Accordingly, they agree to the entry of this Order without
24 trial or further adjudication of any issues of fact or law concerning Plaintiff's claims.

25 WHEREFORE, the parties to this Consent Decree and Order hereby agree and stipulate to
26 the Court's entry of this Consent Decree and Order, which provides as follows:

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SETTLEMENT OF INJUNCTIVE RELIEF

5. This Order shall be a full, complete, and final disposition and settlement of Plaintiff's claims against Defendants for injunctive relief that have arisen out of the subject Complaint. The parties agree that there has been no admission or finding of liability or violation of the ADA and/or California civil rights laws, and this Consent Decree and Order should not be construed as such.

6. Remedial Measures: The corrective work agreed upon by the parties is as set forth in Attachment A.

7. The parties agree and stipulate that the corrective work will be performed in compliance with the standards and specifications for disabled access as set forth in the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are specifically agreed to in this Consent Decree and Order.

8. Timing of Injunctive Relief: Defendants will complete all work by July 1, 2009. In the event that unforeseen difficulties prevent Defendants from completing any of the agreed upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in writing within 15 days of discovering the delay. Defendants or their counsel will notify Plaintiff's counsel when the corrective work is completed, and, in any case, will provide a status report no later than 120 days from the entry of this Consent Decree and Order.

DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS

9. The parties have reached an agreement regarding Plaintiff's claims for damages, attorney fees, litigation expenses and costs. Defendants will collectively pay the amount of \$15,000.00 within 15 days of entry of this order by the Court in full satisfaction of Plaintiff's claims for all damages, including personal injury, civil rights, and all other forms of damages. Defendants will collectively pay the amount of \$27,239 in full satisfaction of Plaintiff's claims for attorney fees, litigation expenses, and costs within 30 days of entry of this order by the Court. Payments shall be made by check payable to "Paul L. Rein in Trust for Christina Adams."

ENTIRE CONSENT ORDER

10. This Consent Decree and Order, and Attachment A to this Consent Decree and

1 Order, which is incorporated herein by reference as if fully set forth in this document, constitute
2 the entire agreement between the signing parties, and no other statement, promise, or agreement,
3 either written or oral, made by any of the parties or agents of any of the parties, that is not
4 contained in this written Consent Decree and Order, shall be enforceable regarding the matters
5 described herein.

6 **CONSENT DECREE AND ORDER**

7 **BINDING ON PARTIES AND SUCCESSORS IN INTEREST**

8 11. This Consent Decree and Order shall be binding on Plaintiff CHRISTINA ADAMS
9 and Defendants ERIK'S DELICAFÉ, INC.; GEORGE OW, JR., DAVID L. OW, and TERRY L.
10 OW, as individuals and as trustees of THE GRANDCHILDREN'S TRUST, and any successors in
11 interest. The parties have a duty to so notify all such successors in interest of the existence and
12 terms of this Consent Decree and Order during the period of the Court's jurisdiction of this
13 Consent Decree and Order.

14 **MUTUAL RELEASE AND WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542**

15 12. Each of the parties to this Consent Decree and Order understands and agrees that
16 there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order,
17 any or all of them will incur, suffer, or experience some further loss or damage with respect to the
18 lawsuit which are unknown or unanticipated at the time this Consent Decree and Order is signed
19 by the parties. Except for all obligations required in this Consent Decree and Order, the parties
20 intend that this Consent Decree and Order apply to all such further loss with respect to the lawsuit,
21 except those caused by the parties subsequent to the execution of this Consent Decree and Order.
22 Therefore, except for all obligations required in this Consent Decree and Order, this Consent
23 Decree and Order shall apply to and cover any and all claims, demands, actions and causes of
24 action by the parties to this Consent Decree and Order with respect to the lawsuit, whether the
25 same are known, unknown or hereafter discovered or ascertained, and the provisions of Section
26 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
2 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
3 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
4 WITH THE DEBTOR.

5 13. Except for all obligations required in this Consent Decree and Order, each of the
6 parties to this Consent Decree and Order, on behalf of their respective agents, representatives,
7 predecessors, successors, heirs, partners and assigns, releases and forever discharges each other
8 party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners,
9 parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and
10 representatives of each other party, from all claims, demands, actions, and causes of action of
11 whatever kind or nature, presently known or unknown, arising out of or in any way connected
12 with the lawsuit.

13 **TERM OF THE CONSENT DECREE AND ORDER**

14 14. This Consent Decree and Order shall be in full force and effect for a period of 12
15 months after the date of entry of this Consent Decree and Order, or until the injunctive relief
16 contemplated by this Order is completed, whichever occurs later. The Court shall retain
17 jurisdiction of this action to enforce provisions of this Consent Decree and Order for 12 months
18 after the date of this Consent Decree and Order, or until the injunctive relief contemplated by this
19 Consent Decree and Order is completed, whichever occurs later.

