

Committee Members:

Frank Menn

Ryan Vickers

Brenda Wagner

Harry Zimmerman

Bill Poletti

**AGENDA
COMMUNITY COMMITTEE
Wednesday, May 17, 2023 - 7:00 p.m.
Council Chambers
10025 Bunkum Road
Fairview Heights City Hall
Or**

**Video Conference/Tele Conference
Phone Number: 1-786-535-3211 Access Code: 808 004 661**

Please join my meeting from your computer, tablet or smartphone.

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<https://global.gotomeeting.com/install/808004661>

Roll Call

Public Participation

Approval of Minutes – *April 19, 2023*

***Parks & Recreation
Alderman Frank Menn, Chairman***

1. ***Director's Report***
2. ***Contract Approval for Pleasant Ridge Park Boundary and Topographic Survey: This agreement will provide a boundary and topographic survey for the 95-acre park. The boundary and topographic survey are required to begin the design plan for Pleasant Ridge Park.***

***Development
Alderman Brenda Wagner, Chairman***

1. ***Director's Report***

***Planning
Alderman Harry Zimmerman, Chairman***

1. ***Director's Report***
2. ***PC-02-23***
3. ***PC-03-23***
4. ***PC-04-23***
5. ***Contract for Engineering for St. Ellen Bike Trail (CIP)***

6. *Transfer of property in accordance with agreement (Four Points convention center)*
7. *“Motion to direct staff to solicit bids for the Market Place Streetscape Landscape & Lighting project”*

COMMUNITY COMMITTEE MINUTES
Wednesday, April 19, 2023, 7:00 p.m.
City Council Chambers at City Hall
10025 Bunkum Road
Fairview Heights, IL 62208
Also, Audio & Video Teleconference

Committee Members in attendance – *Frank Menn, Anthony LeFlore, Brenda Wagner, Denise Williams*

Committee Members absent – *Harry Zimmerman, Mayor Mark Kupsky, Ex-officio*

Other Aldermen and Elected Officials in attendance – *Bill Poletti, Barb Brumfield, Ryan Vickers, Pat Peck*

Others in attendance – *Parks and Recreation Director Angela Beaston, Land Use & Development Director Dallas Alley - video/teleconference, Economic Development Director Paul Ellis, Public Works Director John Harty, City Attorney Andrew Hoerner, IT Manager Chris Elliot*

Recorder – *Cheryl Kleb*

Public Participation – None

Approval of March 22, 2023 minutes

Motion and second to approve said minutes were made by Committee Members Denise Williams/Anthony LeFlore. Roll call vote to approve the March 22, 2023 minutes: Aldermen Frank Menn, Anthony LeFlore, Brenda Wagner, and Denise Williams voted yes. Harry Zimmerman was absent. The motion carried by voice vote with 4 yeas.

Parks & Recreation Committee

Alderman Denise Williams, Chairman

Parks and Recreation Director's Report Director Beaston presented the Director's Report to Committee for review. A brief discussion was held on the Goose Management Program at Everett Moody Park. There were no questions.

Development Committee

Alderman Brenda Wagner, Chairman

Economic Development Director's Report

Director Ellis presented the Director's Report to Committee for review. Alderman Brenda Wagner congratulated Director Ellis on his upcoming retirement. There were no questions.

Land Use & Development Committee

Alderman Anthony LeFlore, Acting Chairman

Land Use & Development Director's Report

Director Alley presented the Director's Report to Committee for review. There were no questions.

Market Place Streetscape Conveyances - GFS, Right-Of-Way

Director Harty briefed Committee on the purchase of right-of-way for the Market Place Streetscape Conveyances.

Motion and second to forward to City Council for approval, the purchase of right-of-way GFS Marketplace Realty Five, LLC for \$66,750.00 for the construction of Market Place Streetscape, Phase III, was made by Aldermen Denise Williams/Frank Menn. Roll call vote: Aldermen Frank Menn, Anthony LeFlore, Brenda Wagner, and Denise Williams voted yes. Harry Zimmerman was absent. The motion carried by voice vote with 4 yeas.

Market Place Streetscape Conveyances- GFS, T.C.E.

Director Harty briefed Committee on the purchase of a temporary construction easement from GFS for the Market Place Streetscape Conveyances.

Motion and second to forward to City Council for approval, the purchase of temporary construction easement from GFS Marketplace Realty Five, LLC for \$17,300.00 for the construction of Market Place Streetscape, Phase III, was made by Aldermen Denise Williams/Frank Menn. Roll call vote: Aldermen Frank Menn, Anthony LeFlore, Brenda Wagner, and Denise Williams voted yes. Harry Zimmerman was absent. The motion carried by voice vote with 4 yeas.

Market Place Streetscape Conveyances - Novus Crestwood Sam's, LLC

Director Harty briefed Committee on the purchase of a temporary construction easement from Novus Crestwood Sam's LLC for the Market Place Streetscape Conveyances.

Motion and second to forward to City Council for approval, the purchase of temporary easement from Novus Crestwood Sam's, LLC for \$15,000.00 for the construction of Market Place Streetscape, Phase III, was made by Aldermen Frank Menn/Denise Williams. Roll call vote: Aldermen Frank Menn, Anthony LeFlore, Brenda Wagner, and Denise Williams voted yes. Harry Zimmerman was absent. The motion carried by voice vote with 4 yeas.

Market Place Streetscape Conveyances - Fairview City Centre, LLC

Director Harty briefed Committee on the purchase of a temporary construction easement from Fairview City Centre, LLC for the Market Place Streetscape Conveyances.

Motion and second to forward to City Council for approval, the purchase of temporary construction easement from Select Fairview City Centre, LLC for \$13,400.00 for the construction of Market Place Streetscape, Phase III, was made by Aldermen Frank Menn/Denise Williams. Roll call vote: Aldermen Frank Menn, Anthony LeFlore, Brenda Wagner, and Denise Williams voted yes. Harry Zimmerman was absent. The motion carried by voice vote with 4 yeas.

Market Place Streetscape Conveyances - Criterion Market Place Commons, LLC

Director Harty briefed Committee on the purchase of a temporary construction easement from Criterion Market Place for the Market Place Streetscape Conveyances.

Motion and second to forward to City Council for approval, the purchase of temporary construction easement from Criterion Market Place Commons, LLC for \$35,800.00 for the construction of Market Place Streetscape, Phase III, was made by Aldermen Frank Menn/Denise Williams. Roll call vote: Aldermen Frank Menn, Anthony LeFlore, Brenda Wagner, and Denise Williams voted yes. Harry Zimmerman was absent. The motion carried by voice vote with 4 yeas.

Community Committee adjourned at 7:30 p.m.

Submitted By:

Recorder

DRAFT

Parks and Recreation Director's Report

Director's Report

The following is a synopsis of the Parks and Recreation Department:

RECREATION AND THE REC:

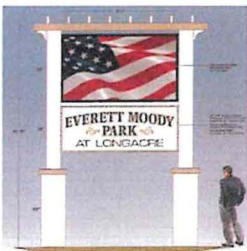
AT THE REC: The REC just celebrated a week of fun filled events for the 4th Year Celebration. The celebration included FREE fitness classes, games, merchandise giveaways, FREE day passes and personal training sessions. It was a great addition to the many wonderful programs and services that are offered by The REC.

Parks Department:

Horticulture/Laborer Position: The new position is now being advertised with the 148 bargaining unit until May 17th. If there are no qualified candidates within the bargaining unit, the job will then be posted to public. Staff has been in contact with the Gateway Professional Horticulturist Association in hopes that the job will be posted within the Association after May 18th.



Electrical Gates at Moody Park: UPDATE: The City was awarded a grant from St. Clair County for the installation of electrical gates at Moody Park. These gates will help secure the park after hours eliminating loitering and nuisance issues that are experienced during the peak season. Installation of the gates have been completed and the electricians are scheduled to complete the project by the end of April. **This project has been slightly delayed due to scheduling conflicts between the two contractors. Belleville Fence and Pyramid Electric are working together to complete the final electrical loops in the pavement. These loops will allow the gates to automatically open if vehicles are left in the park after the gates have closed. Contractors are expecting the project to be complete in the next couple of weeks.**



COMING SOON! New Signage at Moody Park: UPDATE: The new digital sign is scheduled to be installed at the beginning of May. This sign will allow us the opportunity to advertise more information and up-coming events on a regular basis. **The digital sign was shipped on May 11th and we are anticipating the project to be complete by the end of May.**

Agenda Review:

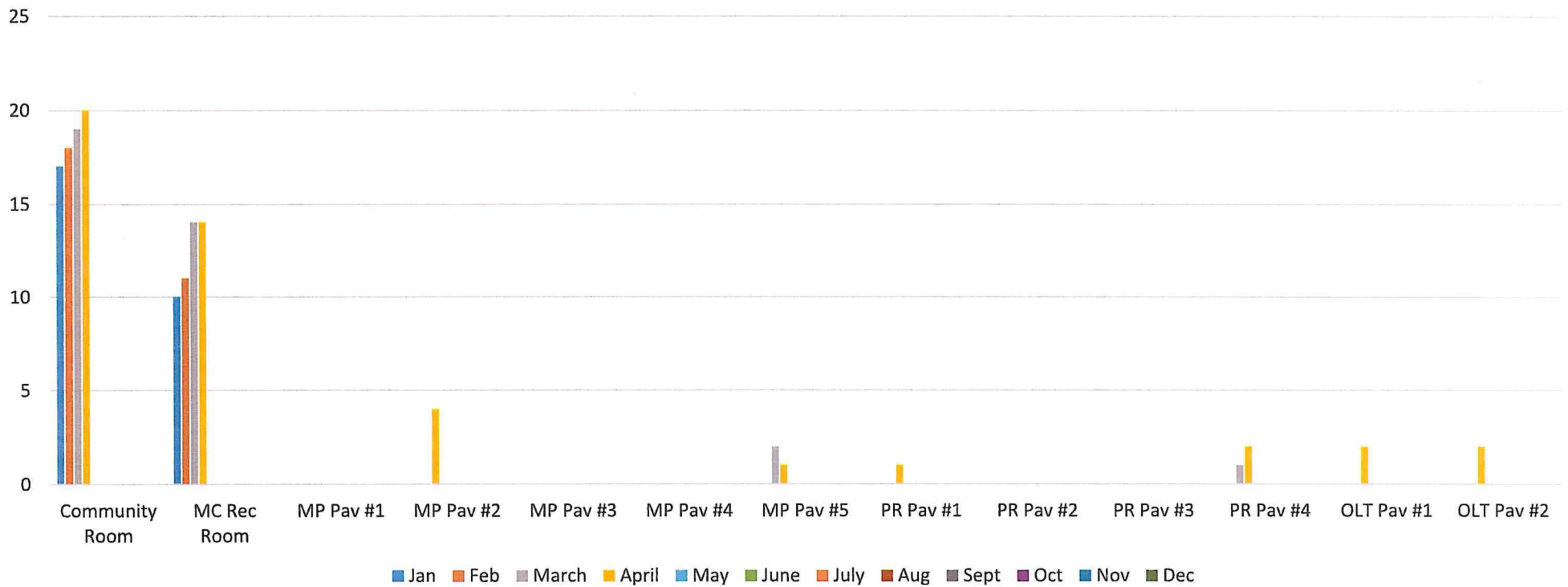
Agenda Item #1 – Director's Report: General discussion regarding items in report.





Agenda Item #2 – Contract Approval for Pleasant Ridge Park Boundary and Topographic Survey: This agreement will provide a boundary and topographic survey for the 95 acre park. The boundary and topographic survey are required to begin the design plan for Pleasant Ridge Park.

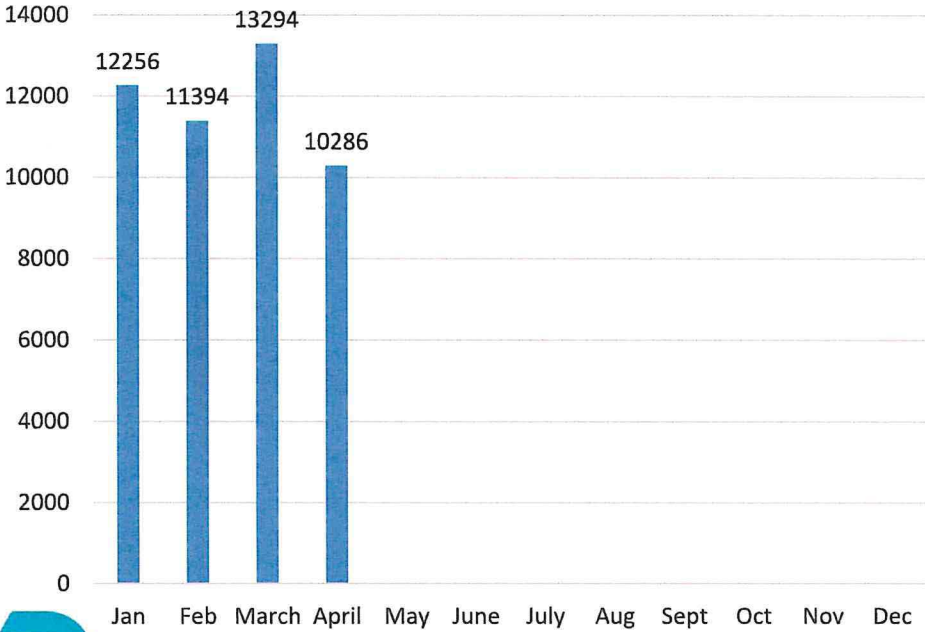
Facility Reservations



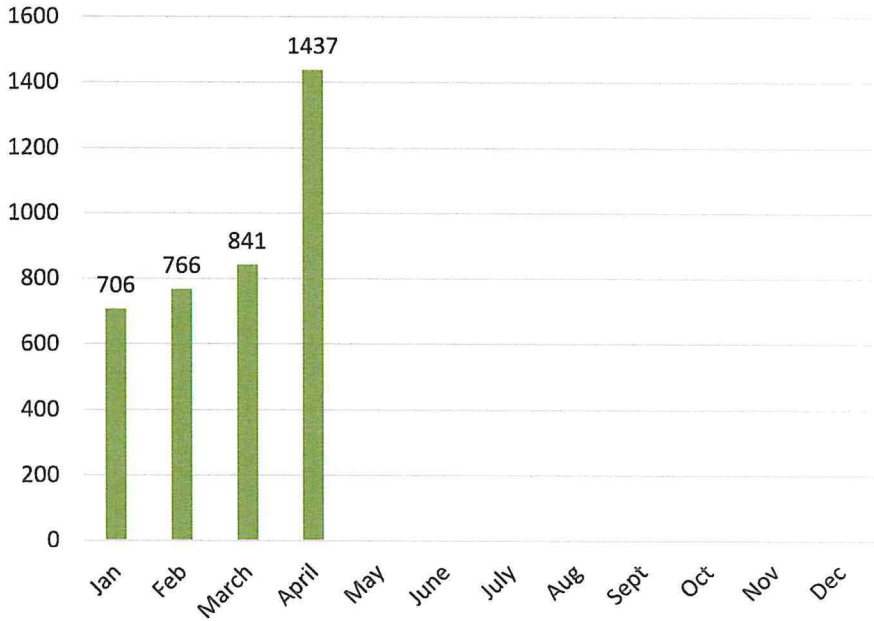
2023 Reservations for facilities.

The REC Membership Update

Membership Check-Ins Per Month

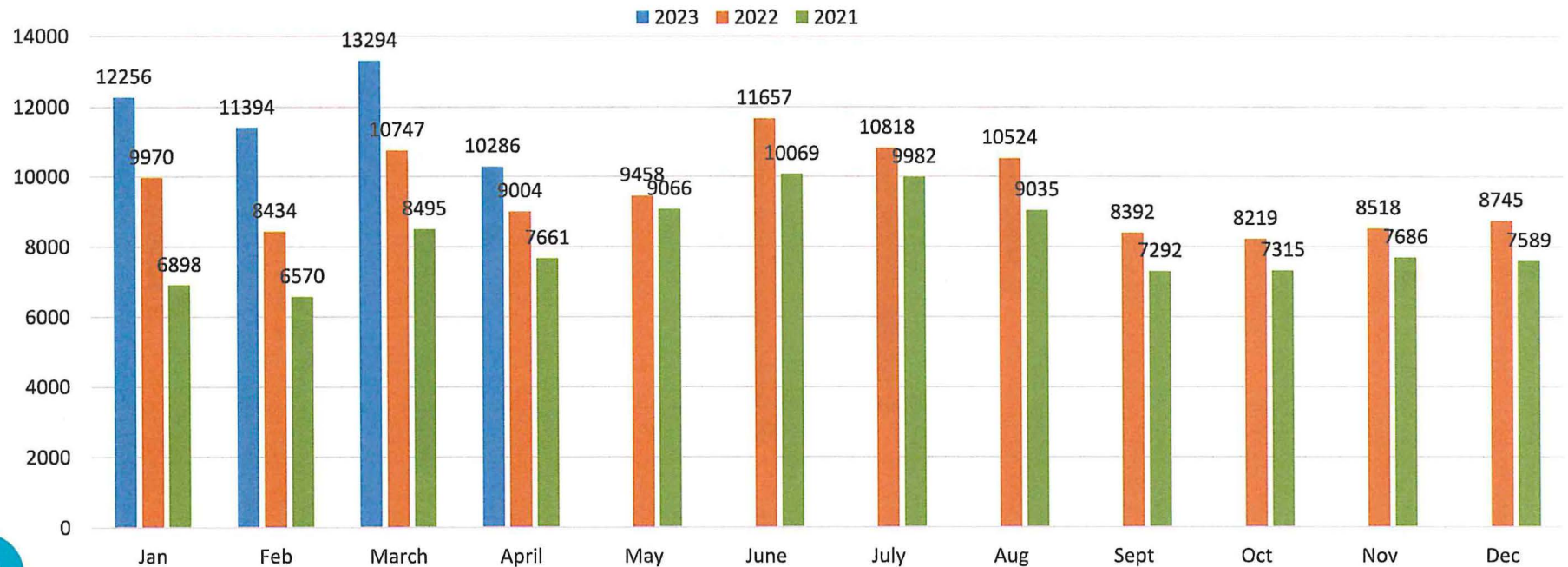


Guest Passes Per Month



The REC Membership Update Yearly Comparison

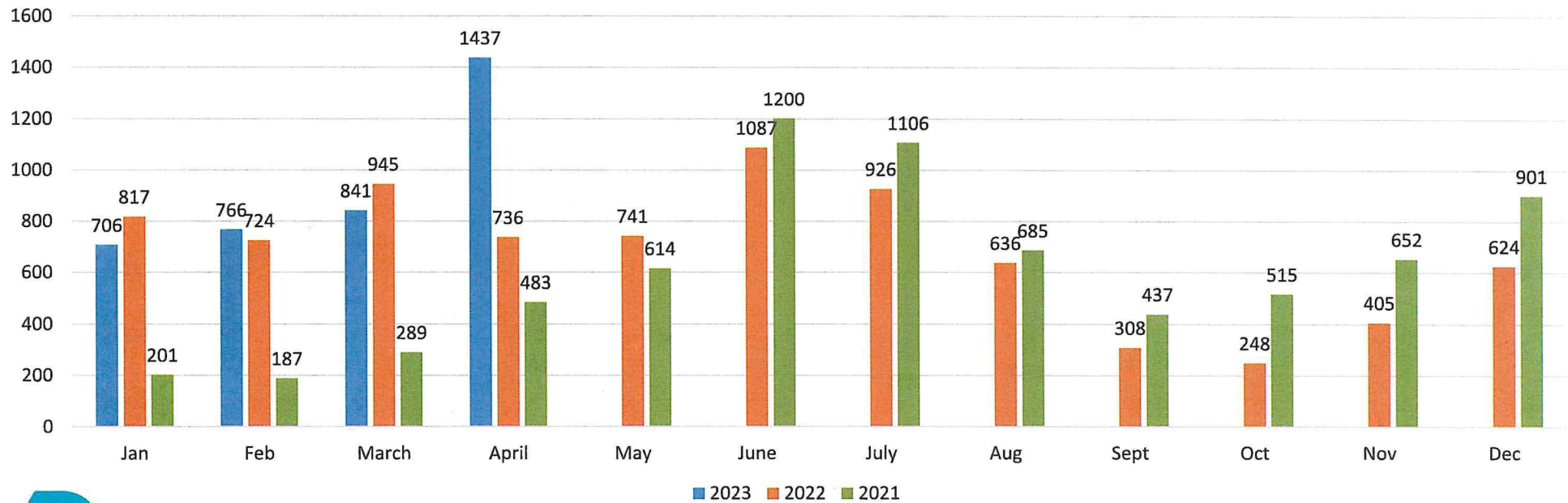
Membership Check-Ins Per Month



April 2023 Report

The REC Membership Update Yearly Comparison

Guest Passes Per Month



April 2023 Report



THOUVENOT, WADE & MOERCHEN, INC.

4940 Old Collinsville Road

Swansea, IL 62226

618.624.4488

WWW.TWM-INC.COM

CONTRACT AGREEMENT FOR GEOSPATIAL SERVICES

This agreement is a legal and binding contract between two parties, **Thouvenot, Wade & Moerchen, Inc. (TWM Inc.)**, and you, the **City of Fairview Heights** as the **CLIENT**. When you see the words "us", "we", and "our" they mean **TWM Inc.** When you see the words "you" or "your", they refer to you as the **CLIENT**. Please read this Contract carefully. It confirms our understanding of the work you desire and the terms and conditions under which we will do that work.

This contract describes the specific professional services that you have requested we provide on the proposed project, **Pleasant Ridge Park Boundary and Topographic Survey**, which we will refer to as simply the "project". As you have described it to us, this project involves the survey of approximately 95± acres located in Fairview Heights, Illinois.

I. Scope of Services - Basic Services

We agree to provide the following specific professional services. For the purposes of this contract and project, you agree with us that these services, as listed, will be considered our **Basic Scope of Services**.

A. Boundary Survey

1. We will perform a boundary survey of the 95 ± acre project site located in Fairview Heights Illinois.
 - You will provide us with a Certificate of Title for the property.
 - The boundary to be conducted based on records obtained from the County Recorder of Deeds Office.
 - We will identify and locate visible corners of the boundary and measure distance and angles thereof and set new iron rod markers where old corners cannot be identified.
2. We will provide a legal description of the property referenced to nearby local monuments.

B. Topographic Survey

1. We will prepare a topographic survey of the 95 ± acre project site.

We will make a J.U.L.I.E. **Design Stage Request**, which is intended for architects, engineers and other customers who are in the design stage of a project. At this stage, J.U.L.I.E. is then supposed to fax a list of utility engineering contacts for their members with utilities in the general area. We must then contact each facility owner's office to notify them of our request. J.U.L.I.E. member companies typically respond in one of three ways within fourteen days of receiving our request. Those are:

- Perform an actual field location at the proposed site, or
- Provide drawings indicating the location of the member's buried facilities for the proposed site, or
- Request that we send drawings of the proposed project / site to the member, then mark their existing facilities on the provided prints or provide copies of the utility's record information and return these documents to us.

If the J.U.L.I.E. member actually field locates their utilities, we will then survey those surface markings in order to indicate the approximate horizontal location of those utilities underground and will add to our topographic survey the horizontal location of those utilities as marked.

If the J.U.L.I.E. member simply provides drawings, or marks up drawings provided by us, we will indicate the approximate horizontal location of those utilities, scaled to the best of our ability, on our topographic survey.

We will also add to our topographic survey:

- other utilities that are above ground and visible on site, and other utilities, utility easements, or subsurface conditions using any information provided to us by you, as well as those that are a matter of record in a title report provided by you.



Based upon the information above, by entering into this agreement with us, you agree and understand that:

- The J.U.L.I.E. Design Stage Request process may delay our starting or completing field services and may add cost to the services we provide; and
- J.U.L.I.E. member companies are not required by law to honor a Design Stage Request; and
- Some J.U.L.I.E. members may charge a fee for any of the Design Stage services mentioned above, the cost of which you agree to pay; and
- We are not responsible if existing utilities must be relocated or plan documents must be modified as a result of conflicts between utilities and our plans because J.U.L.I.E. or a J.U.L.I.E. member company, refused to locate their utilities, located the utilities in error, provide incomplete or inaccurate drawings, or did not provide sufficient information in response to our request.

It is your responsibility to provide us with any and all information that you have regarding subsurface utilities or other subsurface conditions that may not be identified through the Design Stage Request, but that might affect the design of the project.

3. If a Private Utility Locate actually field locates the utilities, we will then survey those surface markings in order to indicate the approximate horizontal location of those utilities underground and will add to our topographic survey the horizontal location of those utilities as marked.

Based upon the information above, by entering into this agreement with us, you agree and understand that the Private Utility Locate is included in the cost of the services we provide.

It is your responsibility to provide us with any and all information that you have regarding subsurface utilities or other subsurface conditions that may not be identified through the Design Stage Request, but that might affect the design of the project.

- **Boundary/Topographic Survey Scope (Provided by Client)**
 - Property site survey to include property lines and easements.
 - Establish horizontal and vertical control
 - Arrange for the various utilities to locate and mark their facilities at the project site.Topographic survey to include:
 - Drainage (structures, pipes, flow lines)
 - Site features
 - Topography
 - Pavement markings
 - Signage
 - Trees/landscaping (Trees 6" and larger, except in wooded areas which should be defined by a tree line).
 - Pavement type
 - Utilities as located per Design Request
 - Existing buildings
 - A vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersection(s).
 - Gross land area
 - 1-foot contours based upon above said Vertical Datum including a DTM surface. Spot elevations (including top and bottom of curbs). Spot elevations not required in wooded areas.
 - Exterior dimensions of all buildings at ground level and gross floor area of all buildings based on exterior dimensions.
 - Substantial features observed in the process of conducting the survey such as parking lots, billboards, signs, swimming pools, landscaped areas, etc.
 - Striping, number and type (e.g. handicapped, motorcycle, regular, etc.) of parking spaces in parking areas, lots and structures.
 - Indication of access to a public way on land such as curb cuts and driveways
 - Location of utilities (representative examples of which are listed below) existing on or servicing the surveyed property as determined by:
 - o Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources, including J.U.L.I.E (with reference as to the source of



information).

o Railroad tracks, spurs and sidings;

o Manholes, catch basins, valve vaults and other surface indications of subterranean uses;

o Wires and cables (including their function, if readily identifiable) crossing the surveyed property, and all poles on or within ten feet of the surveyed property.

Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the dimensions of all encroaching utility pole cross members or overhangs;

o Utility company installation on the surveyed property? There is a separate cost shown for private utility locate.

o Note-source information from plans and markings will be combined with observed evidence of utilities to develop a view of those underground utilities.

However, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. Where additional or more detailed information is required, the client is advised that excavation may be necessary (and is not included in the original scope of services, therefore will be priced in addition to the amount below).

• Governmental Agency survey-related requirements as specified by the client. (The survey is to be performed in accordance with The Current Illinois Minimum Standard Requirements for Boundary and Topographic Surveys.)

• Observed evidence of current earth moving work, building construction or building additions.

• Proposed changes in street right of way lines, if information is available from the controlling jurisdiction. Observed evidence of recent street or sidewalk construction repairs. (Provided by the city)

• Observed evidence of site use as a solid waste dump, sump or sanitary landfill.

• Finished Floor elevation of all existing buildings, and at each exterior doorway.

• Basement floor elevation of all buildings. City to be on site to grant access to basements.

• Local Stormwater Agency structure numbers clearly depicted at each structure (provided by the city or as marked on the structure at the time of the survey).

Deliverables to include:

• AutoCAD file(s) with Civil 3D surface

• Hard copy (printed) of Plat of Survey, Sealed by surveyor

II. Proposed Schedule

Unless you tell us otherwise, we will begin to schedule work on the project as soon as you accept this contract and return it to us with your signature.

III. Fees - Basic Scope of Services

We agree to provide the **Basic Scope of Services** listed above in exchange for your payment of the following fees:



- A. **Boundary Survey** For a Lump Sum Fee of \$12,000
- B. **Topographic Survey Services** For a Lump Sum Fee of \$34,000
- C. **Private Utility Locate** For a Lump Sum Fee of \$4,000
- D. **Reimbursable Costs** - You also agree to reimburse us for outside services, such as subconsultant services, delivery services, express mail, or the printing and production of plan documents, at our actual cost plus 15%. If the project requires commercial travel, overnight stays, and associated expenses you agree to reimburse us at our actual cost.

IV. Billing and Payment

We will bill you, at the address listed for you in this contract, for the **Basic Scope of Services** we have provided as well as for any additional services you requested in the following manner:

- A. For the **Boundary Survey** and the **Topographic Survey**, we will bill you when the project is complete.
- B. For any fees for **Reimbursable Costs**, we will bill you for actual costs plus any markup. when the project is complete.

Should submission of any survey or plat above be unduly delayed by you, by any regulatory review or agency, or by any other event that is not within our control, we reserve the right to bill you for the percentage of services provided to date, and to then bill for the balance of any lump sum fee upon eventual submission.

For all of the above, payment is due when you receive our respective invoice. You agree to both process and pay our invoices promptly. While we are not obligated to do so, if after thirty (30) days, any portion of any invoice remains unpaid, you agree that we have the right to charge you interest, at a rate of up to 1½ percent per month for any balance unpaid.

Except as provided by law or allowed in writing by us, our invoices are not subject to unilateral set-offs, back charges or discounts by you. You must pay the full amount of the invoice. Unless otherwise specified within this Contract, you cannot retain any money due to us, or otherwise reduce the amount of any invoice we send to you.

If you have a question about or disagree with any portion of any invoice, you should notify us in writing within fifteen (15) calendar days of receipt of the invoice, specifically describing the reason for your dispute. We will then work towards resolving any issue with you within thirty (30) calendar days. Any portion of the invoice that is not in dispute remains due and should be paid by you by the due date.

V. Information We Need From You

We need you to provide to us with some specific information so we can perform our Scope of Services. That includes:

- A. A current title insurance commitment or title insurance policy pertaining to the subject property so that we can determine the legal description of the property and the easements, covenants, conditions and restrictions encumbering it.
- B. Any additional information available to you or to your consultants that might be applicable, necessary or helpful to us in performing our Scope of Services.

VI. Additional Services

You may request that we provide any additional services not included in the **Basic Scope of Services** above, and do so either on your verbal authority at our current hourly rates, or by requesting a written addendum to this contract. We may also request authorization for additional services via a written contract addendum. Any such addendum will also identify adjustments to the project schedule and fees in order to include the requested additional services.

As a firm, we may offer other services that you have not requested we provide. If you have not requested those services from us, they are not included within the **Basic Scope of Services** listed above, and therefore also not included in any lump sum fee listed above. If the nature of the project requires or warrants additional services but you choose not to secure those services from us, you still retain the responsibility to



secure those services from another appropriate and qualified consultant.

VII. Excluded Services

As a firm, we specifically list services that we do not provide and therefore exclude from this Contract and from our **Basic Scope of Services**. Specifically Excluded Services are:

- A. Performing any geo-technical or soils testing.
- B. Performing any environmental assessment.
- C. Investigating or performing any archeological (Phase I, II, or III) study that might be required by the Illinois Historic Preservation Agency.
- D. Designing any irrigation system.
- E. Designing any site lighting plan.
- F. Performing any water main testing including domestic or fire flow, pressure, or bacteriological testing.
- G. Verifying that the work of any other design professional is in compliance with any local, state or federal ordinance, code, law or other regulation as they apply to this project

Although these services will not be provided by us, they may still be necessary for the project. It is your responsibility to make that determination and to procure any such services from an appropriate and qualified consultant. When you do, you agree to provide their findings or plans to us so that we can evaluate their potential impact upon the services we have agreed to provide.

We are not responsible for addressing within our design or fees, any environmental conditions you might encounter or find, including but not limited to garbage, dumping sites, petroleum tanks or radioactive waste, nor are we responsible for non-compliance with any permit requirements associated with the above, or for any other requirement not included within our Scope of Services.

VIII. Insurance

We agree to obtain insurance from a reputable insurance company and to maintain that insurance throughout the term of this contract. At your request, we will provide you with a certificate of insurance on the standard ACCORD form issued by an authorized representative of our insurer, as evidence that we have obtained insurance coverage applicable to this Agreement.

As to Professional Liability /Errors & Omissions Insurance, we agree to maintain that insurance throughout the design and construction of this project, and for a period of one year following substantial completion, provided that coverage is reasonably available at commercially affordable premiums. For the purposes of this Contract, "reasonably affordable" and "commercially available" mean that more than half the design professionals practicing in the State of Illinois and in this specific discipline are able to obtain such coverage.

You may request that we secure and provide project specific insurance with higher limits than we would normally carry, and for a specific length of time, provided that you also agree to pay for the higher cost of the premiums for that insurance.

IX. Right of Entry

Throughout the term of this Contract, you agree to obtain and grant to us and our personnel, reasonable and necessary nonexclusive access to the project site and property so that we can fulfill our **Basic Scope of Services** listed above. While on the project site and property, our personnel will make every reasonable effort to protect that property and to comply with applicable safety procedures, including those specifically communicated to us by you. You understand that the use of surveying or other equipment may unavoidably cause some minor damage to trees, shrubs, crops or sod, the correction of which is not a part of this Contract.

X. Qualifications

We employ Licensed / Registered Land Surveyors, Licensed Professional Engineers, and Licensed Structural Engineers. When appropriate, our work will be performed by or under the direct supervision of one of those professionals and when applicable, documents submitted to you or on your behalf will bear the seal of the respective Surveyor or Engineer and certification to that effect.



XI. Specific Terms and Conditions

This contract is based upon the following specific terms and conditions:

- A. You are responsible for paying any and all permit and/or application fees, utility connection fees, any fees required by statute or ordinance, any fees associated with a Municipality's adopted subdivision or development code, and any fees for activities including but not limited to, legal recordation, Illinois EPA sewer or water permits, NPDES NOI permits, wetlands delineation studies, archeological studies, municipal review, or title report. If you should require us to pay any such fees anyway and then request reimbursement from you, you agree to reimburse us for the cost of the actual fees plus a fifteen (15) per cent surcharge in order to offset costs for processing, the cost of money, and professional liability insurance.
- B. When we submit any drawings, plans, specifications, plats, descriptions, or other documents to you for your review you agree to review them within thirty (30) days to determine if they are generally acceptable and if so, to note your approval, which shall not be unduly withheld.
- C. As part of your review, should you detect what you believe to be errors, necessary changes, or failure on our part to complete our responsibilities under the Basic Scope of Services above, you are to immediately notify us. We will then correct any errors you note or complete any remaining tasks, as necessary.
- D. You agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should you fail or refuse to comply with any local, state or federal ordinance, code, law or other regulation as they apply to this project, or should your other consultants, subconsultants, contractors or subcontractors, fail or refuse to comply with any local, state or federal ordinance, code, law or other regulation as they apply to this project, and an injury, claim or loss arises or is alleged as a result.
- E. You agree to name us as an additional insured and have your insurance carrier issue to us a certificate of insurance and an endorsement to your policy using ISO Form CG 20 07 07 04, or an equivalent acceptable to us. This endorsement protects us from liability in respect to any bodily injury, property damage, or personal and advertising injury, caused in whole or in part by your acts or omissions or the acts and omissions of others acting on your behalf.

XII. Attachments

The following are attached to this contract and are hereby incorporated into the contract and made part of it by this reference.

ATTACHMENT I: GENERAL TERMS AND CONDITIONS

XIII. Acceptance


This Contract and any and all attachments comprise the final and complete agreement between you and us. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Contract. Execution of this Contract signifies that each party has read the document thoroughly, has had any questions explained by independent counsel and is satisfied. Amendments to this Contract shall not be binding unless made in writing and signed by both you and by us.

IN WITNESS WHEREOF, the parties hereto have made and executed this **CONTRACT** on this 10th day of May, 2023.

THE CITY OF FAIRVIEW HEIGHTS

Angie Beaston
Parks & Recreation Director
Date: _____

THOUVENOT, WADE & MOERCHEN, INC.



Josh Hoffmann
Geospatial Department Manager
5/9/2023

Address for giving notices:

Address for giving notices:



Fairview Heights, IL
Tel. No. 618-489-2040
E-Mail: beaston@cofh.org

4940 Old Collinsville Road
Swansea, IL 62226
Tel. No. 618.624.4488
E-Mail: jhoffmann@twm-inc.com

ATTACHMENT I - GENERAL TERMS AND CONDITIONS

GOVERNING LAW. Because of our corporate headquarters location, this Contract, its validity, interpretation and performance, will be governed by the laws of the State of Illinois.

TITLES. The paragraph titles used in this Contract, and in any attachments, are only for general reference and are not part of the Contract.

SEVERABILITY AND SURVIVAL. If any provision of this Contract is later held unenforceable for any reason it will be deemed void, but all remaining provisions will continue in full force and effect. Notwithstanding completion or termination of this Contract for any reason, your rights, duties and obligations, as well as ours, will survive the completion of the work or the termination of the Contract, and remain in full force and effect until they are fulfilled.

ASSIGNMENT. Neither you or we can transfer, sublet or assign any rights under, or interest in, this Contract without the prior written consent of the other, with one exception: if you fail to pay for the services we provide, we retain the right to assign this Contract to a collection agency or attorney in order to collect the past due account.

TERMINATION. Either you or we may terminate this Contract at any time with or without cause upon giving the other party thirty (30) calendar day's prior written notice. Regardless of who initiates termination, within thirty (30) calendar days of such termination you agree to pay us for all services rendered and all costs incurred up to the date of termination.

SUSPENSION OF SERVICES. If you suspended work on the project for more than thirty (30) calendar days in the aggregate, we are obviously entitled to compensation for the services we performed and the charges we incurred prior to that suspension. Upon resumption, we may also be entitled to a fair adjustment to our fees to help offset the resulting demobilization and remobilization costs, as well as a fair adjustment in the project schedule because of the suspension. You also agree that we are entitled to be paid, and that you will pay us, for all the services we provide to you, even if you subsequently decide not to proceed with your project.

DEFINITIONS. Sometimes people assume the meaning of specific words commonly used in the construction industry, but that presumed meaning may not be accurate. For the purposes of this Contract, and unless otherwise specified in this Contract, you agree with us that the following words, and their derivative words or phrases, will have the meaning indicated below:

- **CERTIFY, CERTIFICATION:** A statement of our opinion, to the best of our professional knowledge, information and belief, and based on observed conditions. Any such statement of opinion does not constitute a warranty, either express or implied. You understand that our certification does not relieve you or your contractors of any responsibility or obligation they may have by industry custom or under any contract.
- **COST ESTIMATE:** An opinion of probable construction cost made by us. If we provide a cost estimate or an opinion of probable construction cost, you recognized that we have no control over the actual costs of labor, equipment or materials, or over the methods used by contractors and bidders to determine prices or bidding. Any opinion of probable construction costs is therefore based upon our reasonable professional judgment, experience, and the data available to us at the time, and does not constitute a warranty, express or implied, that any bids or the negotiated price of the work will not vary from your budget or from that opinion of probable cost previously prepared by us.
- **DAY, DAYS:** The term "day" means a calendar day of 24 hours. The term "days" means consecutive calendar days of 24 hours each, or any fraction of a single day.
- **INSPECT, INSPECTION:** The visual observation of the Work involved in this project as it is being constructed, in order to permit us, as experienced and qualified professionals, to determine that the Work, when completed by the Contractor, generally conforms to the plans, specifications and Contract Documents. If we make any such inspections for you, you agree that we are not guaranteeing, and that we have no authority or control over, the Contractor's performance or his failure to perform the Work in accordance with the Contract Documents. We also have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor, or for the Contractor's safety precautions and programs, or for the failure of the Contractor to comply with any laws or regulations relating to performing or furnishing the Work under their Contract.
- **RECORD DOCUMENTS:** Drawings prepared by us upon the completion of construction. These are typically based upon marked-up drawings and other data furnished to us by the Contractor and / or others showing significant changes in the Work made during construction. Some refer to these as "as-builts", but because Record Documents are prepared using unverified information provided by others, we don't make any warranty as to the absolute accuracy or completeness of the drawings we prepare, and in fact because of the source of the information we use, the drawings we provide to you may not accurately reflect what was built.
- When you see the words "us", "we", and "our" they generally refer to **TWM INC.**, as well as our officers, partners, employees, agents and subconsultants.
- When you see the words "you" or "your", they generally refer to you as the **CLIENT**, as well as your officers, partners, employees, agents and subconsultants.

SCOPE OF SERVICES. Both you and we have agreed to a list of Basic Services that we will provide to you at an agreed upon price. Those services are listed in the Scope of Services section. Services not specifically listed in this section are excluded from the scope of our work and we therefore assume no responsibility to perform those services. If you ask us to perform additional services we will do so at our prevailing fee schedule. On some projects we are asked to provide only surveying or construction staking services, or to design only specific aspects of the project, while someone else provides those aspects of the design not provided by us. This may be the case in a "design-build" project as well, where the contractor provides some "design" services. In all such cases you agree that we have no responsibility, and accept no responsibility, for any design performed by others, or for detecting errors in their design, or for bringing any such possible errors to your attention.

TIMELINESS OF PERFORMANCE; DELAYS. We will perform our services with due and reasonable diligence consistent with sound professional practices. However, we are not responsible for delays caused by factors beyond our reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of



God, failure of any governmental or other regulatory authority to act in a timely manner, your failure to furnish timely information or approve or disapprove of our services or work product promptly, or delays caused by your faulty performance or by Contractors at any level. When such delays beyond our reasonable control occur, you agree that we are not responsible for damages, nor shall we be deemed to be in default of this Contract.

INFORMATION PROVIDED BY OTHERS. We may need you to provide to us with some specific information so we can perform our Scope of Services. Typically that at least includes a current title insurance commitment or title insurance policy pertaining to the subject property so that we can determine the legal description of the property and the easements, covenants, conditions and restrictions encumbering it. You are also obligated to provide us with any additional information available to you or to your other consultants or contractors that might be applicable, necessary or helpful to us in performing our Scope of Services. With all such information you acknowledge that we have to trust the accuracy, completeness and sufficiency of information when it is provided by you or someone else. Still, there are a number of possible reasons why the information may not be accurate, including that errors or omissions may have occurred in the information when assembled and provided by you, or you may fail to produce all the necessary or appropriate documents or information. Even so, you agree that for any information provided by you or others, we are entitled to rely upon it, and to assume that it is accurate, complete, and in compliance with applicable rules, regulations, codes and laws. You therefore also agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should you provide documents or other information for our use, and an injury, claim or loss arises or is alleged based upon errors, omissions, inaccuracies or code violations contained within the information you or someone else provides.



ATTACHMENT I - GENERAL TERMS AND CONDITIONS (CONTINUED)

UNDERGROUND UTILITIES & SUBSURFACE CONDITIONS. Our Scope of Services may require that we indicate the location of underground utilities on our survey or plans. If so, we will request that the location of those underground utilities be identified by surface markings. We do this by calling J.U.L.I.E. (State of Illinois) or DIG-RITE (State of Missouri) or any other appropriate "one-call" utility location service. You also agree to provide us with any information you might have about easements, pipelines, personal communication cables, or any subsurface conditions that might not otherwise be known or located. We then prepare our survey / plans indicating the locations of existing underground utilities, as they have been marked, or disclosed by you. However, you again recognize and understand that in order for us to provide this service, we are dependent upon information provided by others, and that the information upon which we must rely may contain errors or be incomplete for a number of reasons, including: 1) joint utility location services or their members may refuse to locate buried utilities during the design phase of a project; 2) the actual location of utilities sometimes deviates from the surface location marked by joint location services; 3) not all utilities are members of joint location services and therefore may not be notified by them, and; 4) member utilities may not respond to all requests for utility location. You should also recognize and understand that surface location markings do not identify the depth of underground utilities. You therefore agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should the markings provided by a utility location service prove inaccurate or incomplete, and property damage, injury or economic loss arises or is alleged because of a contractor's reliance on underground utility information contained in plans prepared by us. While we will indicate subsurface utilities on our plans and surveys in a manner consistent with the ordinary standard of care, unless specifically required to do so in the Scope of Services, we will not excavate, uncover or inspect actual underground utilities to indicate a more precise location, condition or capacity, or to try to determine the existence of any subsurface condition that might impact the eventual construction of the project.

ENVIRONMENTAL & HEALTH HAZARDS. Both you and we acknowledge that our scope of work does not include any services related to asbestos or hazardous or toxic materials. However, while working on the site, should we encounter any materials or conditions that we suspect could be hazardous or toxic, we will notify you of that suspicion so that you can investigate. In that event, or in the event that any other party encounters or suspects asbestos or hazardous or toxic materials at the jobsite or any areas adjacent, we may, at our option and without liability for consequential or any other damages, suspend the performance of our services on the project until you retain an appropriate specialist, consultant, or contractor to identify, abate and/or remove the hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations.

CHANGED CONDITIONS. Once this contract is in place, it is possible that conditions change, and that something occurs or is discovered that was not originally contemplated or known by us. You agree to rely on our judgment as to the continued adequacy of this Contract in such cases. Should we identify changed conditions that in our opinion necessitate renegotiation of this Contract, both we and you will promptly, and in good faith, enter into that renegotiation. If we cannot agree to new Contract terms, you and we each have the absolute right to terminate this Contract, in which case you agree to pay us for the services we have rendered through the date of termination.

STANDARD OF CARE. Services provided by us under this Contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Both you and we owe a duty of care to the public that requires both of us to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety. You will make no request of us that, in our reasonable opinion, would be contrary to our professional responsibilities to protect the public. You will take all actions and render all reports required of you in a timely manner. Should you fail or refuse to take any required actions or render any required notices to appropriate public authorities in a timely manner, you agree that we have the right to exercise our professional judgment in reporting to appropriate public officials or taking other necessary action. You agree to take no action against us or attempt to hold us liable in any way for carrying out what we reasonably believe to be our public responsibility. You also agree that in this situation, we have the right to immediately terminate this Contract and cease providing services, without the notice we would normally provide under the Termination or Suspension of Services sections of this Contract.

In order to minimize frivolous lawsuits, you will make no claim for professional negligence against us, either directly or in a third party claim, unless you have first provided us with a written certification executed by an independent professional currently practicing in the same discipline as us and licensed in the State of Illinois. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a professional performing professional services under similar circumstances; and c) state in complete detail the basis of the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to us not less than thirty (30) calendar days prior to the institution of any claim.

JOBSITE SAFETY. Our employees will perform their work in a safe manner and in accordance with applicable rules and regulations. We are responsible for the safety of our own employees on the jobsite but will follow instructions of the General Contractor when those employees are in an area of the jobsite controlled by the General Contractor. Both you and we agree that the General Contractor is solely responsible for jobsite safety, and you agree that it is your responsibility to make that evident to your General Contractor. Neither our professional activities, nor the presence of our employees or subconsultants at a construction site, will relieve the General Contractor or any other entity of their responsibility for jobsite safety or for their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Neither we nor any of our employees has the authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. You also agree that in order to further protect all of us, you, we, and any subconsultants we employ, will be indemnified and made additional insureds under the General Contractor's general liability insurance policy, endorsed under ISO Form CG 20 10 11 85, unless a different form is proposed and accepted by us.

CONFIDENTIALITY. If any data or information furnished to us by you is marked **CONFIDENTIAL**, or if you direct us to keep confidential any data generated by us for this project, we will not disclose that data or information to any person or entity, other than our own employees, any subconsultants working for us on the project, the general contractor and subcontractors, or any appropriate or required governmental or regulatory agency. These provisions do not apply to information in whatever form that comes into the public domain, nor do they restrict us from giving notices required by law or from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction. These provisions also do not apply to information that in our opinion is necessary for us to defend ourselves from any suit or claim.

You agree that the technical methods, techniques and pricing information contained in any proposal submitted by us pertaining to this project or contained in this Contract or any Addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without our express written consent.

CONFIDENTIAL COMMUNICATIONS. In some cases, you may ask us to provide you with an opinion about the past performance, current performance, or the qualifications of other entities under contract to you, or who you are considering for contracts. We assume that if you ask us to do so, you want a candid answer. However, we may be reluctant to provide a frank report or opinion that is not favorable, if you intend to share that report or opinion with others. You therefore agree to keep any such communications confidential, and to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) arising or alleged because you failed to do so, or because we provided any such confidential opinions or reports to you or to your agents.



ATTACHMENT I - GENERAL TERMS AND CONDITIONS (CONTINUED)

OWNERSHIP OF INSTRUMENTS OF SERVICE. All reports, plans, specifications, computer files, field data, notes and other documents prepared by us are instruments of the professional services we provide. They are not products. This is an important distinction when considering the implications of "product liability" versus "professional liability". We therefore shall be deemed the owner and author of said drawings and data, and shall retain all rights to them, including all statutory and other reserved rights, the right to reuse specific design elements created by us, and the ownership of the copyright imbedded therein. If you have paid us in full for the services provided under this Contract, we will, at your request, supply you with one Mylar set of final plans for the project, and grant a limited royalty-free license for you to use those plans for the purposes of advertising, promotion, and construction, and the operation and maintenance of the Project. However, by accepting any such plans or documents you agree that use or reuse for any purpose other than the work covered under this Contract, or any modification without our written permission, is at your sole risk. You agree to indemnify and hold us harmless from all claims, damages and expenses, including attorneys' fees, to release us from all claims and liability, to waive all claims against us, and to pay to defend us, if you or anyone else acting on your behalf, uses or reuses these data for any other purpose or work.

ELECTRONIC MEDIA / FILES. Data transferred in electronic format is easily altered, even unintentionally; therefore creating the possibility that unwanted errors might be introduced into the data via the transfer process. These errors might result from incompatible software or hardware settings; from damage to the electronic media; from electrical charges; from unauthorized changes made by you or another party; or from similar events. It is generally difficult to determine when and how such errors were first introduced, and therefore who is responsible for the change. Like our paper documents, electronic data are instruments of the professional services we provide. They are not products. As such, we normally do not provide clients with drawings or other data as electronic files.