20 **SEVERABILITY**

21 15. If any term of this Consent Decree and Order is determined by any court to be
22 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full
23 force and effect.

24 **SIGNATORIES BIND PARTIES**

25 16. Signatories on the behalf of the parties represent that they are authorized to bind the
26 parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
27 counterparts, and a facsimile signature shall have the same force and effect as an original
28 signature.

1 NOW THEREFORE, IT IS HEREBY STIPULATED as follows:

2 DATED: 4-11-6, 2009

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By: Christina Adams.
Plaintiff CHRISTINA ADAMS

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6 DATED: _____, 2009

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By: _____
Defendant GEORGE OW, JR.,
as an individual and as a trustee of THE
GRANDCHILDREN'S TRUST

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DATED: _____, 2009

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By: _____
Defendant DAVID L. OW,
as an individual and as a trustee of THE
GRANDCHILDREN'S TRUST

14

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DATED: _____, 2009

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By: _____
Defendant TERRY L. OW,
as an individual and as a trustee of THE
GRANDCHILDREN'S TRUST

19

20

DATED: _____, 2009

21

22

By: _____
ERIK JOHNSON, President, of
Defendant ERIK'S DELICAFÉ, INC.

23

24 **SIGNATURES CONTINUED ON NEXT PAGE**

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1 NOW THEREFORE, IT IS HEREBY STIPULATED as follows:

2 DATED: _____, 2009

3

4


By: _____
Plaintiff CHRISTINA ADAMS

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6 DATED: 4-13, 2009

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By: 
Defendant GEORGE OW, JR.
as an individual and as a trustee of THE
GRANDCHILDREN'S TRUST

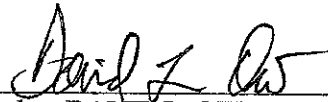
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DATED: 4-6 -, 2009

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By: 
Defendant DAVID L. OW,
as an individual and as a trustee of THE
GRANDCHILDREN'S TRUST

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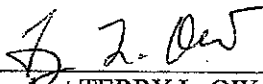
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DATED: 4-7 -, 2009

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By: 
Defendant TERRY L. OW,
as an individual and as a trustee of THE
GRANDCHILDREN'S TRUST

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DATED: 4/10, 2009

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By: 
ERIK JOHNSON, President, of
Defendant ERIK'S DELICAFÉ, INC.

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24 SIGNATURES CONTINUED ON NEXT PAGE

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1 APPROVED AS TO FORM:

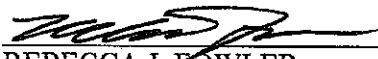
2 DATED: 4/14, 2009

LAW OFFICES OF PAUL L. REIN
LAW OFFICE OF JULIE OSTIL

3
4
5 By: 
6 PAUL L. REIN
Attorneys for Plaintiff CHRISTINA ADAMS

7 DATED: 4-14, 2009

BASKIN & GRANT, LLP

8
9 By: 
10 REBECCA J. FOWLER
11 Attorneys for Defendants ERIK'S DELICAFE,
12 INC.; GEORGE OW, JR., DAVID L. OW, AND
13 TERRY L. OW, as individuals and as trustees of
14 THE GRANDCHILDREN'S TRUST

ORDER

15 Pursuant to stipulation, and for good cause shown,

16 **IT IS SO ORDERED:**

17 DATED: April 20, 2009

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19 
20 RICHARD SEEBORG
21 United States Magistrate Judge

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ATTACHMENT A

ATTACHMENT A

1. Path of travel, with handrails, to Erik's DeliCafé entrance from the public way. This shall be comprised of an accessible route of travel, connecting the public sidewalk on Capitola Road to the raised walkway that runs in front of 1601-W 41st Avenue, Capitola, CA, 95010. Beginning at a point on Capitola Road, approximately 50 feet east of the existing bus stop shelter:
 - a. Construct a curb ramp that slopes a maximum 8.3%, and descends from the public sidewalk into a marked no-parking zone at the level of the existing parking lot;
 - b. From the no-parking zone, in a direction that is 90-degrees from Capitola Road, mark a 4-foot wide accessible route of travel that slopes no steeper than 5% across the parking lot. They shall stripe the borders of the crosswalk and infill with diagonal stripes 36" on-center.
 - c. Extend the marked accessible route across the parking lot to a new access aisle that serves two newly planned accessible parking spaces, contemplated under this agreement.
 - d. Insure that the new access aisle slopes no steeper than 2% in all directions, and that it provides a flush transition to the walkway that borders Erik's Delicafé.
2. Install a minimum of two accessible spaces on the level area facing the north side of See's Candies. One of these spaces shall be van accessible.
3. Install code conforming towing signs at each entrance to the parking lot. The signs shall include language to the effect that: "Unauthorized vehicles parked in designated accessible spaces not displaying distinguishing placards or license plates issued for persons with disabilities may be towed away at owner's expense. Towed vehicles may be reclaimed at or by telephoning ###-####." The phone number is to be completed with the applicable information.
4. At the entrance to 1601-W 41st Avenue, install either a power door opener, or a door closer that requires a maximum of 5-pound force to open and closes in no less than 20 seconds.
5. Install one accessible table in the exterior seating area associated with 1601-W 41st Avenue, so long as 1601-W 41st Avenue is used as a restaurant open to the public and exterior seating is provided for customers.
6. Install within 1601-W 41st Avenue three accessible seats with required clearance for wheelchairs and relocate the self-service condiments toward front of counter. These requirements only apply so long as the premises are used as a restaurant facility by Erik's DeliCafé.
7. Regarding the restroom in 1601-W 41st Avenue:

- a. Modify ramp to the restroom to achieve a slope less than 5% or install a handrail on one side of ramp.
- b. Perform either Option (i) or (ii):
 - i. Provide 12" minimum strike-side clearance on push side of door.
 - ii. Remove the requirement for such clearance by replacing the existing, automatically latching hardware with non-latching door pulls on both sides of the door and adding an accessible deadbolt.
- c. Replace lock on restroom entry door that does not require tight grasping and twisting to operate. This item will not be required if Option (ii) at 7(b)(ii) is performed.
- d. Provide adequate space per California Building Code (28" minimum) to allow side transfer to toilet.
- e. Lower towel dispenser and soap dispenser to 40" maximum.
- f. The requirements of this Paragraph 7 shall be deemed to have been met if the bathroom is reconfigured in substantial compliance with one of the two options outlined in Attachment B to the Consent Decree and Order.
- g. The requirements related to the interior restroom shall be applicable, so long as the bathroom located at 1601-W 41st Avenue is contained within a business which is open to the public.

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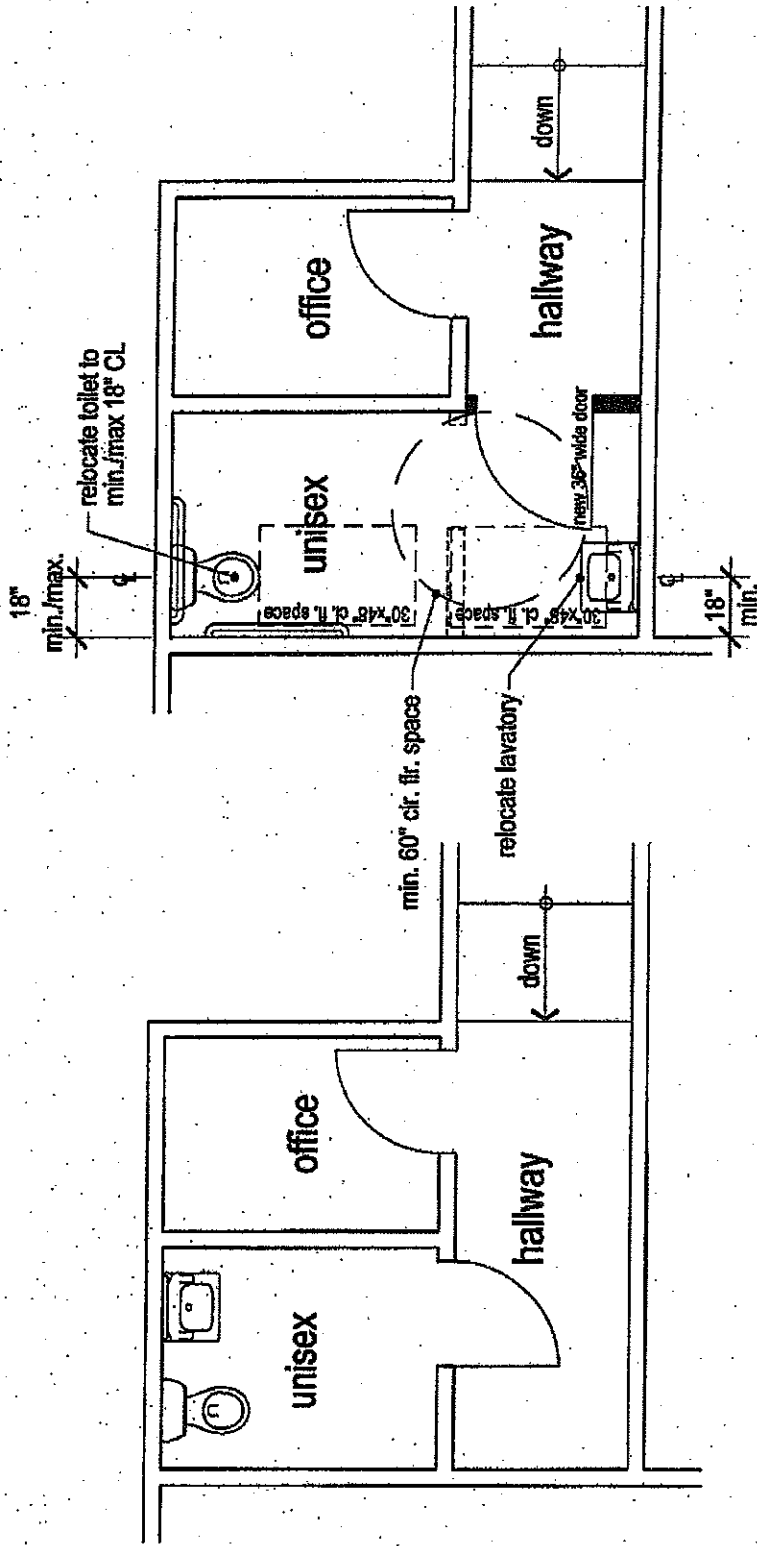
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ATTACHMENT B