If for some reason your project does require that we provide data in electronic format, the terms of doing so should be negotiated as part of this Contract and reduced to writing herein. In that case, if you have paid us in full for the services provided under this Contract, we will supply you with a Compact Disc (CD) containing the specified electronic files in the format in which they were created, and grant you a limited License for Use of Electronic Data. This license is not intended for any purpose or project other than the project that is the subject of this Contract, and is not transferable to any other party. We will also require that you sign a **License for Use of Electronic Data / Non-Disclosure Agreement / Agreement for Release of Liability** form. By your signature on this form you agree to indemnify and hold us harmless from all claims, damages and expenses, including attorneys' fees, to release us from all claims and liability, to waive all claims against us, and to pay to defend us, if you or anyone else acting on your behalf, uses or reuses these data for any other purpose or work. We make no warranties, either express or implied, of the merchantability and fitness for any particular purpose, for any electronic files we might provide. Should you find any difference between electronic versions of any drawing or document and the printed version that is signed and sealed by us, the printed document prevails.

UNAUTHORIZED CHANGES. In the event you allow, authorize, consent to or approve of anyone else making changes to any plans, specifications or other construction documents prepared by us, and those changes are not approved in writing by us, you recognize that said changes and the results thereof are not our responsibility. You therefore agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should you, or any of your agents or representatives other than us, make unauthorized changes to drawings and data provided by us.

SUPPLANTING DESIGN PROFESSIONAL. If, for any reason, we do not complete all the services contemplated by this Contract, we cannot be certain of the accuracy, completeness or workability of any documents prepared by us, especially if they are used, changed, or completed by you or someone else. Since the accuracy of any such documents would no longer be in our control, we also can not be held responsible for assuring that accuracy. Accordingly, you agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability, or cost (including reasonable attorney's fees and defense costs) for injury or loss arising or alleged because of such use or completion, or for any unauthorized changes made by any party to any documents prepared by us. Nothing in this paragraph indemnifies us from our own negligence or breach of our obligations under this Contract.

DEFECTS IN SERVICE. Should you discover what you suspect to be a defect in our work or services, you agree to promptly report that suspicion to us as soon as you become aware of it, so that we can investigate and take measures to correct any such defect and to minimize the consequences of it. You further agree to impose a similar notification requirement on all your contractors, and that they do so with all subcontractors, at any level. The intent is to avoid the potentially higher cost of change orders by identifying and correcting any such defects as early as possible. Therefore, failure by you or your contractors or subcontractors to notify us as required in this section, will limit our cost of remedying any such defects to the sum that remedy would have cost had we been given prompt notification.

BETTERMENT. Betterment, or unjust enrichment, means that a person, who is negatively impacted because of an alleged error, recoups not only their actual losses caused by the error, but gains an advantage or profit because of it. This Contract does not allow betterment or unjust enrichment. Therefore, if due to an oversight by us, any required item or component of the project is omitted from the project construction documents, our responsibility is limited to the cost over and above what it would have cost you had the component or item been designed, specified and constructed in the first place: In other words, not the cost of the item itself, but only the premium cost to add the omitted item out of normal sequence.

CONSEQUENTIAL DAMAGES. Notwithstanding any other provision of the Contract, you or we will not be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by you or us, or by your or our employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

CERTIFICATIONS, GUARANTEES, & WARRANTIES. We will not be required to sign any documents, no matter who makes the request, which would result in our having to certify, guarantee, or warrant the existence of conditions, when we did not observe the existence of those conditions and can not otherwise determine their existence. You agree not to make the resolution of any dispute with us, or the payment of any amount due to us, in any way contingent upon our signing any such certification. In addition, we will not be required to execute any documents subsequent to the signing of this Contract that in any way might, in our sole judgment, increase our contractual or legal obligations or risks, or the availability or cost of our professional or general liability insurance.

CONTINGENCY. You and we agree that although our mutual goal may be the creation of a "perfect" set of project plans and documents, it is improbable that "perfection" can ever be attained. Because of the possibility for omissions, ambiguities or inconsistencies in the drawings and specifications, bidders might interpret the plans and specifications differently than we intended. In addition, influences beyond our control, such as increases in material prices, bidder workload, and labor costs, could all possibly impact bid prices. Therefore, project costs could be higher than you or we initially anticipate and deviate from any pre-bid estimate of those costs prepared by us. You and/or the owner therefore agree to set aside a reserve in the amount of 10 percent of the project construction costs as a contingency, to be used, if necessary, to pay for any increased costs. You and the Owner further agree to make no claim by way of direct or third-party action against us or our subconsultants with respect to such increased costs.

NON-SOLICITATION OF EMPLOYEES. During the term of this agreement and for a period of two (2) years afterwards, you agree that you will not solicit to hire nor hire any of our employees, whether or not you became aware of them through the performance of this Agreement. Furthermore, you agree for the same time period not to participate or facilitate in any way in the attempt of any other company to solicit to hire or hire any of our employees.



ATTACHMENT I - GENERAL TERMS AND CONDITIONS (CONTINUED)

DISPUTE RESOLUTION. Should any disagreement or conflict arise between you and us in relation to this Contract during or following the completion of the project, we both agree to work diligently to try to amicably resolve our differences. We both agree to first do so through informal discussion and agreement. Should those discussions not resolve the matter, you and we agree to attempt resolution through nonbinding mediation, in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this Agreement. Mediation is to commence within thirty (30) days from the date of receipt of any written claim, dispute or other matter in question, and both of us will mutually select the certified mediator or certified mediation service. You and we further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to all agreements.

However, nothing in this Section prohibits us from proceeding with any legal action necessary to enforce the payment provisions of this Contract, should you fail to pay for services rendered by us. In such cases, we are not required to first utilize mediation in the pursuit of collections and may in fact initiate legal action in an attempt to secure payment.

STATUTES OF REPOSE. Any legal action by either you or us against the other arising out of or in any way connected with the services to be performed under this Contract, is barred after any statute of limitation set by state law, or after five (5) years have passed from the date the project or project phase is substantially completed, whichever is shorter, and under no circumstances will any such claim be initiated by either you or us beyond those dates. In the event this Contract is terminated early, the date of Contract termination will be used in place of a substantial completion date.

THIRD PARTY BENEFICIARIES. Nothing contained in this Contract should be interpreted to create a contractual relationship with, or a cause of action in favor of, a third party against either you or us. Our services under this Contract are being performed solely for your benefit, and no other entity shall have any claim against us because of this Contract or the performance or nonperformance of services under this Contract. You agree to include a provision in all you contracts with contractors and other entities involved in this project to carry out the intent of this Section.

FAILURE TO PAY FOR SERVICES PROVIDED. Failure to make payment to us in accordance with the terms herein is a material breach of this Contract. If payment for services we provide to you is not received by us within thirty (30) calendar days of the invoice date, you agree that while we are not obligated to do so, we have the right to charge interest at a rate of up to one and one-half (1½) percent (or the maximum allowable by law, whichever is lower) on the PAST DUE amount each month it remains past due. Any payments you then make will first be applied to the accrued interest and then to the unpaid principal. In addition we may take additional actions, which may include:

- **SUSPENSION OF SERVICES.** We may suspend performance of services by giving you five (5) calendar days' notice. If we do so, we have no liability whatsoever to you for any costs or damages as a result of such suspension caused by any breach of this Contract.
- **TERMINATION OF SERVICES.** We may terminate this Contract. Payment remains due for services provided regardless of termination of this Contract by either of us.
- **MECHANICS LIEN.** We may file a lien against your property to protect our financial interests under this Contract.
- **LEGAL ACTION.** We may file suit against you to enforce the payment provisions of this Contract.

In the event that we find it necessary or prudent to file a lien or take legal action in order to enforce the payment provisions of this contract, you agree to compensate us for our cost of doing so. Among others things, those costs include our time, at current billing rates, and the expenses we incur in our collection efforts. They also include reasonable attorney's fees, court costs and related expenses incurred by us. You agree that in addition to any judgment or settlement sums due, you will pay these fees, costs and expenses to us.

GENERAL INDEMNIFICATIONS. We agree, to the fullest extent permitted by law, to indemnify and hold you (as well as your officers, directors and employees and their heirs and assigns) harmless from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by our negligent acts, errors or omissions under this Contract, or those of anyone for whom we are legally liable.

You agree, to the fullest extent permitted by law, to indemnify, defend and hold us (as well as our officers, directors, employees and their heirs and assigns, and any individuals and entities we retain for performance of the services under this Contract, including but not limited to our subconsultants and their officers, directors, employees, heirs and assigns) harmless from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by your negligent acts, errors or omissions in connection with the Project, or those of your contractors, subcontractors or other consultants, or anyone for whom you are legally liable.

You are not obligated to indemnify us in any manner whatsoever for our own negligence. We are not obligated to indemnify you in any manner whatsoever for your own negligence. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of both of us, they shall be borne by each party in proportion to each party's negligence.

LIMITATION OF LIABILITY. The potential risks of the project, in recognition of the relative benefits to both you and us, have been allocated in such a manner that you agree, to the fullest extent permitted by law, to limit our liability, and the liability of our subconsultants, to you, and to all construction contractors and subcontractors on the project, for any and all claims, losses, costs, and damages of any nature whatsoever, or claims or expenses from any cause or causes. **As such, unless a higher limit is requested by you and agreed to by us, the total aggregate liability for us and our subconsultants to all those named, defaults to, and shall not exceed, \$25,000.** This limitation applies regardless of cause of action or legal theory, pled or asserted. You also agree that you will not seek damages in excess of the contractually agreed limitations indirectly through suits with other parties who may join us as a third party defendant.

Limitations on liability and indemnities in this Contract are business understandings between you and us and shall apply to all the different theories of recovery, including breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action. However, these limitations on liability and indemnities will not apply to any losses or damages that have been found by a trier of fact to have been caused by our sole or gross negligence or our willful misconduct.

ENTIRE AGREEMENT. This Contract contains the entire agreement between you and us and supersedes any prior understanding or agreements, whether verbal or in writing, in relation to this project and the specific Scope of Services outlined in this Contract.



From the office of the Mayor
Mark T. Kupsky

10025 Bunkum Road ♦ Fairview Heights, Illinois 62208 ♦ Phone: (618) 489-2000 ♦ www.cofh.org
Congratulations to Paul Ellis, who retired on May 2.

Currently, the Mayor is conducting a search for a new Economic Development Director and anticipates making an announcement within the next 30 days. In the interim, the Mayor and Land-Use Director, Dallas Alley will be leading economic development efforts to keep things moving forward in the City of Fairview Heights. If anyone has questions regarding current projects, please direct those to the mayor.

PROJECT UPDATES

Recently, the Planning Commission approved, a Special Use Permit for the redevelopment of the Steak “n” Shake property which will be a new restaurant to be named in the future at that site. This project will be coming forward to the Planning Committee and the City Council for approval. There will be a request for business assistance that will be going forward to the Business Alliance Commission for review.

Weekends Only, we are pleased to announce that the building is in the process of being purchased, and the new owners and the use will be announced in the near future. This is anticipated to be a great addition to the City of Fairview Heights. The new business will open on or before the beginning of September. The Land-Use Department is currently working on all of the necessary building permits and signage approvals. Also, there will be a business assistance request going forward to the Business Alliance Commission to support this project.

I am excited to announce that the City is a recipient of a Tourism Grant of \$100,000 that Paul Ellis applied for in late 2022. By comparison to the City of Chicago, who also received a \$100,000 grant. The specifics of this grant are to promote tourism, and beyond 50 miles as well as several other very defined initiatives that will benefit the City of Fairview Heights, details will be forthcoming.

GRAND OPENINGS

The city recently celebrated the grand opening of Fusion Restaurant located on Route 50 at the site of the former Show Me’s Restaurant. Please take time to stop in and try this. They offer American, Mexican, and Indian food.

Also, this Friday, May 19 will be a ribbon cutting at the Tree of Life Child Care located in Ward 2 on Route 50 at the site of the former Pantera’s Pizza. The owners have done an outstanding job with the renovations, and we wish them the most success. The ribbon-cutting will be at 10:00 a.m.

The City is continuing to work closely with the Fource Group on marketing initiatives to advance projects within the city, including prospective tenants at the Sears location and the 72 acres north of the city in addition to continuing to utilize the All In Campaign to drive overall business grow throughout the city.

Things are healthy in the city. The Mayor, along with staff are working to bring new tenants into our city. Look forward to announcements in the future.



DEPARTMENT OF LAND USE AND DEVELOPMENT

INTEROFFICE MEMORANDUM

To: Fairview Heights City Council
From: Dallas Alley, Land Use and Development Director
Subject: Monthly Director's Report – April 2023
Date: May 15, 2023

Major Department Activities.

Planning and Zoning

- The Planning Commission meet in April; however, they did not have a quorum and did not hear any cases.
- The Zoning Board of Appeals did not meet in April
- Staff responded to questions and consulted with developers, property owners, and residents on new development, annexation and zoning related matters. Potential applications for the May Planning Commission meeting were discussed with developers, Kendall Stacker submitted a development plan for an event center at 525 Lincoln Hwy Suite 28, Amy Katsikas submitted an application to amend the Development Code to include Cosmetic Tattooing as an approved use in the PPO Planned Professional Office zoning district, Austin Craddock submitted a development plan for a drive thru restaurant at 10860 Lincoln Trail, and Lauren Burleson submitted a special use permit application for a tunnel car wash at 6118 North Illinois Street.
- Staff continues the process of updating the development code, in April the Code Development Committee meet several times to review the comprehensive plan.
- Staff continues to work with existing and potential residential developers on subdivision in fill and expansion. New residential single- and two-family home construction continues in multiple subdivisions. Discussion about possible development within the remaining sections of Fountains Place and Summit Springs took place, as well as possible annexations. Several potential annexations are being reviewed. Installation of infrastructure has begun on Phase 2 of Fountains Place Village F.

Code Enforcement

- The Code Enforcement Division conducts weekly hot spot inspections to ensure the preservation, maintenance and improvement of buildings and properties through the enforcement of the International Property Maintenance Code and other municipal ordinances. Code violations are identified through complaints and proactive inspections. Commercial properties are included in sweeps. April included a sweep on exterior junk and debris on residential properties.
- During the month of April 129 code enforcement cases were initiated.

- Staff continues to work with the Public Works Department on nuisance abatement matters such as dead trees, building board ups, and stormwater conveyance.
- Staff continues to respond to animal control calls. In April 2 animal control calls required code enforcement action.

Building Division

- Staff continues to perform plan review and building related inspections. Major construction projects underway include Fountains subdivision Village C and F. Plan review was completed for the interior remodel of several commercial structures. Staff is expecting commercial construction to continue through the summer with several major commercial projects in the review phase and under construction.
- Commercial Plan Review in the pre-permitting phase
 - 50 Ludwig Drive (Faith Church) - Interior remodel and building addition
 - 10218 Lincoln Trail (Bobby’s food and fun spot) – Interior Remodel for full-service restaurant
 - 6549 N Illinois (Hobby Lobby) – Reconfiguration of rear storage area ***Issued**
 - 501 Salem Place (Lou Fusz Honda Motorsports) – Interior remodel and building addition ***Issued**
 - 120 S Ruby Ln (Ruby Lane Apartments) – Interior and exterior remodel
 - 6000 N Illinois (Tenant TBD) – Interior demolition only permitted at this point

DEPARTMENT ACTIVITY			
	April	March	Fees Collected
Residential Occupancy Permits Issued	70	170*	\$6,610
Building Permits Issued	71	51	\$19,262.25
Commercial Occupancy Permits Issued	8	7	\$400
Special Event Permit	2	0	\$100

* Residential Occupancy Permits issued in March included a large batch process from Winchester Apartments, this is atypical and skews the actual number of inspections being completed.

Action Items

PC 02-23

Planning Commission heard case PC 02-23 on May 9, 2023. After hearing testimony, the Commission voted seven (7) in favor and (4) four absent to recommend approval of the application. Planning Committee motion to send PC 02-23 to City Council, with the recommendation of approval.

PC 03-23

Planning Commission heard case PC 03-23 on May 9, 2023. After hearing testimony, the Commission voted seven (7) in favor and (4) four absent to recommend approval of the application. Planning Committee motion to send PC 03-23 to City Council, with the recommendation of approval.

PC 04-23

Planning Commission heard case PC 03-23 on May 9, 2023. After hearing testimony, the Commission voted seven (7) in favor and (4) four absent to recommend approval of the application. Planning Committee motion to send PC 03-23 to City Council, with the recommendation of approval.

Engineering contract for St Ellen Bike Trail Phase 3

The contract presented for St Ellen Bike Trail Phase 3 is inclusive of all engineering and anticipated professional services for the trail segment along Ashland Avenue from Old Collinsville Road to Judy Ln. Engineering will span two fiscal years with half of the contract expenditure coming from this fiscal year and half from next fiscal year. Construction of this phase of the trail is majority funded with a Transportation Alternatives Program grant and a Metro East Parks and Recreation grant. The engineering is budgeted under Land Use Capital Improvement. Planning Committee motion to send TWM contract for professional services related to the St Ellen Bike Trail Phase 3, with the recommendation of approval.

Please let me know if there are questions or concerns.

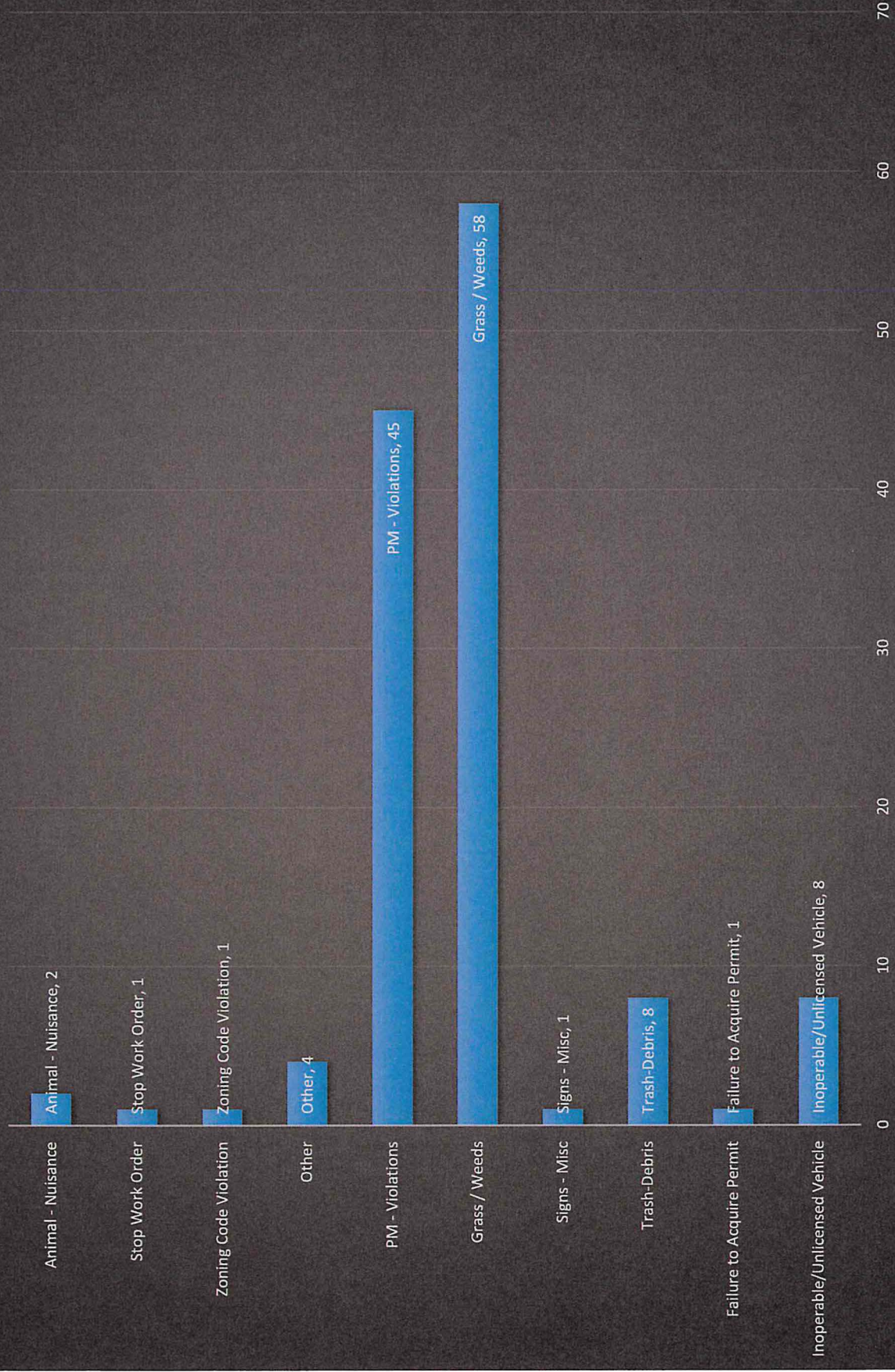
Date Initiated	Violation Address	Violation Type	Current Status	# of Insp.	Ward
4/28/2023	7 BALDUS DR	Grass/Weeds	Passed	2	Ward 1
4/24/2023	9210 HIGHLAND PK RD	Grass/Weeds	Passed	2	Ward 1
4/24/2023	9719 HOLY CROSS RD	PM - Violations	Passed	2	Ward 1
4/24/2023	9710 HOLY CROSS RD	Grass/Weeds	Passed	2	Ward 1
4/24/2023	9030 SUMMIT ST	Grass/Weeds	Passed	2	Ward 1
4/21/2023	9111 SOUTH AVE	PM - Violations	Pending	1	Ward 1
4/18/2023	34 WILSHIRE DR	Vehicle	Passed	1	Ward 1
4/28/2023	8 MECKFESSEL DR	Grass/Weeds	Passed	2	Ward 2
4/26/2023	1 DOGWOOD LN	Animal - Misc	Passed	1	Ward 2
4/26/2023	304 LAUREL DR	PM - Violations	Passed	2	Ward 2
4/26/2023	308 LAUREL DR	Grass/Weeds	Passed	2	Ward 2
4/26/2023	212 LAUREL DR	PM - Violations	Passed	2	Ward 2
4/26/2023	304 LAUREL DR	Grass/Weeds	Passed	1	Ward 2
4/26/2023	316 LAUREL DR	Grass/Weeds	Passed	2	Ward 2
4/26/2023	8 BOUNTIFUL DR	PM - Violations	Pending	1	Ward 2
4/26/2023	8 BOUNTIFUL DR	PM - Violations	Pending	1	Ward 2
4/26/2023	1 SOUTHPOINT RD	PM - Violations	Passed	2	Ward 2
4/24/2023	9615 HOLDENER PL	Grass/Weeds	Pending	1	Ward 2
4/20/2023	201 MC KNIGHT RD	Grass/Weeds	Passed	2	Ward 2
4/20/2023	112 MC KNIGHT RD	Grass/Weeds	Passed	2	Ward 2
4/20/2023	111 MC KNIGHT RD	Grass/Weeds	Passed	2	Ward 2
4/20/2023	207 MECKFESSEL DR	Grass/Weeds	Passed	2	Ward 2
4/20/2023	205 MECKFESSEL DR	Grass/Weeds	Passed	2	Ward 2
4/20/2023	201 MECKFESSEL DR	Grass/Weeds	Passed	2	Ward 2
4/20/2023	107 BOUNTIFUL DR	Grass/Weeds	Passed	2	Ward 2
4/20/2023	107 PRIMOSE LN	PM - Violations	Passed	2	Ward 2
4/20/2023	110 PRIMROSE LN	Grass/Weeds	Passed	3	Ward 2
4/20/2023	215 NORTHPOINT RD	Grass/Weeds	Passed	2	Ward 2
4/20/2023	102 GALE DR	Grass/Weeds	Passed	3	Ward 2
4/20/2023	212 DOGWOOD LN	Grass/Weeds	Passed	2	Ward 2

4/18/2023	9500 MARY ANN DR	PM - Violations	Passed	2	Ward 2
4/18/2023	59 CONCORD DR	PM - Violations	Passed	2	Ward 2
4/4/2023	9500 MARY ANN DR	Vehicle	Passed	2	Ward 2
4/11/2023	10039 LINCOLN TR	PM - Violations	Passed	2	Ward 2
4/28/2023	213 ST LO DR	Grass/Weeds	Passed	2	Ward 3
4/28/2023	445 ANITA DR	Grass/Weeds	Passed	2	Ward 3
4/28/2023	314 ANITA DR	Vehicle	Passed	2	Ward 3
4/28/2023	17 Hollandia	PM - Violations	Pending	3	Ward 3
4/27/2023	218 BRITTANY DR	PM - Violations	Pending	1	Ward 3
4/26/2023	425 ANITA DR	Grass/Weeds	Passed	3	Ward 3
4/26/2023	7/8 RAM CT 8	PM - Violations	Pending	1	Ward 3
4/25/2023	5401 BONITA BLVD	Grass/Weeds	Passed	5	Ward 3
4/25/2023	6109 North Illinois	PM - Violations	Pending	1	Ward 3
4/25/2023	5409 BONITA BLVD	Grass/Weeds	Passed	4	Ward 3
4/25/2023	6101 N ILLINOIS ST	PM - Violations	Passed	2	Ward 3
4/24/2023	5300 BONITA BLVD	STOP WORK ORDER Violation	Pending	2	Ward 3
4/24/2023	209 ORLEANS DR	Grass/Weeds	Passed	2	Ward 3
4/24/2023	61 PINE TR	PM - Violations	Passed	2	Ward 3
4/24/2023	63 PINE TR	Grass/Weeds	Passed	2	Ward 3
4/24/2023	40 IRMA LN	Grass/Weeds	Passed	2	Ward 3
4/21/2023	41 IRMA LN	Grass/Weeds	Passed	2	Ward 3
4/21/2023	43 IRMA LN	Grass/Weeds	Passed	2	Ward 3
4/21/2023	30 JUDITH LN	Grass/Weeds	Passed	3	Ward 3
4/21/2023	31 JUDITH LN	Grass/Weeds	Passed	2	Ward 3
4/21/2023	5203 BONITA BLVD	Grass/Weeds	Passed	4	Ward 3
4/21/2023	217 KASSING AVE	Grass/Weeds	Passed	2	Ward 3
4/21/2023	10800 LINCOLN TR	Failed to Acquire Permit	Passed	2	Ward 3
4/20/2023	227 LOLA LN	Grass/Weeds	Passed	2	Ward 3
4/20/2023	203 STITES AVE	Grass/Weeds	Passed	2	Ward 3
4/20/2023	509 ANITA DR	Grass/Weeds	Passed	3	Ward 3
4/20/2023	517 ANITA DR	Grass/Weeds	Passed	2	Ward 3

4/19/2023	21 LONGACRE DR (Storage Facility)	PM - Violations	Passed	2	Ward 3
4/19/2023	10300 LINCOLN TR	Signs - Misc	Passed	2	Ward 3
4/19/2023	505 ANITA DR	PM - Violations	Passed	2	Ward 3
4/19/2023	6311 NORTH ILLINOIS	PM - Violations	Pending	1	Ward 3
4/18/2023	395 LONGACRE DR	PM - Violations	Passed	2	Ward 3
4/18/2023	29 JUDITH LN	PM - Violations	Passed	2	Ward 3
4/18/2023	101 LINDA DR	Vehicle	Passed	2	Ward 3
4/14/2023	513 ANITA DR	Inoperable/unlicensed vehicle	Passed	2	Ward 3
4/11/2023	537 LEMANS WAY	Other	Passed	2	Ward 3
4/6/2023	56 PINE TR	PM - Violations	Pending	1	Ward 3
4/19/2023	5519 N ILLINOIS ST	PM - Violations	Pending	1	Ward 3
4/24/2023	137 LUDWIG DR	PM - Violations	Pending	2	Ward 4
4/27/2023	114 CRYSTAL LN	PM - Violations	Passed	2	Ward 4
4/27/2023	809 HAWK VIEW CT	PM - Violations	Passed	2	Ward 4
4/26/2023	224 MONTICELLO PL	Zoning Ordinance Violation	Pending	6	Ward 4
4/26/2023	141 N RUBY LN	Grass/Weeds	Passed	2	Ward 4
4/26/2023	76 COUNTRYSIDE LN	Grass/Weeds	Passed	2	Ward 4
4/25/2023	216 RICHMOND DR	PM - Violations	Pending	5	Ward 4
4/21/2023	22 HAMPTON DR	PM - Violations	Passed	2	Ward 4
4/19/2023	204 PAMONA DR	Grass/Weeds	Passed	2	Ward 4
4/19/2023	6701 NORTH ILLINOIS	PM - Violations	Pending	1	Ward 4
4/19/2023	120 COMMERCE LN	PM - Violations	Pending	1	Ward 4
4/18/2023	5 LUDWIG DR	PM - Violations	Pending	2	Ward 4
4/17/2023	29 JUDY LN	PM - Violations	Pending	2	Ward 4
4/17/2023	58 MONTICELLO DR	PM - Violations	Pending	1	Ward 4
4/11/2023	122 Linc Hwy	PM - Violations	Passed	2	Ward 4
4/11/2023	6932 Conner Pointe Drive	Vehicle	Passed	3	Ward 4
4/6/2023	9 MARILYN CR	PM - Violations	Pending	2	Ward 4
4/5/2023	920 FIELDS END CT	Animal - Misc	Passed	1	Ward 4
4/17/2023	805 Fairfield Drive	Trash-Debris	Passed	2	Ward 4
4/28/2023	30 CHARVEL DR	Grass/Weeds	Passed	2	Ward 5

4/28/2023	38 BEL RUE DR	Grass/Weeds	Passed	3	Ward 5
4/28/2023	101 BLANC LEE AVE	Grass/Weeds	Passed	2	Ward 5
4/28/2023	30 MAR JACQUES DR	Grass/Weeds	Passed	2	Ward 5
4/28/2023	9 MAPLELEAF LN	Grass/Weeds	Passed	2	Ward 5
4/25/2023	5335 DUKE DR	Grass/Weeds	Passed	2	Ward 5
4/25/2023	5425 DUKE DR	Grass/Weeds	Passed	3	Ward 5
4/25/2023	414 RYAN DR	Grass/Weeds	Passed	3	Ward 5
4/25/2023	305 TOULON CT	Grass/Weeds	Passed	3	Ward 5
4/24/2023	304 TOULON CT	Grass/Weeds	Passed	2	Ward 5
4/24/2023	5811 PERRIN RD	Grass/Weeds	Passed	2	Ward 5
4/24/2023	105 TOULON CT	Grass/Weeds	Passed	3	Ward 5
4/24/2023	125 TOULON CT	Grass/Weeds	Passed	2	Ward 5
4/21/2023	951 STANFORD WAY	Grass/Weeds	Passed	3	Ward 5
4/21/2023	616 LENORA DR	Grass/Weeds	Passed	2	Ward 5
4/20/2023	5105 N ILLINOIS ST	PM - Violations	Pending	1	Ward 5
4/19/2023	320 ST SABRE DR	PM - Violations	Pending	3	Ward 5
4/18/2023	40 LINDENLEAF LN	PM - Violations	Pending	3	Ward 5
4/18/2023	50 LINDENLEAF LN	PM - Violations	Passed	2	Ward 5
4/18/2023	52 LINDENLEAF LN	PM - Violations	Pending, Canceled	1	Ward 5
4/18/2023	3 CHAVANT CT	PM - Violations	Pending	4	Ward 5
4/18/2023	1 TOULON CT	Vehicle	Passed	4	Ward 5
4/18/2023	5 CHALET CT	Trash-Debris	Passed	2	Ward 5
4/18/2023	5715 OLD COLLINSVILLE RD	PM - Violations	Pending	1	Ward 5
4/17/2023	250 LAKELAND HILLS DR	Trash-Debris	Passed	3	Ward 5
4/17/2023	244 JUBAKA DR	Trash-Debris	Passed	2	Ward 5
4/17/2023	189 JUBAKA DR	Trash-Debris	Passed	2	Ward 5
4/17/2023	203 ARBOR MEADOWS CT	Trash-Debris	Passed	2	Ward 5
4/17/2023	5810 PERRIN RD	Trash-Debris	Passed	2	Ward 5
4/17/2023	5603 PERRIN RD	Grass/Weeds	Passed	3	Ward 5
4/17/2023	5519 PERRIN RD	Trash-Debris	Passed	2	Ward 5
4/14/2023	5514 PERRIN RD	Grass/Weeds	Pending	3	Ward 5

April 2023 Code Enforcement



Planning Commissioner Linda Hoppe introduced the following resolution and moved for its adoption:

RESOLUTION PC 02-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO APPROVAL OF A SPECIAL USE PERMIT FOR A CORPORATE AND SOCIAL EVENT SPACE AT 525 LINCOLN HIGHWAY SUITE 28

WHEREAS, Kendall and Susie Stacker hereinafter referred to as the "Applicant," applied for a Special Use permit for approval of a development plan for a corporate and social event space on parcel number 03-27.0-100-067, commonly known as 525 Lincoln Highway; and

WHEREAS, the Fairview Heights Development Code requires that major modifications to a site development plan in PB Planned Business Zoned District be approved as a special use;

WHEREAS, the Applicant has properly applied for a special use permit.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the subject property is zoned "PB" Planned Business Zoned District.
3. That the Applicant shall be responsible for all City costs incurred in administering and enforcing this approval.
4. That the Director of Land Use and Development, and his designee, shall have the right to inspect the premises for compliance and safety purposes.
5. That this Approval shall automatically expire if the use is not initiated within one year of City Council Approval.
6. That the Applicant shall obtain all required permits and comply with all ordinances and codes.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner Sunyatta McDermott upon vote being taken thereon, the following voted in favor thereof: Pat Wesemann, Patrick McCarthy, Linda Hoppe, Sunyatta McDermott, Pat Herrington, Greg Moats, Kelly Smith.

And the following voted against the same: none

And the following abstained: none

And the following were absent: Clarence Carthen, Gregory Coleman, Terry Fowler, Larry Mensing

Whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

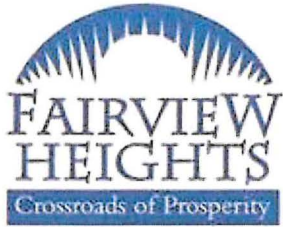
Greg Moats

Planning Commission Chairman

ATTEST:

Dallas Alley

Land Use Director



DEPARTMENT OF LAND USE AND DEVELOPMENT

TRANSMITTAL TO PLANNING COMMISSION

APPLICATION NUMBER: PC-02-23

REQUEST: Special Use Permit to allow a corporate & social event space in the "PB" Planned Business zoning district office at 525 Lincoln Highway Suite 28. Also identified by St. Clair County PIN(s) 03-27.0-100-067. *VOTE REQUESTED.*

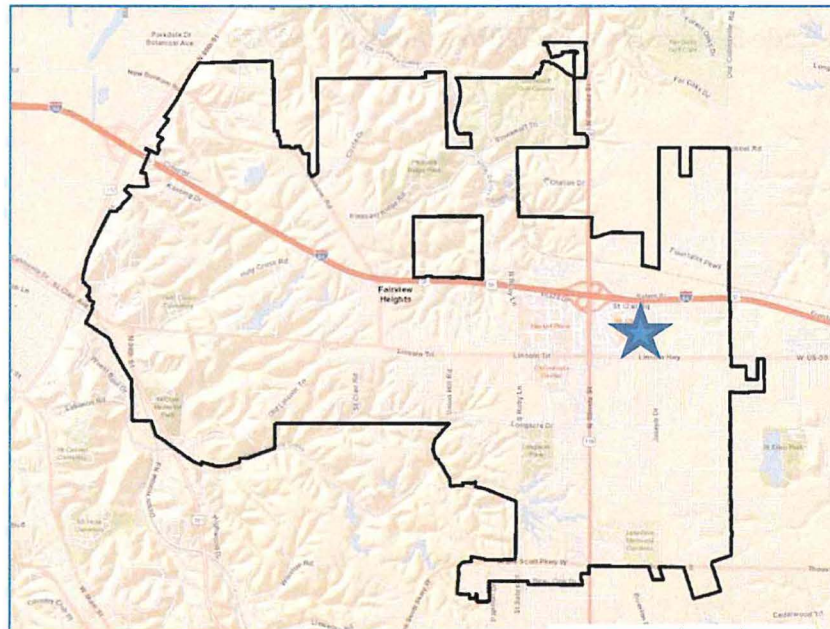
APPLICANT NAME: Kendall & Susie Stacker

MEETING DATE: May 9, 2023

ZONING: PB – Planned Business

PLANNING COMMISSION ACTION: Consideration of the Special Use Permit, make recommendation to the Community Committee and City Council which has final authority to approve or deny the request.

GENERAL LOCATION:



STAFF ADVISORY

1. BACKGROUND

The City of Fairview Heights Development Code divides the City into districts and establishes a set of land uses that are either “permitted” or “special”. Permitted uses are compatible land uses authorized as a matter of right. Special uses are those that may cause potential conflict depending on the scope of the operation. A special use may be allowed after a review by Plan Commission and City Council, in accordance with Development Code section 14-10-8. Each special use is evaluated on its own merits.

The applicant is seeking approval of a corporate and social event space.

The subject property located at 525 Lincoln Highway Suite 28 and is zoned PB- Planned Business. This zoning district is intended for a variety of commercial uses such as retail, office, and restaurant uses. The corporate and social event space use is permitted; however, a Special Use Permit with Site Development Plan is required when there is a substantial change to an approved PB-Planned Business development site plan or where there could be impacts to traffic, noise or adjacent uses.

2. DISCUSSION

Context

The subject site is located in the east portion of the City, north of IL Rte 50, and east of IL Rte 159. It is comprised of one parcel.

The zoning designation for this parcel is PB – Planned Business. This zoning district is intended for a variety of commercial uses such as retail, office, and restaurant uses. Substantial changes to an approved planned business development site plan must be approved by the Planning Commission as established in Development Code Section 14-2-13 (G) Procedures in PB District.

Zoning: Site and Surrounding Areas

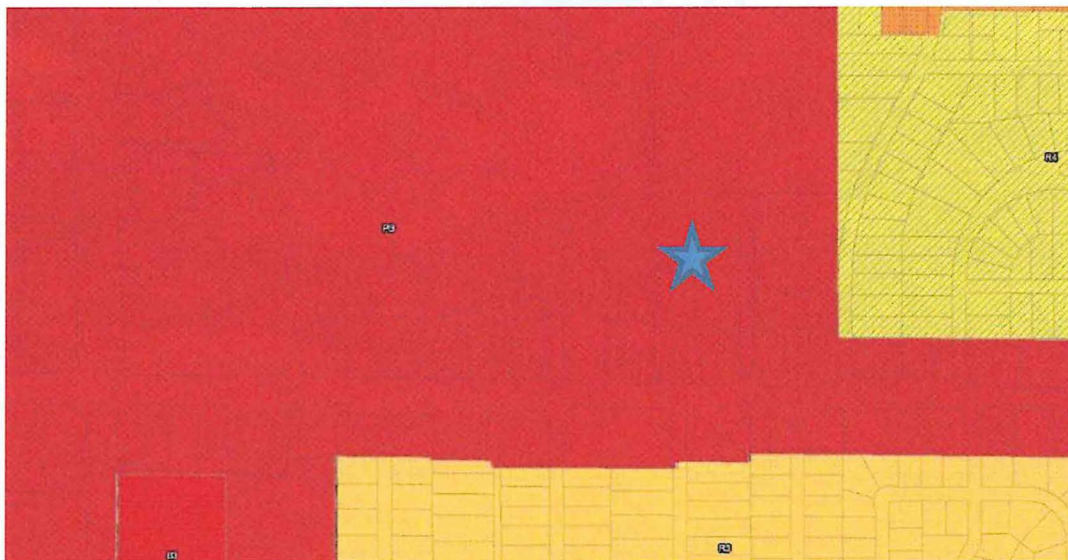
The zoning and land uses of adjoining and surrounding properties are as follows:

North: PB - Planned Business;

South: PB – Planned Business;

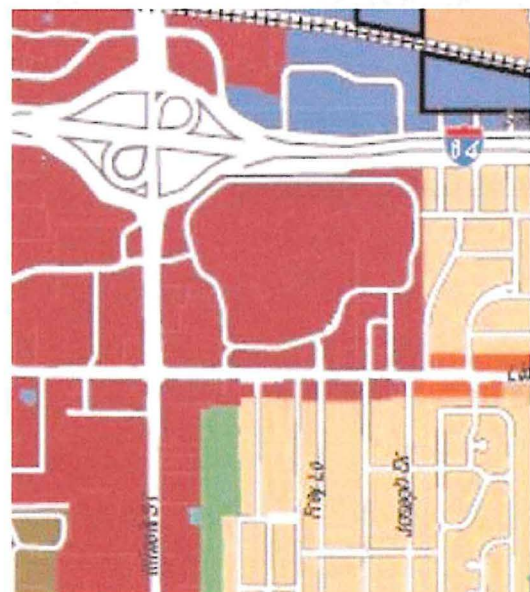
West: PB – Planned Business;

East: PB – Planned Business.



Future Land Use: Site and Surrounding Areas

The Fairview Heights Comprehensive Plan identifies the subject site as Regional Commercial. This designation is an intense commercial land use consisting of larger commercial properties. The proposed use conforms with the Fairview Heights Comprehensive Plan.

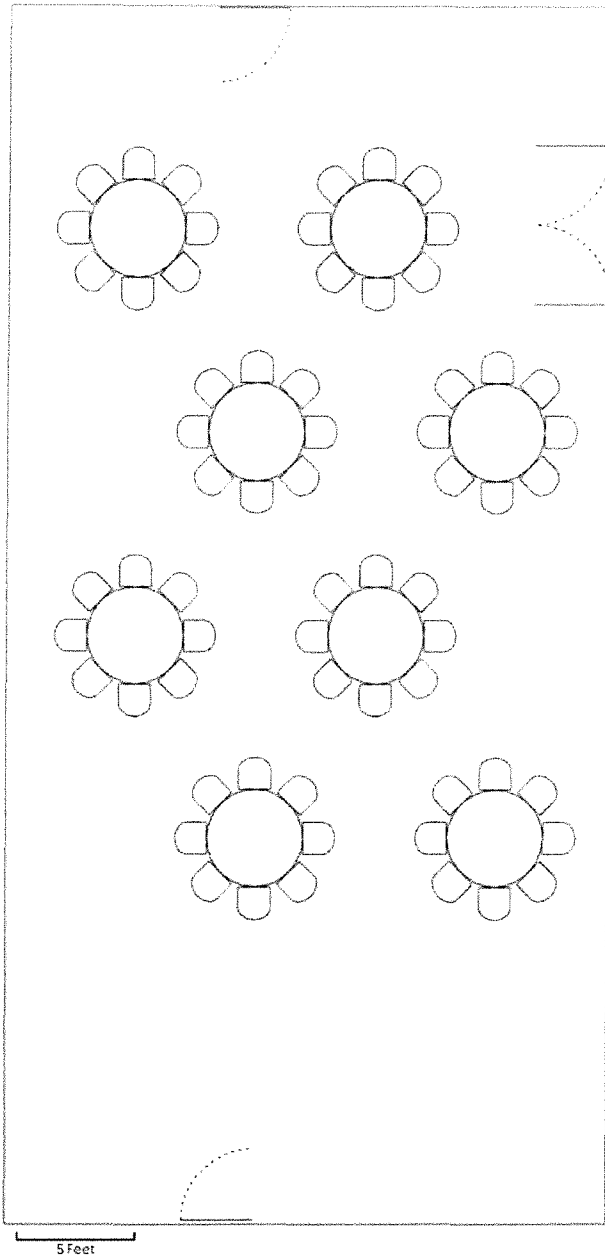


Site Photographs

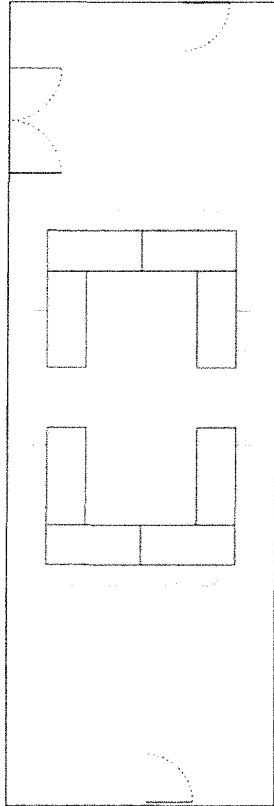


[Plaza St. Clair \(ricoh360.com\)](http://ricoh360.com)

Interior Site Plan -



main room A for display - February 3, 2023 at 12:00 PM



5 Feet

room B for display - February 3, 2023 at 12:00 PM

Planning Considerations

I. Analysis: Site Development

The applicant is seeking approval of the placement of a corporate and social event space. In its deliberations, Planning Commission shall review general planning considerations and may impose conditions to the approval of this structure. Following are the criteria outlined in Chapter 14 of the Fairview Heights Code of Ordinances (Development Code) and proposed conditions, where applicable:

(a) *Permitted uses, including maximum floor area.*

The use of a corporate and social event space is permitted in the PB Planned Business District.

(b) *Performance standards. (Performance standards regulate the intensity of land use to prevent adverse impact on abutting and nearby properties.)*

The premises shall be maintained in good condition, free from trash and debris.

Noise emanating from the use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property line. Unreasonably offensive noises due to intermittence, beat frequency or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

No obnoxious, toxic or corrosive matter, smoke, fumes or gases shall be discharged into the air or across the boundaries of any lot in such concentrations as to be detrimental to or endanger the public health, safety, comfort or welfare or to cause injury or damage to property or business.

(c) *Height limitations.*

The building height is not to be modified.

(d) *Minimum yard requirements.*

n/a

(e) *Off-street parking and loading requirements*

The proposed parking and loading configuration is satisfactory to the zoning administrator.

(f) *Sign regulations*

The size and number of signs are prescribed in Article VII of the Development Code and will be reviewed during the permitting process. The location will also be determined at that time.

(g) *Minimum requirements for site development plans.*

Site development plans shall depict the proposed location of buildings, parking areas, traffic circulation, landscaping, utilities, and drainage. These requirements have been met.

(h) *Time limitations for commencement of construction.*

Within one (1) year of approval, construction shall commence. The applicant may apply for one (1) extension of time limitation from the City in writing explaining extenuating circumstances.

(i) Trust funds, impact fees, surcharges and connection fees.

The applicant will pay all applicable fees and meet all permitting requirements of any utility or other jurisdictional unit.

(j) Rights of way dedication and road improvements.

n/a

Exhibits

1. Applicant's Narrative and Excerpted Supporting Documents
2. Resolution and Findings of Fact
3. Public notice

APPLICATION FOR SPECIAL USE PERMIT

03-21-23 DATE APPLICATION RECEIVED BY LUD



Department of Land Use and Development
10025 Bunkum Road
Fairview Heights, IL 62208
Phone (618) 489-2060

OFFICE USE ONLY	
DATE APPLICATION DEEMED COMPLETE:	CASE NUMBER ASSIGNED: <u>PC 02-23</u>
RESUBMITTALS RECEIVED/DATE:	APPLICATION FEES PAID (\$150 + \$25 per acre above one acre): <u>02-07-23 - \$150</u>
ZONING DISTRICT: <u>PB</u>	DATE PUBLIC NOTICE SIGN POSTED:
DATE SET FOR HEARING: <u>04-11-23</u>	NEWSPAPER NAME AND PUBLICATION DATE:
APPLICATION CIRCULATION DATE _____: Comments Received: <input type="checkbox"/> Public Works <input type="checkbox"/> Fire District <input type="checkbox"/> Parks and Recreation <input type="checkbox"/> Economic Development <input type="checkbox"/> Police Department <input type="checkbox"/> Finance Department <input type="checkbox"/> Administration Department <input type="checkbox"/> Other	AUTHORITY MEETING DATE/RECOMMENDATION: <input type="checkbox"/> Planning Commission _____ / _____ <input type="checkbox"/> Community Committee _____ / _____ <input type="checkbox"/> City Council _____ / _____
DATE OF MEETING:	RESOLUTION NUMBER: (Maintain copy with LUD file)

Special Use Permits are reviewed by the City's Planning Commission, Community Committee and City Council. City Council has the final decision on the application. Representation is required at these meetings.

Applicants are encouraged to schedule a pre-application conference with the Director of Land Use and Development prior to submittal. The application will be processed and scheduled for Plan Commission consideration after it is deemed complete.

Applicants are responsible for the following:

1. Two hard copies and one electronic version of the completed application and submittal requirements. The application deadline to the Department of Land Use and Development is at least thirty-six (36) days prior to the Plan Commission meeting.
2. Application fees.
3. Posting a public hearing notice sign on the subject property; providing photographic evidence of same.
4. Newspaper public notification fee.

PROJECT INFORMATION FOR SPECIAL USE PERMIT

Project Name: The Stackhouse Venue
Project Address: 525 Lincoln Highway Suite 28 Fairview Heights Ill.
Parcel ID: 03-270-100-067
Current Use of Property: Retail / Office complex
Project Size/Acreage: 2476 SF
Number of Lots: 1 unit
Density: W/A

CONTACT INFORMATION FOR SPECIAL USE PERMIT

Property Owner(s): SUSO 4 ST. CLAIR LP
Mailing Address: 20 S Clark St, Chicago, IL 60603. Suite 1400
Phone: 443-827-0720
E-Mail: JCasey@Slateam.com

Applicant/agent: Kendall Stacker (Susie)
Relationship to owner: N/A
Mailing Address: 2745 Brookmeadow Dr. Belleville Illinois
Phone: 618-250-5485
E-Mail: Kendall.Stacker@GMAIL.COM

AUTHORIZATION

I hereby certify that the above information and accompanying documents are true and accurate to the best of my knowledge and are consistent with the ordinances relating to this application. I also understand that as the applicant, it is my responsibility to obtain all additional approvals, permits or licenses required by any applicable regulatory agency for this project.

I consent that the entry upon the premises described in this application by an authorized official of Fairview Heights, Illinois for the purpose of inspecting or of posting, maintaining, and removing such notices as may be required by law.

THIS APPLICATION WILL NOT BE ACCEPTED WITHOUT SIGNATURE OF THE OWNER OF RECORD OR AUTHORIZED APPLICANT/AGENT.