existing plan

proposed plan

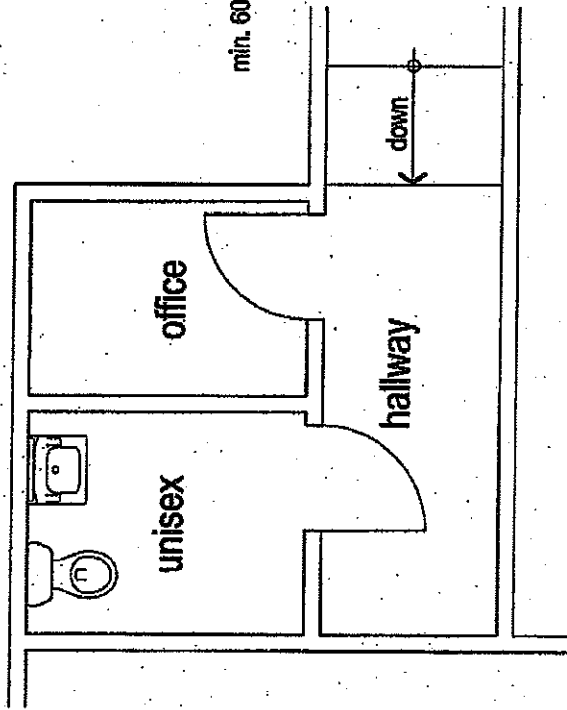
LEGEND

- new wall
- existing wall
- remove wall

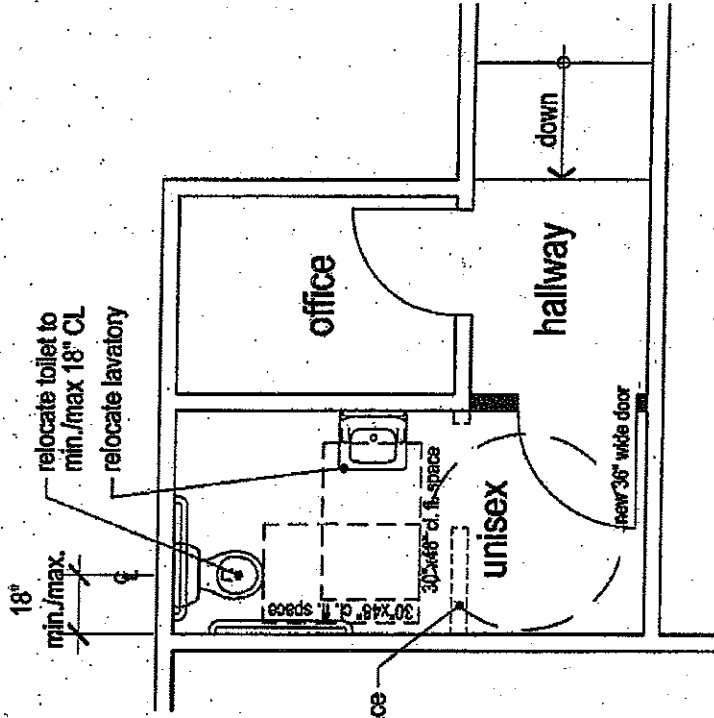
Proposed Conceptual Accessible Restroom Plan (not for construction) Option #2

Erik's DeliCafe

not to scale



existing plan



proposed plan

LEGEND

- new wall
- existing wall
- remove wall

not to scale

Proposed Conceptual Accessible Restroom Plan (not for construction) Option #1

Erik's DeliCafe