Signature of Owner: [Signature] Date: 3/20/2023
Printed Name: John Casey
Signature of Applicant: [Signature] Date: 3/8/2023
Printed Name:



COMMERCIAL REAL ESTATE SOLUTIONS 1173 Fortune Blvd. Shiloh, Illinois 62269 | 618.277.4400 | barbermurphy.com

March 17th, 2023

Ben Weis
TBOS, LLC d/b/a Location Commercial Real Estate
222 S. Central Ave Suite 300
St. Louis, MO 63105
ben@locationcre.com

RE: Letter of Intent to lease– Plaza St. Clair – 525 Lincoln Highway Suite 28, Fairview Heights, IL 62208

Dear Mr. Weis,

The following is a Letter of Intent on behalf of **The Stackhouse Venue, LLC** to lease the above-referenced property in Fairview Heights (IL).

Tenant: The Stackhouse Venue, LLC
2745 Brook Meadow Dr.
Belleville, IL 62221
Attn: Kendall and Susie Stacker

Landlord: SUSO St. Clair, LP
620 Lincoln Highway
Fairview Heights, IL 62208

Guarantor(S): Kendall and Suzie Stacker shall provide a Personal Guarantee for the full term of the Lease.

Property Type: Retail complex located at 525 Lincoln Highway, Fairview Heights, (IL).

Leased Premises: Suite 28 as shown on Exhibit A, 2,476 SF (approximately)

Use: Workforce training and event center not to conflict with the Exclusives and Restrictions of the Shopping Center and or no other use or purpose.

Lease Term: Five (5) Years and Four (4) Months

Renewal / Option: So long as Tenant is not in default and open for business, Tenant will have the option to renew for an additional one (1), Three (3) year-period with one hundred eighty (180) days' notice.

Possession Date: Landlord shall use its reasonable efforts to deliver the Leased Premises to Tenant within 30 days after full Lease execution. If the HVAC units need to be replaced, Landlord can still deliver the Leased Premises within 30 days, however, the HVAC units will be replaced within 90 days.

Lease Commencement: Rent shall commence the earlier of (i) One Hundred Twenty (120) days after turnover of the Leased Premises or (ii) Tenant opening for business

Base Rent: **Months 1-4: \$0.00 PSF. Tenant pays NNN expenses.**
Year 1: \$8.00 PSF NNN with 3% annual increases to base rent.

Free Rent Period: Tenant shall receive four (4) months of free Base Rent starting on the Rent Commencement date. During the Free Rent Period, Tenant shall pay NNN Charges.

NNN Charges: Tenant shall pay its pro rata share of the cost of real estate taxes, insurance, and common area maintenance, excluding tenants separately taxed, insured or maintained. Tenant shall make estimated payments monthly with an annual reconciliation. NNN charges for 2022 are currently estimated at **\$5.97 per square foot (CAM-\$3.75; Tax-\$1.89; Ins-\$0.26) = \$1,231.81 / month**

Total monthly Rent: Intentionally deleted.

Landlord Improvements: Landlord will ensure all mechanical systems are in good working order prior to occupancy. Landlord will repair any leaks to the roof.

Tenant Improvements: Tenant, at Tenant's sole cost and expense, shall be permitted to make modifications to the leased premises for the purposes of operating and conducting Tenant's business. All improvements shall be prior approved by the Landlord but shall not be unreasonably withheld.

Landlord Warranties: Landlord guarantees working order of all mechanicals including HVAC, plumbing and electrical, prior to tenant possession and for 120-days after possession. Tenant shall be responsible, at its sole cost and expense, for the routine maintenance of the existing HVAC system for the Leased Premises, which includes entering into a quarterly maintenance contract. Tenant shall also be responsible for repairs to the HVAC system up to \$1,500 per 12-month period, beyond the cost of routine maintenance. Landlord shall be responsible for repairs to the HVAC system for the Leased Premises in excess of \$1,500 in a 12-month period and also the one-time replacement of the existing HVAC

system. After the one-time replacement of the HVAC systems, Tenant shall be responsible for all costs relating to the HVAC including routine maintenance, repairs and replacement without any caps. Landlord shall pass along any manufacturer's warranty for the benefit of the Tenant.

Security Deposit: One month Gross Rent is to remain on deposit with Landlord during the Initial Term of the Lease and any Option Term, as security for the full and faithful performance by Tenant of all covenants and conditions of the Lease.

Prepaid Rent: First month's Base Rent and NNN Expenses due at Lease Execution.

Signage: Tenant shall have the use of the signage locations on the glass doors / windows as well as the building facade on the suite and monument signage subject to all applicable codes and regulations with the City of Fairview Heights. The cost of all signage is the responsibility of the Tenant. Landlord shall have the right to prior review and approve of any Tenant signage visible from the exterior of the building.

Insurance & Indemnification: Landlord will insure the building located on the Property. Tenant will obtain business and liability insurance. Indemnification will be mutual and there shall be a mutual waiver of subrogation rights.

Landlord's Lien: Tenant will not agree to allow Landlord to place a lien on the personal property of Tenant located in or on the Premises.

Surrender of Possession: Tenant will have the option to remove all equipment, signs, back-lit canopies, trade fixtures and personal property installed in or placed on or about the Premises by Tenant, in which event Tenant will repair any resulting damage to the Premises.

Agency Disclosure: Landlord and Tenant acknowledge that TBOS, LLC d/b/a Location Commercial Real Estate designates Ben Weis as the legal real estate licensee(s) representing the Landlord for the purpose of leasing real estate.

Landlord and Tenant acknowledge that Barber Murphy designates Mike Durbin as the legal real estate licensee(s) representing the Tenant for the purpose of leasing real estate.

Landlord represents that he/she has no current exclusive representation agreement with any other real estate agent or firm.

Landlord and Tenant and the real estate licensees acknowledge that this broker relationship was disclosed to the Landlord and Tenant or their respective agents

no later than the first showing or first contact or immediately upon the occurrence of any change to the relationship.

Lease Document: Landlord's standard Lease form to be used.

*****Landlord and Tenant acknowledge that this proposal is not a lease and that it is intended as the basis for the preparation of a lease. The Lease shall be subject to Landlord's and Tenant's approval and only a fully executed Lease shall constitute a Lease for the Premises. Broker makes no warranty or representation to Landlord or Tenant that the acceptance of the proposal will guarantee the execution of a lease for the Premises. If this is acceptable, please return a signed copy of this Letter of Intent within 6 business days to Mike Durbin at BARBERMurphy Group, Inc. miked@barbermurphy.com.**

Thank you!
Mike Durbin – Barber Murphy

Tenant: The Stackhouse Venue, LLC

BY: Kendall Stacker dodoop verified
03/17/23 2:17 PM CDT
FXIN-3TDM-UDEI-BSYF

Name: Kendall Stacker

Title: Member

AGREED AND ACCEPTED this the 17th day of March 2023.

Landlord: SUSO 4 St. Clair LP

By: [Signature]
Name: John Casey

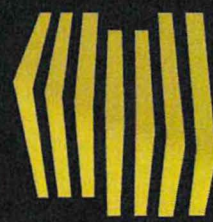
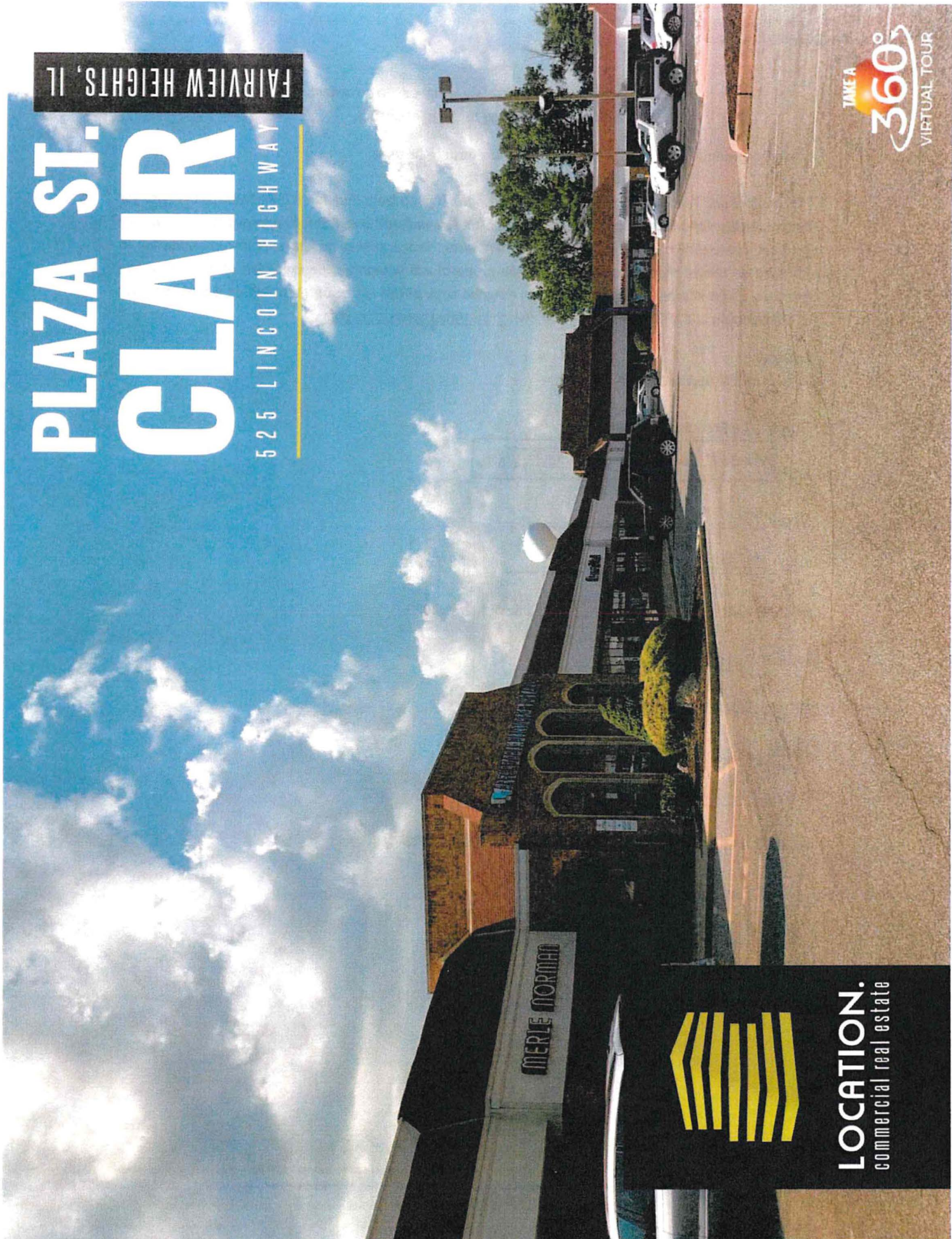
Title: Associate

AGREED AND ACCEPTED this the 20th day of March 2023

PLAZA ST. CLAIR

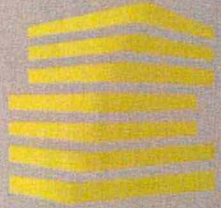
525 LINCOLN HIGHWAY

FAIRVIEW HEIGHTS, IL



LOCATION.
commercial real estate

TAKE A
360°
VIRTUAL TOUR



PLAZA ST. CLAIR

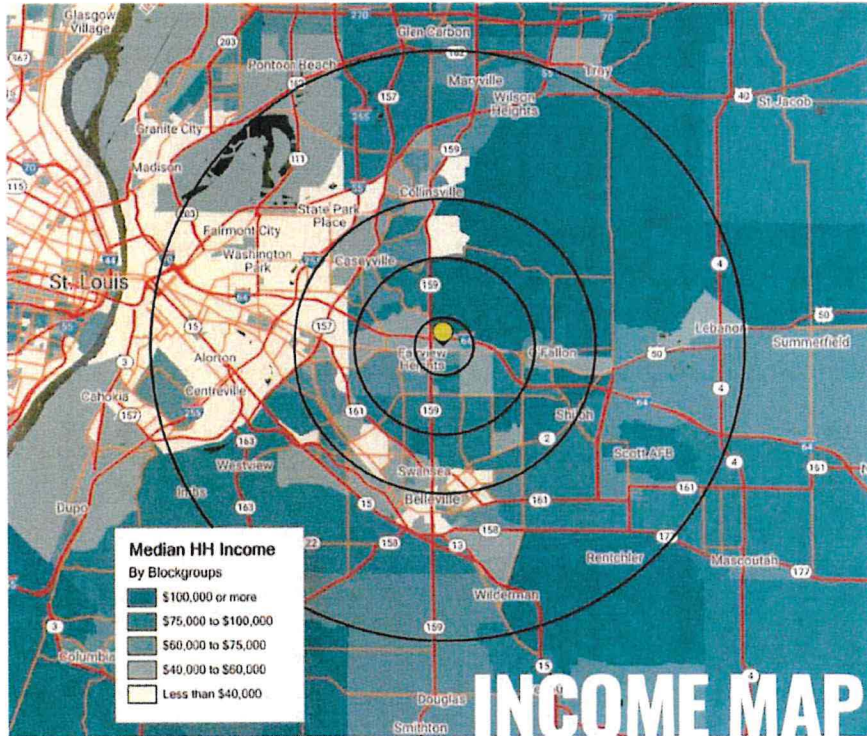
NEIGHBORHOOD VIBE

BEN WEIS

314.818.1563 (OFFICE)
314.629.6532 (MOBILE)
Ben@LocationCRE.com

SCOTT BITNEY

314.818.1550 (OFFICE)
314.276.4673 (MOBILE)
Scott@LocationCRE.com



INCOME MAP

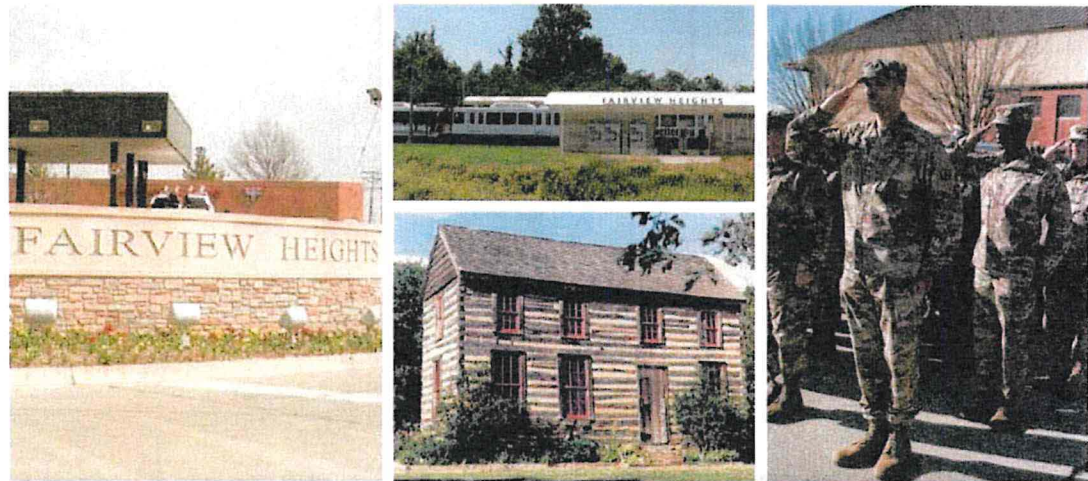
ANNUAL DEMOGRAPHICS

	1 MI	3 MI	5 MI	10 MI
POPULATION	6,178	34,843	113,639	247,672
HOUSEHOLDS	2,769	15,429	50,230	106,268
AVG HH INCOME	\$83,998	\$86,903	\$83,728	\$75,234

Fairview Heights, Illinois, known as the "Crossroads of Prosperity," is located in St. Clair County and is the local center for trade and tourism for all of southwestern Illinois. This growing community offers all the advantages of a St. Louis Metro location, yet retains small town hospitality and well-planned travel routes. Incorporated in October 1969, the city has dramatically changed from what was once productive farmland into a thriving community with a population of 17,078.

Fairview Heights is a dominant shopping destination for southwestern Illinois and includes numerous shopping centers, primarily concentrated along and around Route 159 between I-64 and Lincoln Trail. Fairview Heights is known as having the best shopping south of Chicago. St. Clair Square Mall is an enclosed shopping mall that opened in 1974 and was most recently renovated in 2003. The mall is anchored by Macy's, JC Penney and Dillard's, and features over one million square feet of GLA. It is the fifth largest mall in the St. Louis Metro area.

Scott Air Force Base, Home of the U.S. Defense Department Transcom Command, is approximately five miles east of Fairview Heights on I-64 and has an area annual economic impact in excess of \$3.2 billion. There is a total of 41,204 active duty/civilian personnel/dependent/retiree personnel in conjunction with the base.



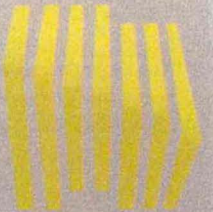
LOCATION.
commercial real estate



REALTY RESOURCES MEMBER

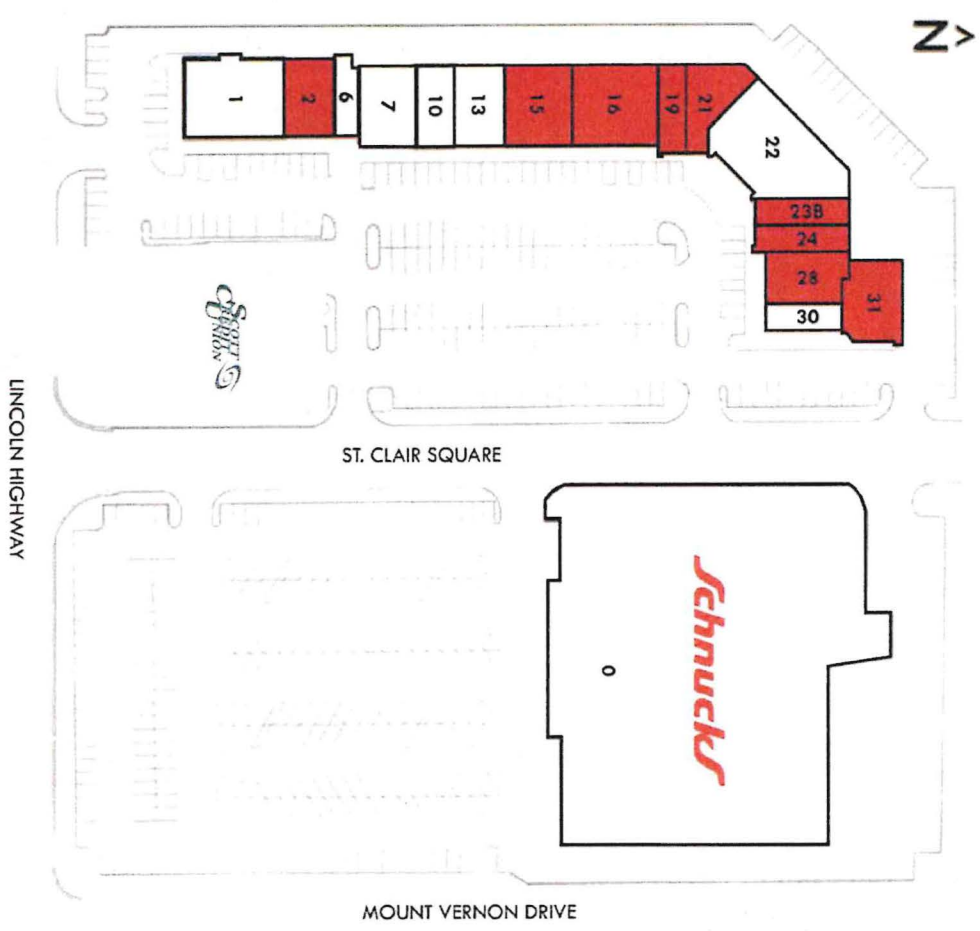
www.LocationCRE.com

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PLAZA ST. CLAIR

SITE PLAN



BEN WEIS **SCOTT BITNEY**

314.818.1563 (OFFICE) 314.818.1550 (OFFICE)
 314.629.6532 (MOBILE) 314.276.4673 (MOBILE)

Ben@LocationCRE.com Scott@LocationCRE.com

Suite	Tenant	SF
0	Schnucks	58,884
1	Salon Loft	4,234
2	AVAILABLE	2,388
6	Merle Norman	1,200
7	Affordable Dentures	3,000
10	Metro Infusion	1,800
13	DesmoProf	2,145
15	AVAILABLE	3,020
16	AVAILABLE	4,080
20	AVAILABLE	1,400
21	AVAILABLE	2,578
22	Banging Body Bootcamp	5,810
28B	AVAILABLE	1,400
24	AVAILABLE	1,800
28	AVAILABLE	2,478
30	Weight Watchers	1,600
31	AVAILABLE	2,028
	TOTAL	97,458

360 VIRTUAL TOURS
 AVAILABLE SUITES

- SUITE 23B**
- SUITE 28**
- SUITE 24**



LOCATION.

Commercial Real Estate



GREASULTYCES
 MEMBER

WWW.LOCATIONCRE.COM

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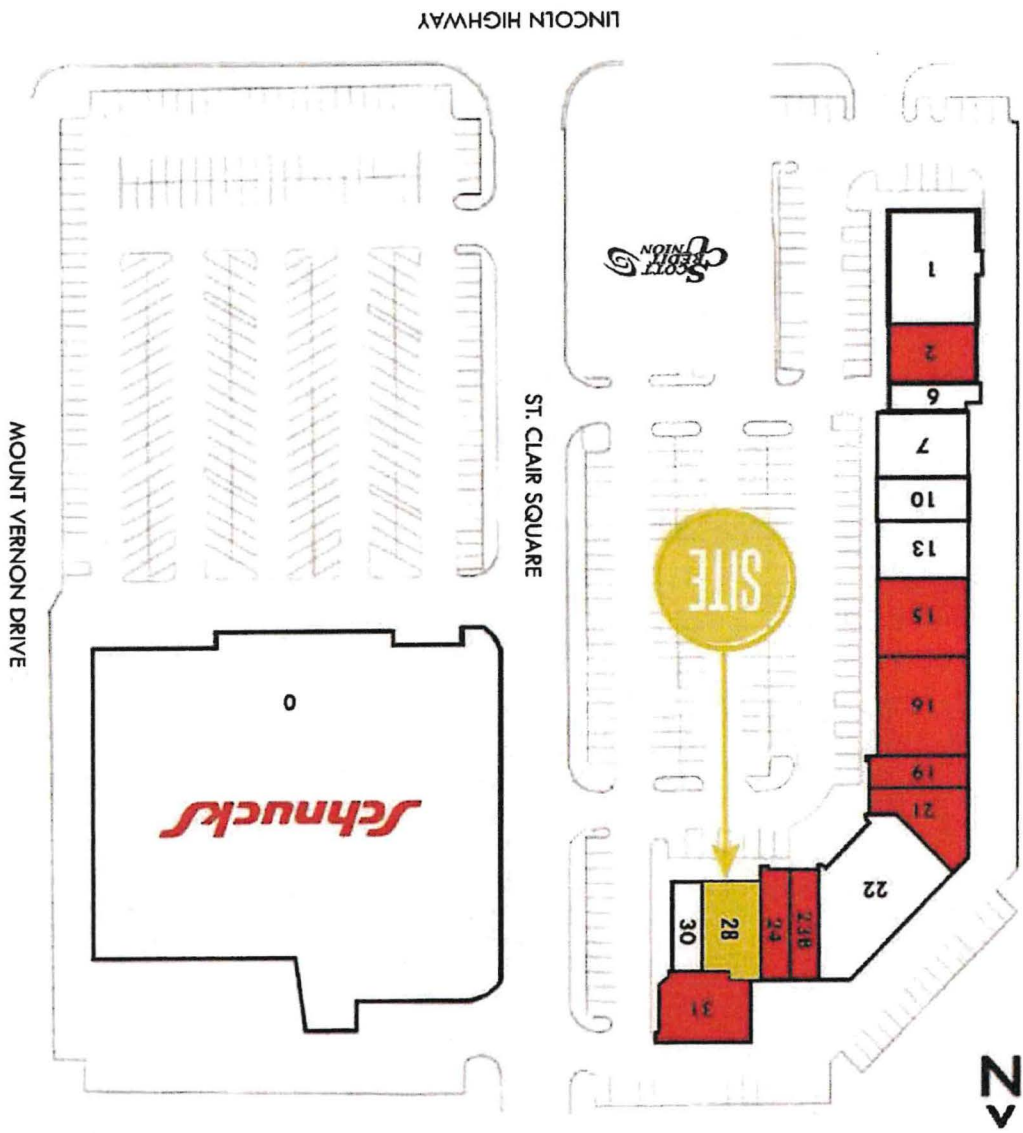
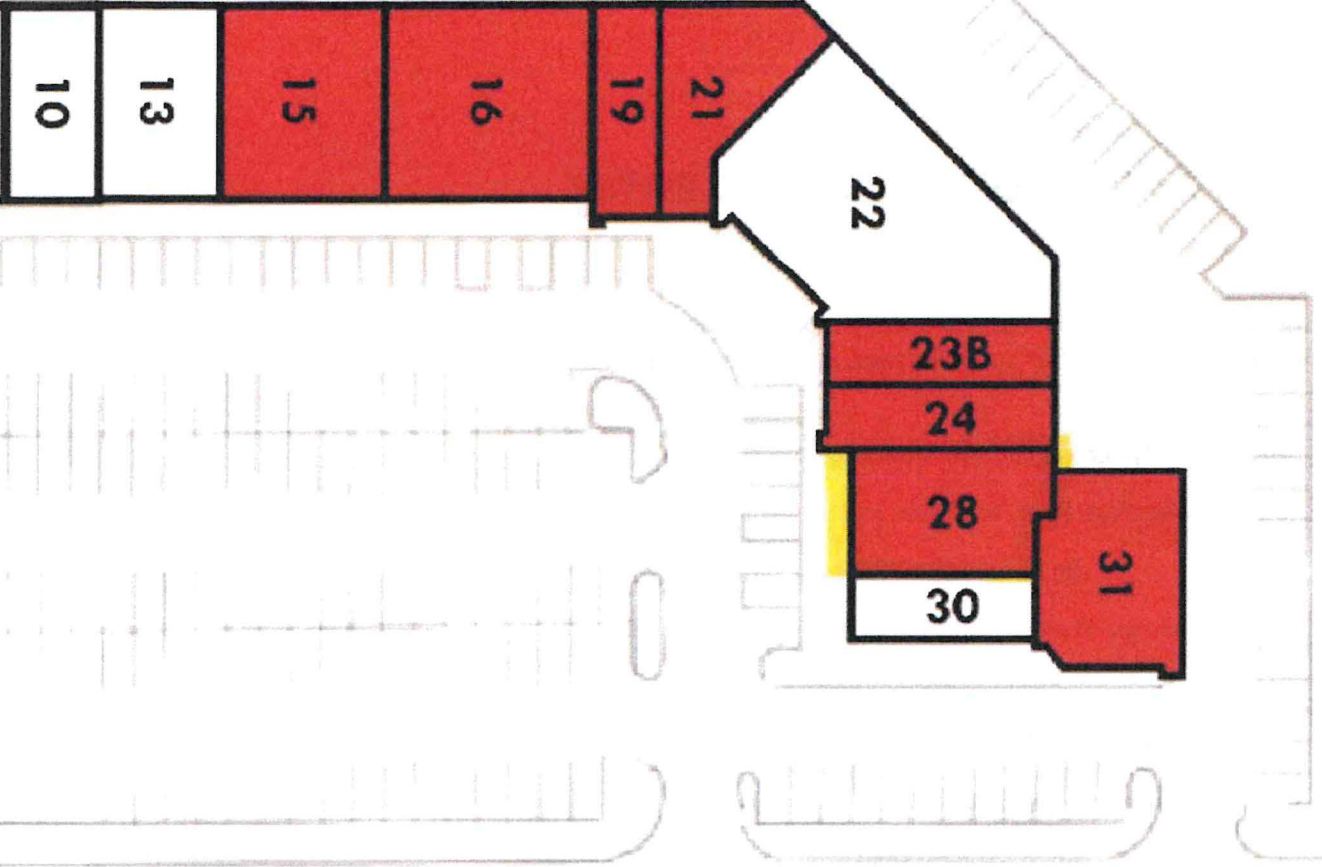
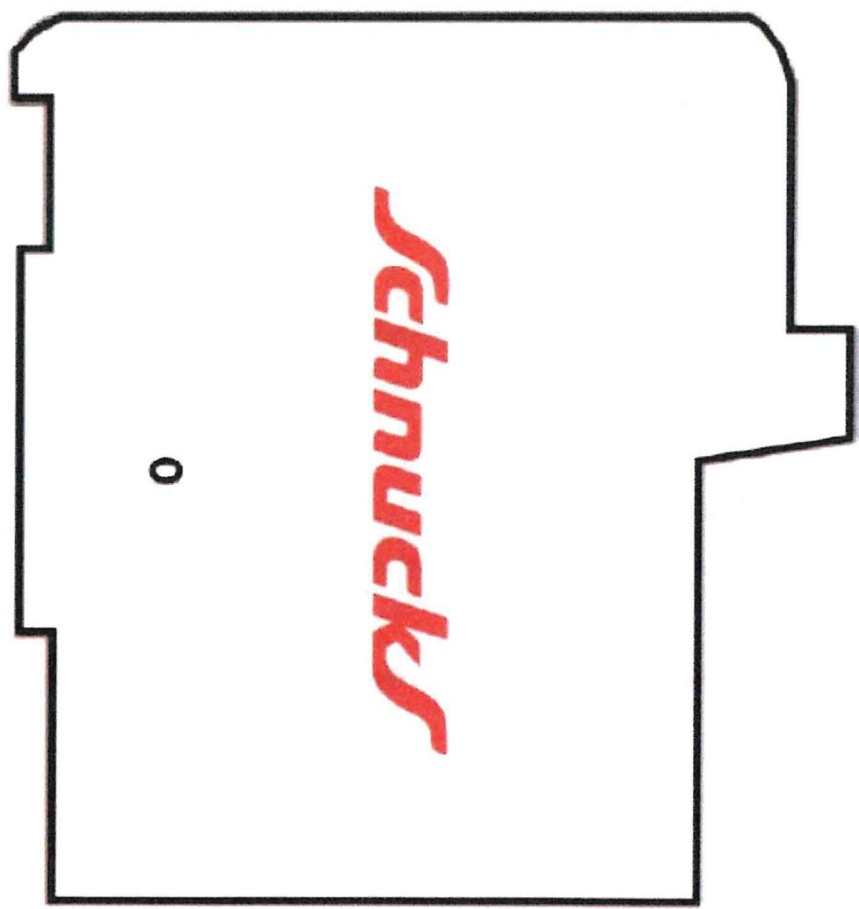


Exhibit A



R SQUARE



The StackHouse Event Center

Objective- To provide corporate & social meeting space for small businesses, non-profits, social & family gatherings. We will offer a sophisticated work /lifestyle experience enriched with state of art technology..

Capacity – 50 Main + 25 B room = 75 total

Hours of operation- 8a.m. to 10p.m. Sunday - Thursday

8a.m. to 12a.m. Friday & Saturday

Food & Beverage- Provided by license Catering Vendor

Rates

4 hr Minimum – Room B Base

Sunday – Thursday 8a.m.- 5p.m \$300

6p.m. -10p.m. \$450

Friday – Saturday 8a.m. – 5p.m. \$350

6p.m. – 12a.m. \$500

Main Room Base – 4hr Minimum

Sunday – Thursday 8a.m.- 5p.m \$500

6p.m. -10p.m. \$650

Friday – Saturday 8a.m. – 5p.m. \$500

6p.m. – 12a.m. \$750

Holiday – (Pre holiday & Day of holiday) All Day Rental

Main room \$1000 / Room B \$800

Owner- Susie & Kendall Stacker

We have over 30 yrs of Customer Service & Information Technology experience.

Our goal is to provide the Best Customer experience for a Corporate /Social Gathering space..!!!

The Stack House BUSINESS PLAN

Prepared by:

Kendall Stacker, Susie Stacker

10240 Lincoln Trl
Fairview Heights, Illinois 62208
1-618-250-5485

I. EXECUTIVE SUMMARY

The Stack House (referred to from hereon in as the "Company") is intended to be established as a Sole Proprietorship at 10240 Lincoln Trl, Fairview Heights, Illinois 62208 with the expectation of rapid expansion in the event entertainment industry. The Company solicits financial backing in order to be able to introduce its new service (described below).

Business Description

The Company shall be formed as Sole Proprietorship under Illinois state laws and headed by Kendall Stacker, Susie Stacker.

The Company will employ 2 full-time employees and 3 part-time employees.

Management Team

The Company has assembled an experienced management team:

Owner - Kendall Stacker, *25 yrs experience in Information technology experience*

Owner - Susie Stacker, *20 yrs of customer service experience*

New Service

The Company is prepared to introduce the following service to the market:

Event Planning: Plan, create and produce various events and manage all the delivery elements on deadline.

Manage all aspects of event planning meeting strict deadlines and budget demands.

Build relationships with vendors, venues, and other industry contacts to craft and implement creative and logistical aspects of all events.

Discuss with clients to find out what their expectations are and how to meet them.

Research the market and negotiate contracts with providers and other partners.

Offer constant feedback to clients.

Come up with original, imaginative ideas for the event and implement them.

Organize locations, setting, the list of attendees, and particular requirements about logistic issues.

Coordinate staff, and keep in contact with the PR and marketing departments to promote the event if need be.

Stay proactive and find solutions to any emergency issues that might arise on the day of the event.

Conduct research before and after the event and provide activity reports to the clients.

Funding Request

The Company requests a total loan of \$10,000.00 over the course of 60 months, to be used for the following purposes:

Equipment ,supplies, renovation, technology,payroll, marketing basic startup cost

<u>Purpose</u>	<u>Loan Amount</u>
Marketing	\$1,500.00
Staffing	\$3,000.00

Long-term debt payment is a key feature of the Company's financial plan. We expect to break even within a 1 yr time period following the introduction of our service. Financial predictions suggest a minimum 200% return on investment by the conclusion of the financing period.

II. BUSINESS SUMMARY

Industry Overview

In the United States, the event entertainment industry presently makes 200,000 dollars in sales.

Market trends are up in both sectors of our targets.. Social events are up as people are getting together more after Covid -19
Corporate events are now on the rise as employees are meeting in smaller satellite loc

Research shows that consumers in this industry primarily focus on the following factors when making purchasing decisions:

Business Goals and Objectives

Short Term:

small parties, commercial use

Long Term:

Birthday's & anniversaries, Corporate meeting's

Legal Issues

The Company affirms that its promoters have acquired all legally required trademarks and patents.

III. MARKETING SUMMARY

Target Markets

The Company's major target markets are as follows:

Social & Corporate

The estimated number of potential clients within the Company's geographic scope is 1,000.

Pricing Strategy

The Company has completed a thorough analysis of its competitors' pricing. Keeping in mind our competition's pricing and the costs of customer acquisition, we have decided on the following pricing strategy:

competitive

Promotional Strategy

The Company will promote sales using the following methods:

Online, Social media, Print ad's

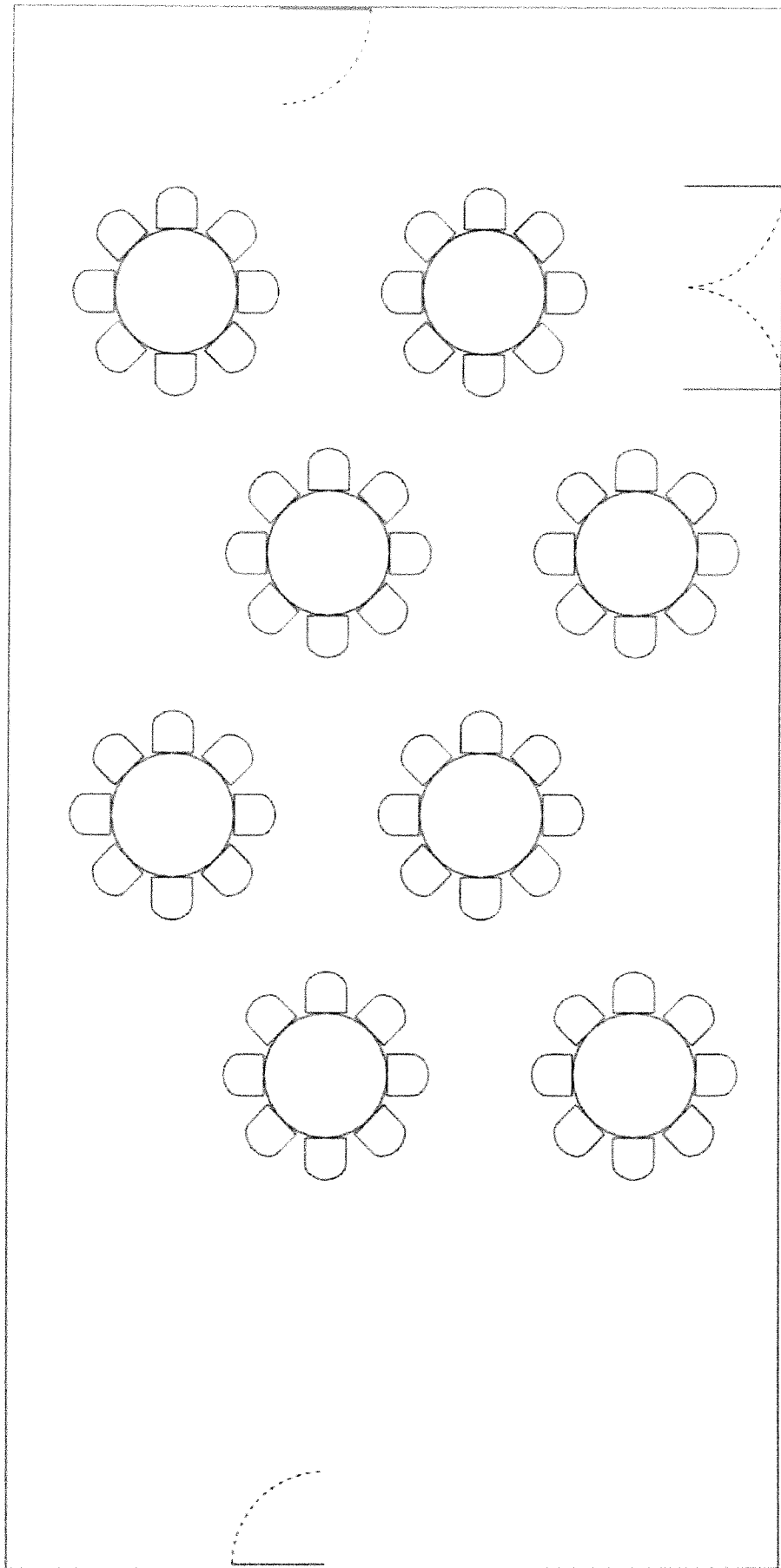
Services

First-rate service is intended to be the focus of the Company and a cornerstone of the brand's success. All clients will receive conscientious, one-on-one, timely service in all capacities, be they transactions, conflicts or complaints. This is expected to create a loyal brand following and return business.

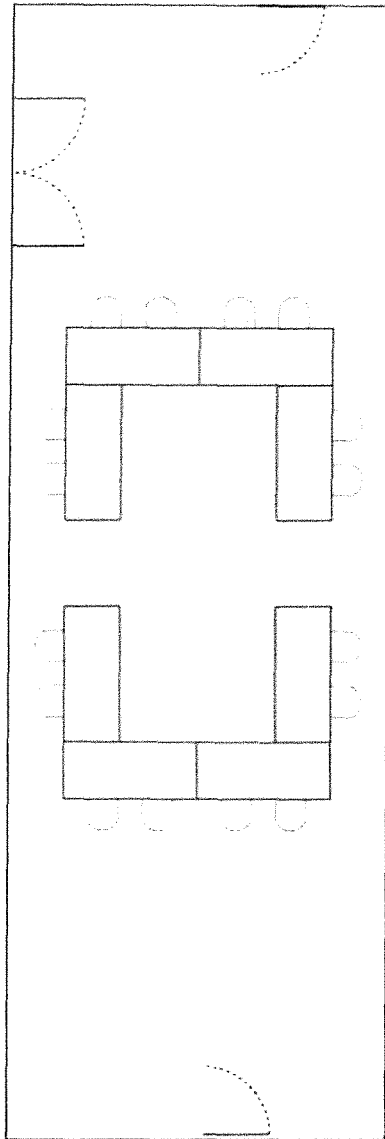
IV. FINANCIAL PLAN

12-Month Profit and Loss Projection

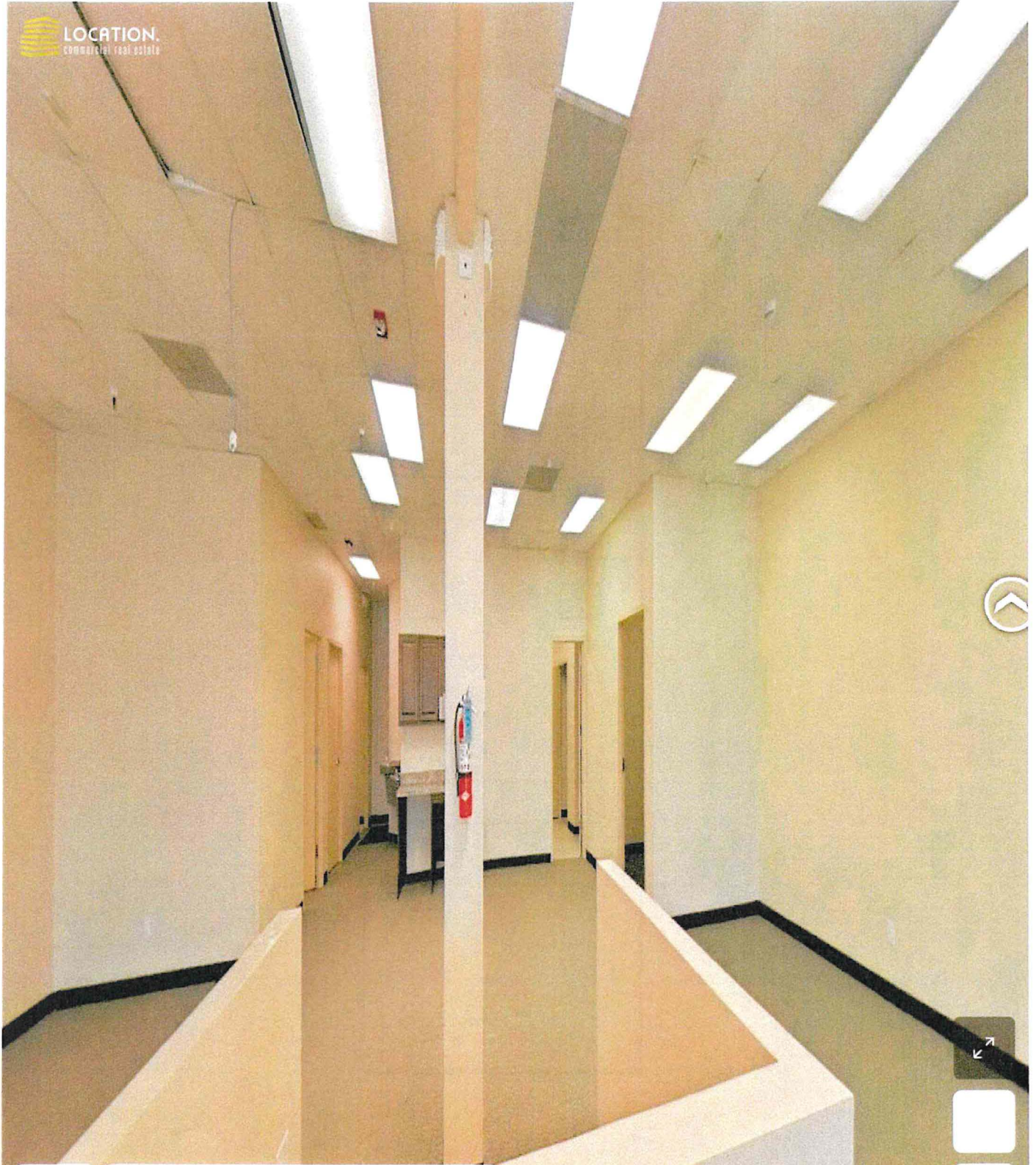
Monthly expense for salaries and overhead (projected):	\$1,500.00
Revenue and sales for first year of business (projected):	\$75,000.00
Gross profit for first year of business (projected):	\$60,000.00



5 Feet

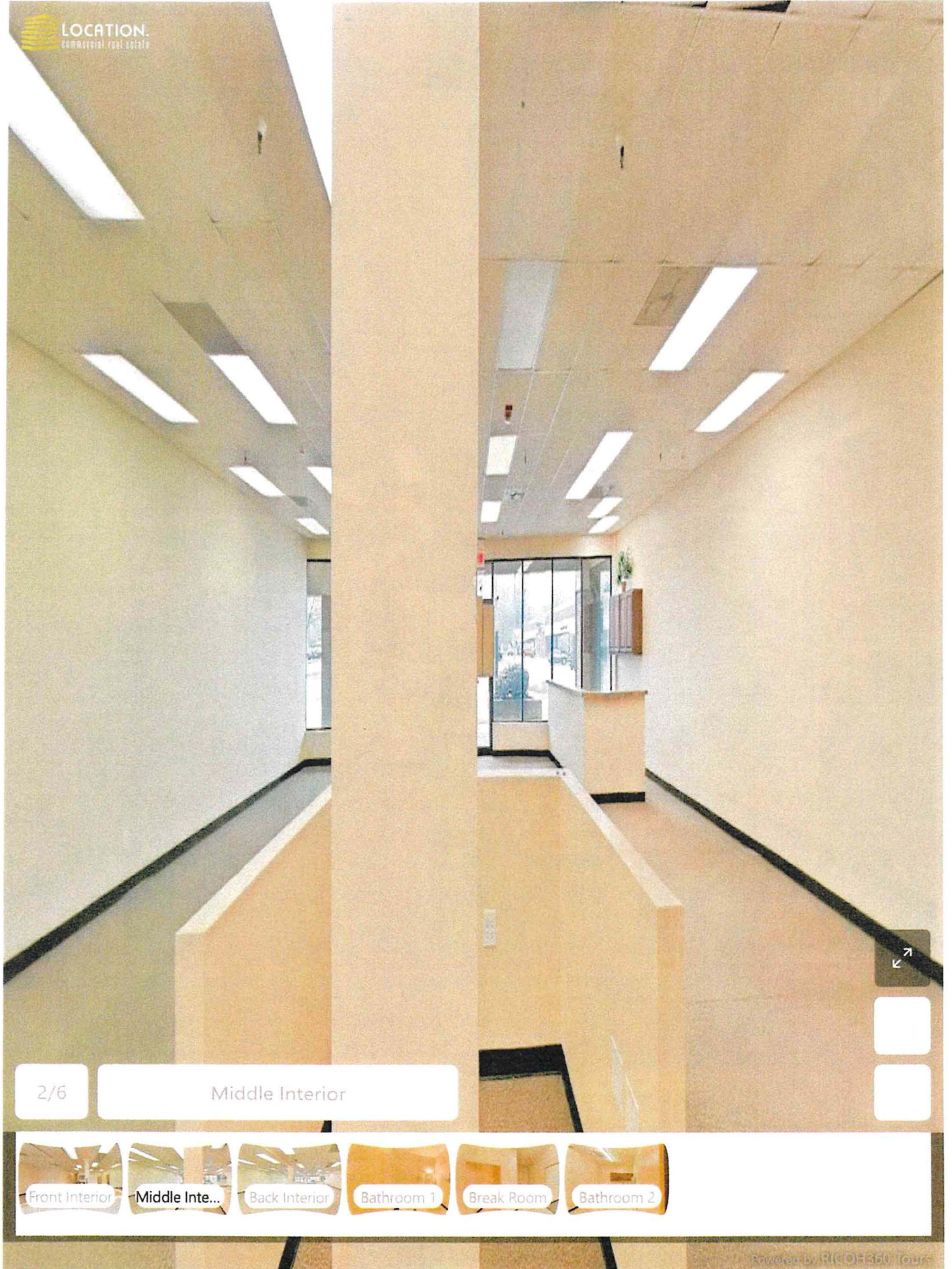


5 Feet



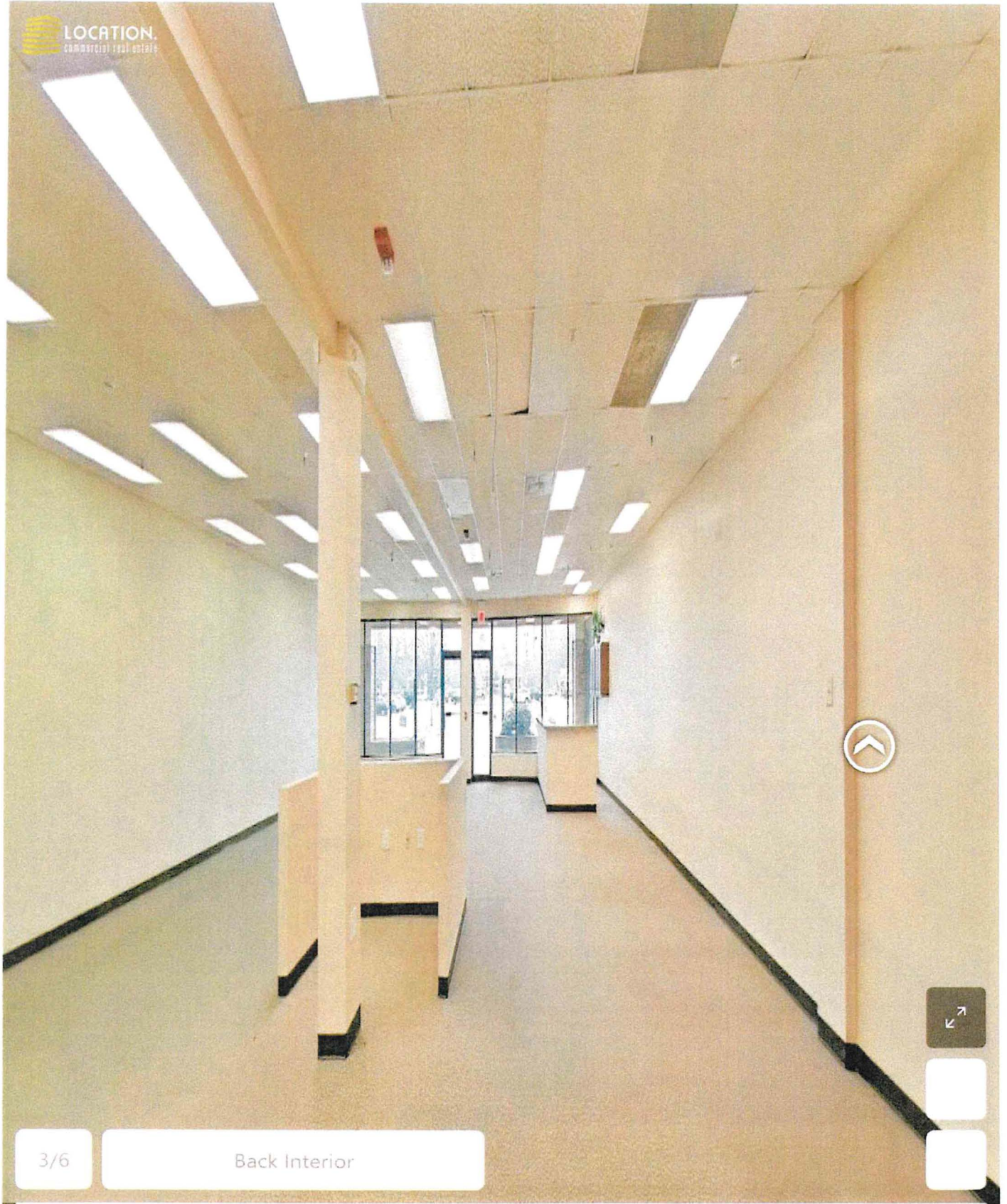
1/6 Front Interior

- Front Interior
- Middle Inte...
- Back Interior
- Bathroom 1
- Break Room
- Bathroom 2



2/6 Middle Interior

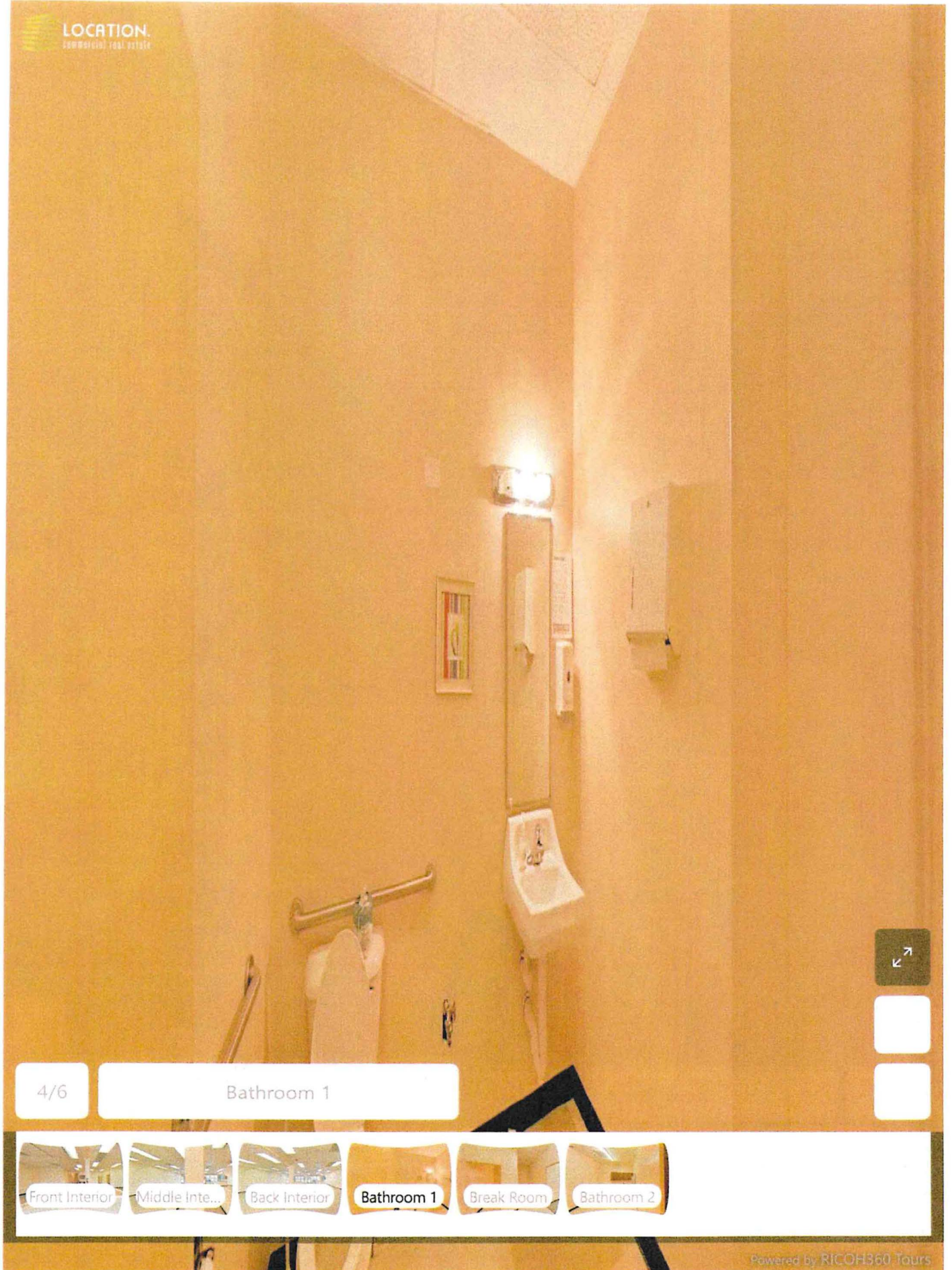
- Front Interior
- Middle Inte...
- Back Interior
- Bathroom 1
- Break Room
- Bathroom 2



3/6

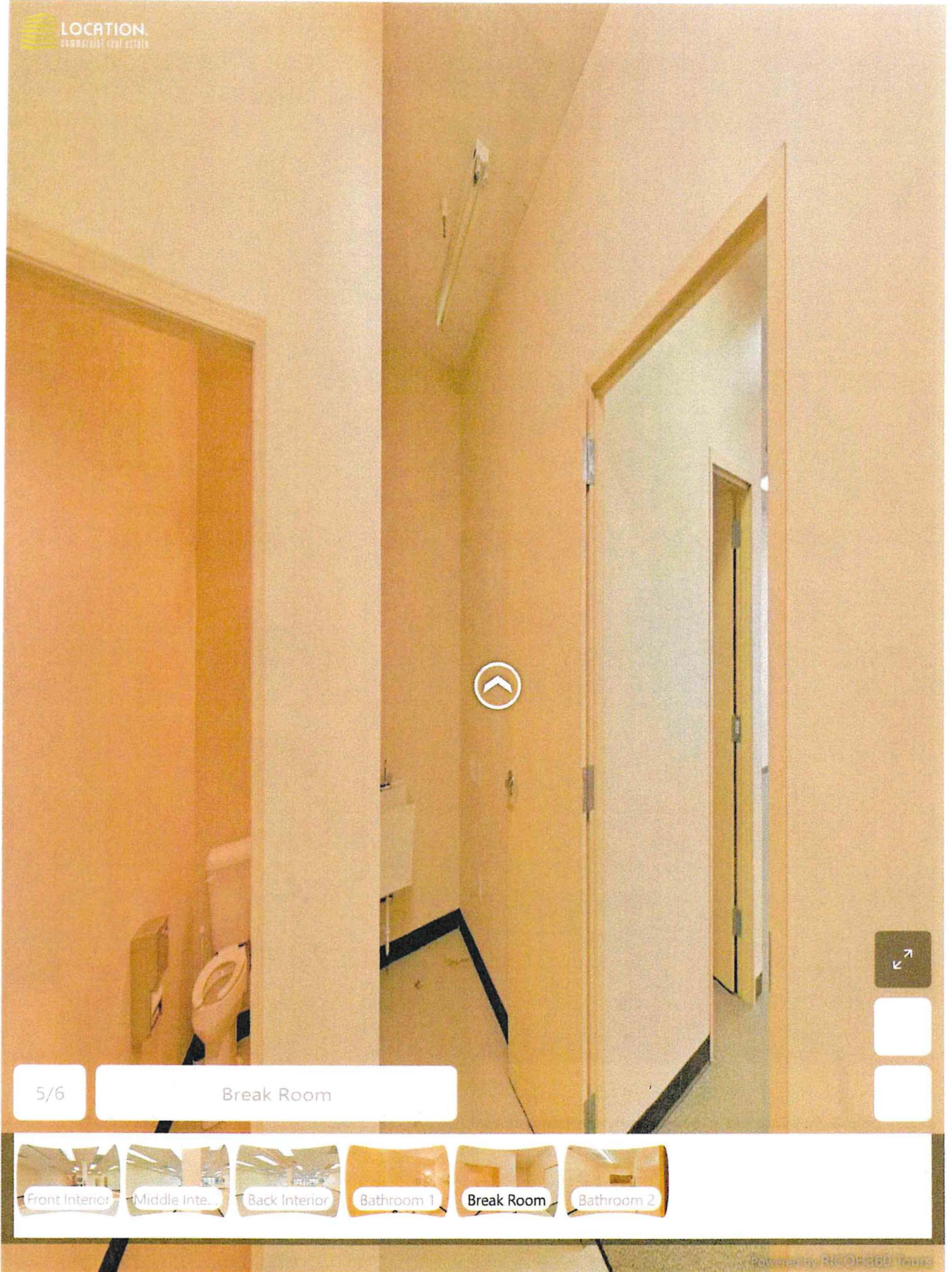
Back Interior





4/6 Bathroom 1

- Front Interior
- Middle Inte...
- Back Interior
- Bathroom 1**
- Break Room
- Bathroom 2



5/6

Break Room





6/6 Bathroom 2

- Front Interior
- Middle Inte...
- Back Interior
- Bathroom 1
- Break Room
- Bathroom 2

Planning Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION PC 02-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO APPROVAL OF A SPECIAL USE PERMIT FOR A CORPORATE AND SOCIAL EVENT SPACE AT 525 LINCOLN HIGHWAY SUITE 28

WHEREAS, Kendall and Susie Stacker hereinafter referred to as the "Applicant," applied for a Special Use permit for approval of a development plan for a corporate and social event space on parcel number 03-27.0-100-067, commonly known as 525 Lincoln Highway; and

WHEREAS, the Fairview Heights Development Code requires that major modifications to a site development plan in PB Planned Business Zoned District be approved as a special use;

WHEREAS, the Applicant has properly applied for a special use permit.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the subject property is zoned "PB" Planned Business Zoned District.
3. That the Applicant shall be responsible for all City costs incurred in administering and enforcing this approval.
4. That the Director of Land Use and Development, and his designee, shall have the right to inspect the premises for compliance and safety purposes.
5. That this Approval shall automatically expire if the use is not initiated within one year of City Council Approval.
6. That the Applicant shall obtain all required permits and comply with all ordinances and codes.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____ upon vote being taken thereon, the following voted in favor thereof: _____

And the following voted against the same: _____

And the following abstained: _____

And the following were absent: _____

Whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Planning Commission Chairman

ATTEST:

Land Use Director

Planning Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION PC 02-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO DENIAL OF A SPECIAL USE PERMIT FOR A CORPORATE AND SOCIAL EVENT SPACE AT 525 LINCOLN HIGHWAY SUITE 28

WHEREAS, Kendall & Susie Stacker hereinafter referred to as the "Applicant," applied for a Special Use permit for approval of a development plan for a corporate and social event space on parcel number 03-27.0-100.067, commonly known as 525 Lincoln Highway Suite 28; and

WHEREAS, the Fairview Heights Development Code requires that major modifications to a site development plan in PB Planned Business District be approved as a special use;

WHEREAS, the Applicant has properly applied for a special use permit.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the subject property is zoned "PB" Planned Business District.
3. That the Applicants special use permit for a corporate and social event space shall be denied, based on the following criteria

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____ upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Planning Commission Chairman

ATTEST:

Land Use Director



DEPARTMENT OF LAND USE AND DEVELOPMENT

PUBLIC HEARING NOTICE

Notice is hereby given that a public hearing will be held before the Fairview Heights Planning Commission on Tuesday, April 11th, 2023 at 7:00 p.m. This meeting will be held both in-person at the Fairview Heights City Hall, 10025 Bunkum Road, 62208 and virtually. Parties interested in attending the meeting virtually should contact Dallas Alley, Director of Land Use and Development at (618) 489-2061 or alley@cofh.org for instructions and visit the City's website for an agenda and meeting materials at www.cofh.org.

At this meeting, the Commission will consider a Special Use Permit in the "PB" Planned Business zoning district for the placement of an event space at 525 Lincoln Highway Suite 28 also identified by St. Clair County PIN(s) 03-27.0-100-067.

Request was made by Kendall and Susie Stacker, 2745 Brookmeadow Dr, Belleville, IL 62221.

All persons desiring to be heard on this proposal may attend either in-person or virtually.

Dated this 22nd day of March 2023.

FAIRVIEW HEIGHTS PLANNING COMMISSION

BY: Greg Moats, Chairman

PC 02-23

Planning Commissioner Kelly Smith introduced the following resolution and moved for its adoption:

RESOLUTION PC 03-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO A ZONING AMENDMENT TO ALLOW COSMETIC TATTOOING IN THE PPO – PLANNED PROFESSIONAL OFFICE ZONING DISTRICT

WHEREAS, Amy Katsikas hereinafter referred to as the "Applicant," applied for an amendment to the Fairview Heights Development Code to allow cosmetic tattooing as a permitted use in the PPO – Planned Professional Office Zoning District; and

WHEREAS, the Fairview Heights Development Code requires that text amendment be approved upon recommendation from the Planning Commission by the City Council;

WHEREAS, the Applicant has properly applied for an amendment to the Fairview Heights Development Code.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the Planning Commission believes it to be in the best interest of the City of Fairview Heights to allow cosmetic tattooing as a permitted use within the PPO – Planned Professional Office District, and recommends the inclusion of the definition of cosmetic tattooing provided in the staff advisory report, herein incorporated by reference and attached hereto as exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by Pat Wesemann; upon vote being taken thereon, the following voted in favor thereof: Patrick McCarthy, Linda Hoppe, Sunyatta McDermott, Pat Herrington, Greg Moats, Kelly Smith, Pat Wesemann.

and the following voted against the same: None

and the following abstained: None

and the following were absent: Gregory Coleman, Clarence Carthen, Terry Fowler, Larry Mensing

whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Greg Moats

Planning Commission Chairman

ATTEST:

Dallas Alley

Land Use Director

STAFF ADVISORY

PC03-23: TEXT AMENDMENT TO ORDINANCE 190, CHAPTER 14, SECTION 14-2-14 (B) PERMITTED USES – PPO PLANNED PROFESSIONAL OFFICE DISTRICT

REQUEST

Applicant Amy Katsikas is requesting a Zoning Text Amendment to Ordinance 190 –Chapter 14 the Development Code to include cosmetic tattooing as a permitted use in the PPO – Planned Professional Office Zoning District. The proposed amendment will add a definition of cosmetic tattooing and establish cosmetic tattooing as permitted use in the planned professional office district. The current code does not expressly address these uses.

Zoning text amendments are necessary to keep the Development Code current with new uses, to implement new policies, and to ensure that the Development Code is in keeping with its purpose of promoting the health, safety and general welfare of the public. In accordance with 14-9-13 of the Development Code, a zoning text amendment may be initiated by (1) the City (2) a petition of any person(s) with interest or (3) the Planning Commission. Once requested, the amendment is considered at a public meeting by the Planning Commission. After Planning Commission consideration, the proposed amendment is presented to the City Council's Community Committee for review and recommendation to City Council. City Council has the final decision on the text amendment.

Planning Background and Considerations

Cosmetic Tattooing has been established as an alternative to traditional cosmetic application methods. The City of Fairview Heights neither prohibits cosmetic tattooing in general nor outright permits cosmetic tattooing establishments *as a primary land use*. While the current Development Code establishes guidelines and regulates traditional tattooing parlors the development code does not distinguish between traditional tattooing establishments and establishments that provide cosmetic tattooing exclusively. This is problematic from a decision-making and permitting standpoint. The State of Illinois requires establishments that provide cosmetic tattooing services to be licensed in the same manner as traditional tattooing services.

RECOMMENDATION

The Director of Land Use and Development does not endorse or renounce the proposed amendment to the text; however it is recommended that the Planning Commission carefully consider the proposed definition of cosmetic tattooing as well as the implication of allowing the proposed use. Attached is the proposed definition, note that should the text amendment be

approved, the approved uses in the PPO – Planned Professional Office Zones District would be modified to include cosmetic tattooing and the definition section of the Development Code would be modified to include the attached definition.

Cosmetic Tattooing. The practice commonly referred to as permanent makeup, in which micropigmentation or intradermal cosmetics are applied to permanently or semi-permanently simulate the appearance of common cosmetic applications such as eyeliner, lip liner, lip color, eyebrow enhancement, and beauty marks, or to otherwise permanently or semi-permanently restore or improve the appearance of damaged or disfigured skin and other bodily features to natural coloration and condition. The act of tattooing in a manner not consistent with this definition shall be considered traditional tattooing and shall adhere to Section 8-8-1 et seq.

REQUEST FOR ZONING AMENDMENT

Planning Commission
Fairview Heights, Illinois

Special Permit No. 03-23
Date: 4-4-23

(Do not write in this space. For office use only)

Date of Hearing: 5-9-23 Perm Parcel #: _____
Notice Published on: _____ Zone District: PPO
Newspaper: _____ Fee Paid \$ 150.00 Date: 4-4-23

Recommendation of Planning Commission

- Denied
 Approved
 Approved with modification

Date: _____

Action by City Council

- Denied
 Approved
 Approved with modification

Date: _____

INSTRUCTIONS TO APPLICANTS: To request a change in either the zoning map or text, this application for a zoning amendment must be completed and a public hearing held. If the applicant is requesting that this property be rezoned, a site plan must be included with the application showing the information listed on the attached sheet. Normally there are only two primary reasons for change in zoning: (1) the original zoning was in error; (2) the character of the area has changed to such an extent as to warrant rezoning. The burden of providing substantiating evidence rests with the applicant.

A notice of the hearing must be published in a newspaper or general circulation in the local area at least 15 days before the hearing. The publication cost must be paid by the applicant prior to the hearing. The applicant will be notified by mail of the time and place of the hearing at least six days prior to the hearing date. The applicant or his attorney or duly-authorized agent must appear at the hearing and present his case to the Planning Commission. All information requested below must be provided before a hearing will be scheduled. Applicants are encouraged to visit the Director of Lane Use for any assistance needed in completing this application.

- 1) Name of Applicant: Amy KATSIKAS Phone # (618) 558-7888
Address: 391 FRANK SCOTT PKWY EAST, Fairview Heights
- 2) Property Interest of Applicant:
 Owner Contract Purchaser Lessee Other
- 3) Name of Owner (s): Amy KATSIKAS
(If other than applicant): _____ Phone # 618 558 7888
Address: 923 FAR OAKS DR. Caseyville IL. 62232

1941

1942

1943

1944

4) An amendment to the Zoning Ordinance is requested as follows:

a. Amendment to Text:

It is requested that Section _____ of the Zoning Ordinance be amended as follows:
TO ALLOW COSMETIC TATTOOING AS A PERMITTED USE WITHIN THE PPO DISTRICT.

Reason for amendment: allow cosmetic tattooing WITHIN THE PPO DISTRICT.

b. Amendment to Map:

It is requested that the property described below and shown on the attached site plan be rezoned from _____ to _____

Address of property: _____

Legal description of property (lot/block/subdivision or metes & bounds; attach additional sheets if necessary): _____

391 Frank Scott Parkway East, Fairview Heights

Present use of property: professional services

Proposed use of Property: professional services including cosmetic TATTOOING

Reason for amendment: add a service.

5. Names and addresses of adjacent property owners and present use of their property:

KEVIN WEISSERT - 2008 TIFFANY DR., BELLEVILLE, IL 62223 - FARM GROUND
JUDITH SAMS - 5176 DEPAUL DR., FAIRVIEW HEIGHTS, IL 62208 - RES HOME

6. I certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true and accurate. I consent to the entry in or upon the premises described in this application by any authorized official of the City of Fairview Heights for the purpose of inspecting, or of posting, maintaining and removing such notices as may be required by law.

Date: 3/30/23

Applicant: Amy Katsikas

Date: 3/30/23

Owner(s): Amy Katsikas

Receipt No: 6.002160

Apr 4, 2023

AMY KATSIKAS

Previous Balance: .00

PERMITS

ZONING PERMITS 150.00

Total: 150.00

GENERAL FUND CASH 200.00

Total Applied: 150.00

Change Tendered: 50.00

Duplicate Copy
04/04/2023 3:05 PM

Planning Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION PC 03 -23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO A ZONING AMENDMENT TO ALLOW COSMETIC TATTOOING IN THE PPO – PLANNED PROFESSIONAL OFFICE ZONING DISTRICT

WHEREAS, Amy Katsikas hereinafter referred to as the "Applicant," applied for an amendment to the Fairview Heights Development Code to allow cosmetic tattooing as a permitted use in the PPO – Planned Professional Office Zoning District; and

WHEREAS, the Fairview Heights Development Code requires that text amendment be approved upon recommendation from the Planning Commission by the City Council;

WHEREAS, the Applicant has properly applied for an amendment to the Fairview Heights Development Code.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the Planning Commission believes it to be in the best interest of the City of Fairview Heights to allow cosmetic tattooing as a permitted use within the PPO – Planned Professional Office District, and recommends the inclusion of the definition of cosmetic tattooing provided in the staff advisory report, herein incorporated by reference and attached hereto as exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by _____; upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Planning Commission Chairman

ATTEST:

Lan Use Director

Planning Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION PC 03 -23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO A ZONING AMENDMENT TO DENY THE PROPOSED AMENDEMENT TO THE DEVELOPMENT CODE TO PERMIT COSMETIC TATTOOING IN THE PPO – PLANNED PROFESSIONAL OFFICE ZONING DISTRICT

WHEREAS, Amy Katsikas hereinafter referred to as the "Applicant," applied for an amendment to the Fairview Heights Development Code to allow cosmetic tattooing as a permitted use in the PPO – Planned Professional Office Zoning District; and

WHEREAS, the Fairview Heights Development Code requires that text amendment be approved upon recommendation from the Planning Commission by the City Council;

WHEREAS, the Applicant has properly applied for an amendment to the Fairview Heights Development Code.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the Applicants request to modify the Development Code to include cosmetic tattooing as a permitted use in the PPO – Planned Professional Office Zoning District shall be denied, based on the following criteria: _____

The motion for the adoption of the foregoing resolution was duly seconded by _____; upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of December, 2023.

Planning Commission Chairman

ATTEST:

Land Use Director



DEPARTMENT OF LAND USE AND DEVELOPMENT

PUBLIC HEARING NOTICE

Notice is hereby given that a public hearing will be held before the Fairview Heights Planning Commission on Tuesday, March 9, 2023 at 7:00 p.m. This meeting will be held both in-person in the Fairview Heights City Hall, 10025 Bunkum Road, 62208 and virtually. Parties interested in attending the meeting virtually should contact Dallas Alley, Director of Land Use and Development at (618) 489-2061 or alley@cofh.org for instructions and visit the City's website for an agenda and meeting materials at www.cofh.org.

At this meeting, the Commission will consider an application for Zoning Text Amendment of the Revised Code of Ordinances, Chapter 14 The Development Code, to Section 14-2-14 (B) to include Cosmetic Tattooing as a permitted use in Planned Professional Office District.

Request was made by Amy Katsikas of Pure 111 Medical Aesthetics Spa, 391 Frank Scott Parkway Suite E. All persons desiring to be heard on this proposal may attend either in-person or virtually.

Dated this 17th day of April 2023.

FAIRVIEW HEIGHTS PLANNING COMMISSION

BY: Greg Moats, Chairman

PC03-23

Planning Commissioner Pat Wesemann introduced the following resolution and moved for its adoption:

RESOLUTION PC 04-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO APPROVAL OF A SPECIAL USE PERMIT FOR A RESTAURANT WITH DRIVE THRU AT 10860 LINCOLN TRAIL

WHEREAS, Ryan Bickings, hereinafter referred to as the "Applicant," applied for a Special Use permit for approval of a development plan for a restaurant with drive thru on parcel number 03-28.0-401-023, commonly known as 10860 Lincoln Trail; and

WHEREAS, the Fairview Heights Development Code requires that major modifications to a site development plan in PB Planned Business Zoned District be approved as a special use;

WHEREAS, the Applicant has properly applied for a special use permit.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the subject property is zoned "PB" Planned Business Zoned District.
3. That the Applicant shall be responsible for all City costs incurred in administering and enforcing this approval.
4. That the Director of Land Use and Development, and his designee, shall have the right to inspect the premises for compliance and safety purposes.
5. That this Approval shall automatically expire if the use is not initiated within one year of City Council Approval.
6. That the Applicant shall obtain all required permits and comply with all ordinances and codes.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner Linda Hoppe upon vote being taken thereon, the following voted in favor thereof: Linda Hoppe, Sunyatta McDermott, Pat Herrington, Greg Moats, Kelly Smith, Pat Wesemann, Patrick McCarthy.

And the following voted against the same: None

And the following abstained: None

And the following were absent: Clarence Carthen, Gregory Coleman, Terry Fowler, Larry Mensing

Whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Greg Moats

Planning Commission Chairman

ATTEST:

Dallas Alley

Land Use Director



DEPARTMENT OF LAND USE AND DEVELOPMENT

TRANSMITTAL TO PLANNING COMMISSION

APPLICATION NUMBER: PC-04-23

REQUEST: Special Use Permit to allow a restaurant with drive thru in "PB" Planned Business zoning district at 10860 Lincoln Trail. Also identified by St. Clair County PIN(s) 03-28.0-401-031. *VOTE REQUESTED.*

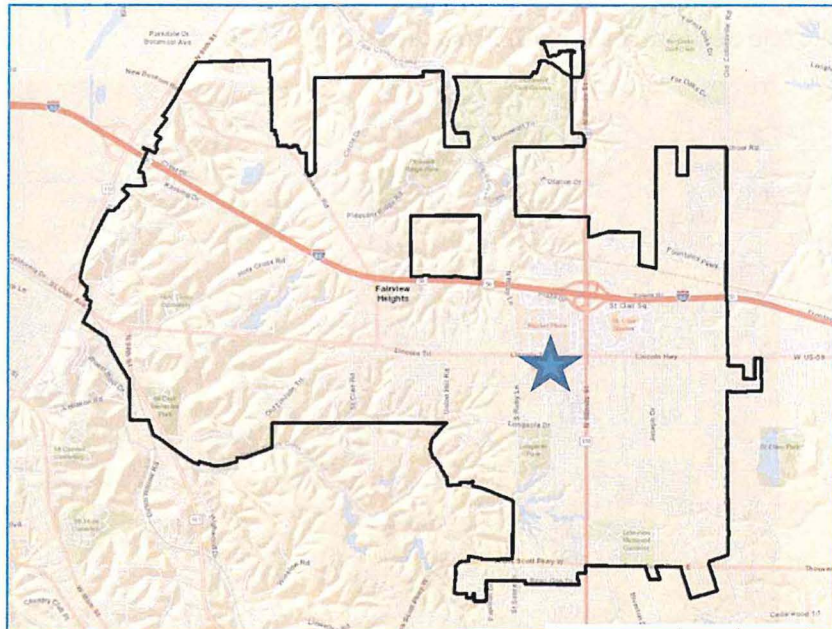
APPLICANT NAME: Ryan Bickings

MEETING DATE: May 9, 2023

ZONING: PB – Planned Business

PLANNING COMMISSION ACTION: Consideration of the Special Use Permit, make recommendation to the Community Committee and City Council which has final authority to approve or deny the request.

GENERAL LOCATION:



STAFF ADVISORY

1. BACKGROUND

The City of Fairview Heights Development Code divides the City into districts and establishes a set of land uses that are either “permitted” or “special”. Permitted uses are compatible land uses authorized as a matter of right. Special uses are those that may cause potential conflict depending on the scope of the operation. A special use may be allowed after a review by Plan Commission and City Council, in accordance with Development Code section 14-10-8. Each special use is evaluated on its own merits.

The applicant is seeking approval of a restaurant with drive thru.

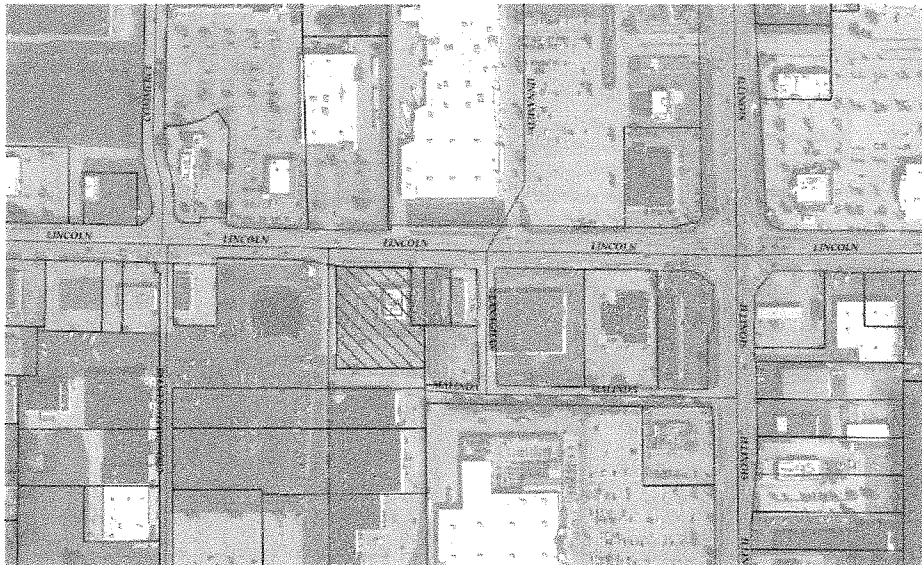
The subject property located at 10860 Lincoln Trail and is zoned PB- Planned Business. This zoning district is intended for a variety of commercial uses such as retail, office, and restaurant uses. The restaurant with drive thru use is permitted; however, a Site Development Plan is required when there is a substantial change to an approved PB-Planned Business development site plan or where there could be impacts to traffic, noise or adjacent uses.

2. DISCUSSION

Context

The subject site is located in the central portion of the City, south of IL Rte 50, and west of IL Rte 159. It is comprised of one parcel.

The zoning designation for this parcel is PB – Planned Business. This zoning district is intended for a variety of commercial uses such as retail, office, and restaurant uses. Substantial changes to an approved planned business development site plan must be approved by the Planning Commission as established in Development Code Section 14-2-13 (G) Procedures in PB District.



Zoning: Site and Surrounding Areas

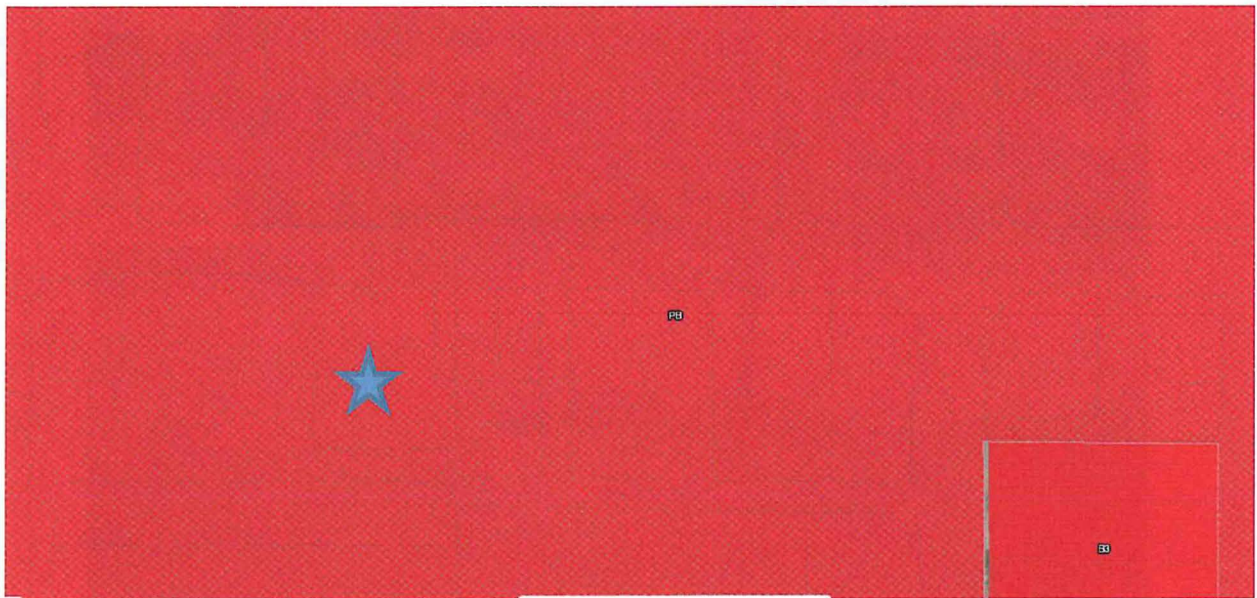
The zoning and land uses of adjoining and surrounding properties are as follows:

North: PB - Planned Business;

South: PB – Planned Business;

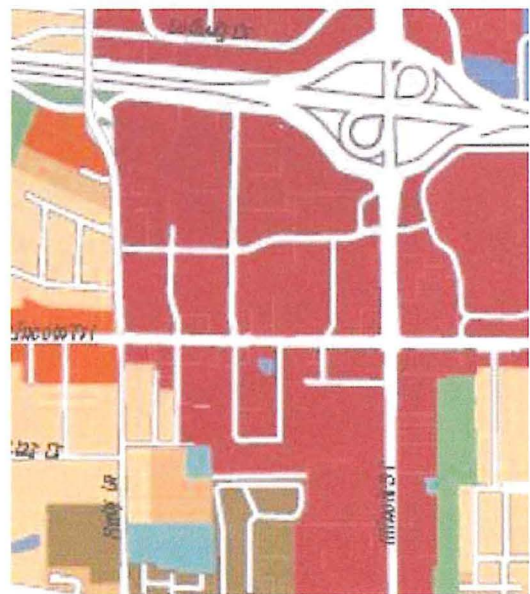
West: PB – Planned Business;

East: PB – Planned Business.



Future Land Use: Site and Surrounding Areas

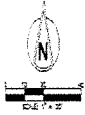
The Fairview Heights Comprehensive Plan identifies the subject site as Regional Commercial. This designation consists of intense commercial land use of larger properties. The proposed use does conform with the Fairview Heights Comprehensive Plan.



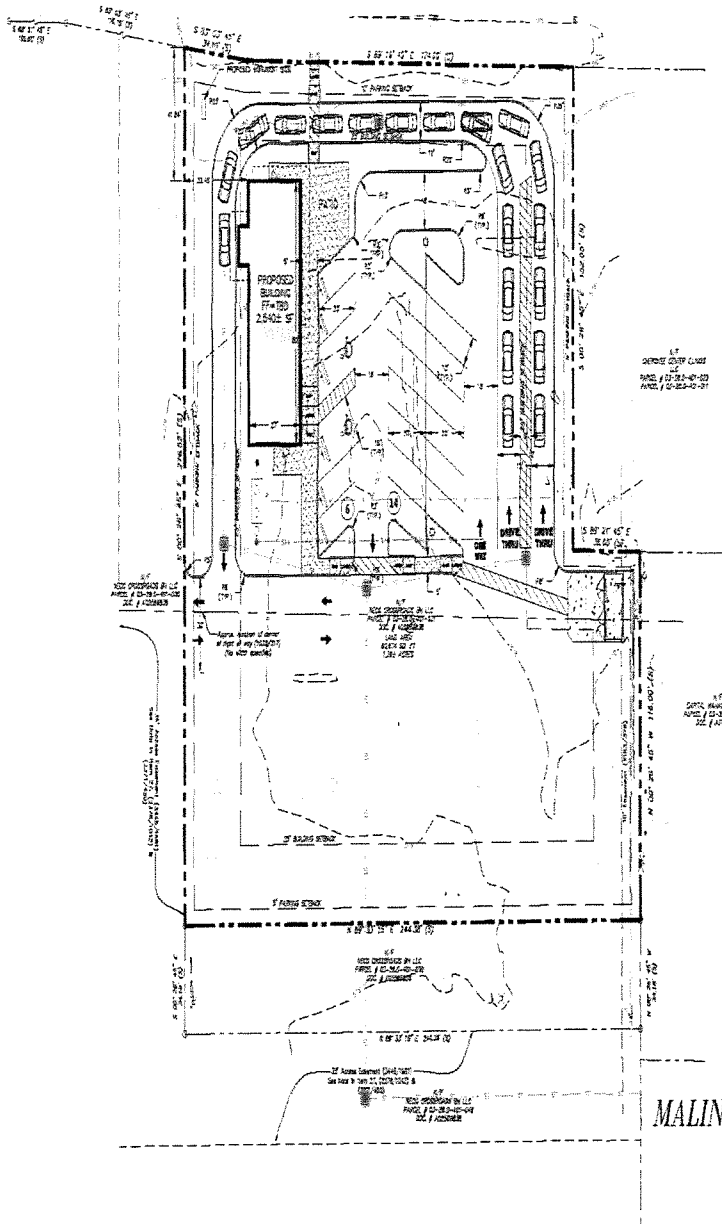
Site Photographs



Site Plan -



LINCOLN TRAIL



ZONING INFORMATION

LOT SIZE: 41.39 ACRES
BUILDING SIZE: 28,402 SF
ZONING: B-3 COMMUNITY BUSINESS DISTRICT (DRIVE-THRU FACILITY IS SPECIAL USE)
ACCESS: FULL ACCESS FROM FRONTAGE
ACCESS AISLE: 20' TWO-BAY 80' PARKING
18 ONE-BAY 80' PARKING

PARKING STALL DIMENSIONS: 80' AND 60' PARKING - 15'X20'
ADA PARKING - 15'X20'
REQUIRED PARKING: DRIVE-IN RESTAURANTS:
1 SPACE/A SEAT
+ 3 SPACES PER 1000 AT MAX. SHOT
75 SPACES

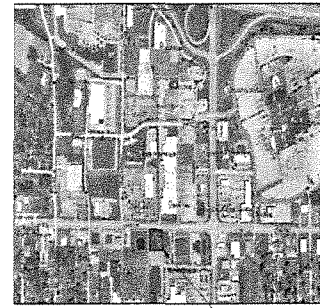
PROVIDED PARKING: 20 SPACES INCLUDING 2 ADA STALLS
DRIVE-THRU STACKING: 7 SPACES MINIMUM
DRIVE-THRU QUEUE: MINIMUM 18
MAXIMUM 22

REQUIRED BUILDING SETBACKS: FROM PUBLIC RIGHT-OF-WAY 15'
INTERIOR SIDE 05'
STREET SIDE 05'
REAR 05'
REQUIRED PARKING SETBACKS: FROM PUBLIC RIGHT-OF-WAY 10'
INTERIOR SIDE 05'
STREET SIDE 05'
REAR 05'

REQUIRED ACCESSORY STRUCTURE SETBACKS: FROM PUBLIC RIGHT-OF-WAY 10'
INTERIOR SIDE 05'
STREET SIDE 05'
REAR 05'

SEWERAGE: WASH AREA 225 FT²
SEWERAGE 10 FT FROM PUBLIC RIGHT-OF-WAY
WALK HEIGHT: 20 FT
TYPE RESTRICTION: IMPERVIOUS OR PAVED SURFACE

LANDSCAPE: ALL VEHICULAR USE AREAS SHALL HAVE A MINIMUM TEN (10) FOOT LANDSCAPE SETBACK FROM EXISTING OR PROPOSED RIGHTS-OF-WAY LINES. WHEN THE SITE ADJUTS UNDEVELOPED COMMERCIAL PROPERTY, THE LANDSCAPE SETBACK SHALL BE AT A MINIMUM FIVE (5) FEET FROM THE PROPERTY LINE.



VICINITY MAP SITE LOCATION



NATIONAL Q.S.R.

PROJECT NAME: CROSSROADS CENTRE SHOPPING MALL
ADDRESS: 10860 LINCOLN TRAIL FAIRVIEW HEIGHTS, IL 62208

CONTRACT NO. 20150000000000000000
DATE: 04/10/13

Drawn By/Checked By: JSP/SLK
Project Number: 2015000
Sheet Date: 04/10/13
SHEET: 15-113

SITE PLAN
C10
DATE 04/10/13

Planning Considerations

I. Analysis: Site Development

The applicant is seeking approval of the placement of a tunnel car wash. In its deliberations, Planning Commission shall review general planning considerations and may impose conditions to the approval of this structure. Following are the criteria outlined in Chapter 14 of the Fairview Heights Code of Ordinances (Development Code) and proposed conditions, where applicable:

(a) *Permitted uses, including maximum floor area.*

The use of a restaurant with a drive thru is permitted in the PB Planned Business District.

(b) *Performance standards. (Performance standards regulate the intensity of land use to prevent adverse impact on abutting and nearby properties.)*

The premises shall be maintained in good condition, free from trash and debris.

Noise emanating from the use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property line. Unreasonably offensive noises due to intermittence, beat frequency or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

No obnoxious, toxic or corrosive matter, smoke, fumes or gases shall be discharged into the air or across the boundaries of any lot in such concentrations as to be detrimental to or endanger the public health, safety, comfort or welfare or to cause injury or damage to property or business.

(c) *Height limitations.*

The building height of approximately 18 feet meets the height limitation requirements.

(d) *Minimum yard requirements.*

n/a

(e) *Off-street parking and loading requirements*

The Development Code states that parking and loading requirements for drive-thru restaurants shall be approved base on administrative review. The proposed parking and loading configuration is satisfactory to the zoning administrator.

(f) *Sign regulations*

The size and number of signs are prescribed in Article VII of the Development Code and will be reviewed during the permitting process. The location will also be determined at that time.

(g) *Minimum requirements for site development plans.*

Site development plans shall depict the proposed location of buildings, parking areas, traffic circulation, landscaping, utilities, and drainage. These requirements have been met.

(h) *Time limitations for commencement of construction.*

Within one (1) year of approval, construction shall commence. The applicant may apply for one (1) extension of time limitation from the City in writing explaining extenuating circumstances.

(i) Trust funds, impact fees, surcharges and connection fees.

The applicant will pay all applicable fees and meet all permitting requirements of any utility or other jurisdictional unit.

(j) Rights of way dedication and road improvements.

n/a

Exhibits

1. Applicant's Narrative and Excerpted Supporting Documents
2. Resolution and Findings of Fact
3. Public notice

APPLICATION FOR SPECIAL USE PERMIT



_____ DATE APPLICATION RECEIVED BY LUD

Department of Land Use and Development
10025 Bunkum Road
Fairview Heights, IL 62208
Phone (618) 489-2060

OFFICE USE ONLY	
DATE APPLICATION DEEMED COMPLETE:	CASE NUMBER ASSIGNED:
RESUBMITTALS RECEIVED/DATE:	APPLICATION FEES PAID (\$150 + \$25 per acre above one acre):
ZONING DISTRICT:	DATE PUBLIC NOTICE SIGN POSTED:
DATE SET FOR HEARING:	NEWSPAPER NAME AND PUBLICATION DATE:
APPLICATION CIRCULATION DATE _____ : Comments Received: <input type="checkbox"/> Public Works <input type="checkbox"/> Fire District <input type="checkbox"/> Parks and Recreation <input type="checkbox"/> Economic Development <input type="checkbox"/> Police Department <input type="checkbox"/> Finance Department <input type="checkbox"/> Administration Department <input type="checkbox"/> Other	AUTHORITY MEETING DATE/RECOMMENDATION: <input type="checkbox"/> Planning Commission _____ / _____ <input type="checkbox"/> Community Committee _____ / _____ <input type="checkbox"/> City Council _____ / _____
DATE OF MEETING:	RESOLUTION NUMBER: <i>(Maintain copy with LUD file)</i>

Special Use Permits are reviewed by the City's Planning Commission, Community Committee and City Council. City Council has the final decision on the application. Representation is required at these meetings.

Applicants are encouraged to schedule a pre-application conference with the Director of Land Use and Development prior to submittal. The application will be processed and scheduled for Plan Commission consideration after it is deemed complete.

Applicants are responsible for the following:

1. Two hard copies and one electronic version of the completed application and submittal requirements. The application deadline to the Department of Land Use and Development is at least thirty-six (36) days prior to the Plan Commission meeting.
2. Application fees.
3. Posting a public hearing notice sign on the subject property; providing photographic evidence of same.
4. Newspaper public notification fee.

PROJECT INFORMATION FOR SPECIAL USE PERMIT

Project Name: National QSR
Project Address: 10860 Lincoln Trail, Fairview Heights, 62208
Parcel ID: 03 - 28.0 - 401 - 023
Current Use of Property: Restaurant with drive thru window
Project Size/Acreage: 1.39
Number of Lots: 1
Density: 27% Greenspace

CONTACT INFORMATION FOR SPECIAL USE PERMIT

Property Owner(s): Austin Craddock - Grady CRE, LLC (Owner under contract)
Mailing Address: 1508 Highland Valley Circle, Wildwood, MO 63005
Phone: 314-574-808
E-Mail: austinc@gradycommercial.com

Applicant/agent: Ryan Bickings
Relationship to owner: Architect & Engineer
Mailing Address: 12 Sunnen Dr. Suite 100, St. Louis, MO, 63143
Phone: 314-541-8808
E-Mail: ryan.bickings@thecdcompanies.com

AUTHORIZATION

I hereby certify that the above information and accompanying documents are true and accurate to the best of my knowledge and are consistent with the ordinances relating to this application. I also understand that as the applicant, it is my responsibility to obtain all additional approvals, permits or licenses required by any applicable regulatory agency for this project.

I consent that the entry upon the premises described in this application by an authorized official of Fairview Heights, Illinois for the purpose of inspecting or of posting, maintaining, and removing such notices as may be required by law.

THIS APPLICATION WILL NOT BE ACCEPTED WITHOUT SIGNATURE OF THE OWNER OF RECORD OR AUTHORIZED APPLICANT/AGENT.

Signature of Owner:  Date: 04/10/23
Printed Name: Austin Craddock -Manager Grady CRE, LLC

Signature of Applicant:  Date: 04/10/23
Printed Name: Ryan Bickings

SUBMITTAL REQUIREMENTS FOR SPECIAL USE PERMIT

The minimum standards for land subdivision and development are contained in Section 14-9-8 of the City's Development Code. Please consult this section, as well as the relevant zoning district regulations, when preparing the application. <http://www.cofh.org/DocumentCenter/View/298/COMPLETE-PDF-CODE>

1. *Site plan- drawn to scale and includes the following information:
 - a. Location and dimensions of lot (boundary) and *adjacent* properties and right of way; note zoning designation of surrounding properties
 - b. Location and dimensions of existing and proposed buildings and structures
 - c. Location and size of proposed off-street parking, loading areas, pedestrian facilities, curbcuts/driveways and vehicular traffic circulation, and relationship to adjacent circulation systems (all curb cuts within 150' of property and road intersections)
 - d. Distances between buildings (front, side, and rear lot lines); principal building and accessory buildings; principal building and principal buildings on adjacent lots
 - e. Location of public and/or private utilities and facilities proposed to serve the subject area; including water supply, sewage, and drainage facilities
 - f. Location of light standards
 - g. Size and design of signs
 - h. Location and type of landscaping (of a sufficient detail to ensure parking lot landscaping and buffer requirements are met). Indicate existing and to be removed landscaping
 - i. Small key map
 - j. Any additional information as may be reasonably required by the Land Use and Development Department

NOTE: ALL INFORMATION SHALL BE PROVIDED ON A SINGLE SHEET, UNLESS OTHERWISE AGREED BY THE DIRECTOR OF LAND USE AND DEVELOPMENT. RE-OCCUPANCIES MAY NOT REQUIRE ALL INFORMATION; PLEASE CONSULT WITH LUD.

2. Narrative- statement describing the proposed project, estimated development schedule, economic viability of the project, extent of grading, anticipated traffic, impact upon community, and other information considered relevant to the project.
3. Photographs- aerial and/or ground-level photographs of the site
4. Buffered Parcel Report- listing of all property owners within 300 feet of the subject property. This information can be obtained through St. Clair County Mapping and Platting at 618-825-2527. Be sure to request that the list includes: name of owner, complete mailing address, *and parcel number*.
5. Building elevations or perspectives- to show compatibility with surrounding area and of sufficient detail to ensure building material requirements are met (*for new construction and significant rehabilitation only*)
6. Floor plan drawn to approximate scale and dimensioned (*for new construction, change of use and significant rehabilitation only*)
7. Legal description of the property

Project Narrative

Project Name: National QSR

Date: 04/10/23

We are proposing to put a National QSR restaurant at 10860 Lincoln Trail. The 1.39-acre site is directly adjacent to Lincoln Trail within the B-3 Community Business District. We intend to use the site for a nationwide service that provides a fast service to its customers. We believe this establishment will provide value to the community members that frequent Crossroad Centre, Fairview City Centre, and St. Clair Square Shopping Center.

1. The property is a closed Steak n Shake restaurant with a drive-thru. We will remove this building and prepare the site for a new structure.
2. All material finishes of the new structure will be coordinated with the city and follow all city ordinances.
3. The proposed building is 2,500 S.F. on a 1.39-acre lot.
4. A traffic study was previously prepared for a similar use establishment and can be referenced for this submittal.
5. The proposed site plan flows easily, with cars entering from a single-access driveway on an internal road system and traveling counterclockwise throughout the site.
6. The National QSR restaurant will be open 7 days a week from 5:00 AM to 9:00 PM.
7. The minimum stacking requirement for B-3 is 18 cars, and the maximum is 22 cars. Our site plan shows the ability of the site with 21 vehicles in queue.
8. The south side of the lot will remain parking.

Traffic Study

As noted above, CBB has prepared a traffic study for a similar use establishment which can be referenced for this submittal.

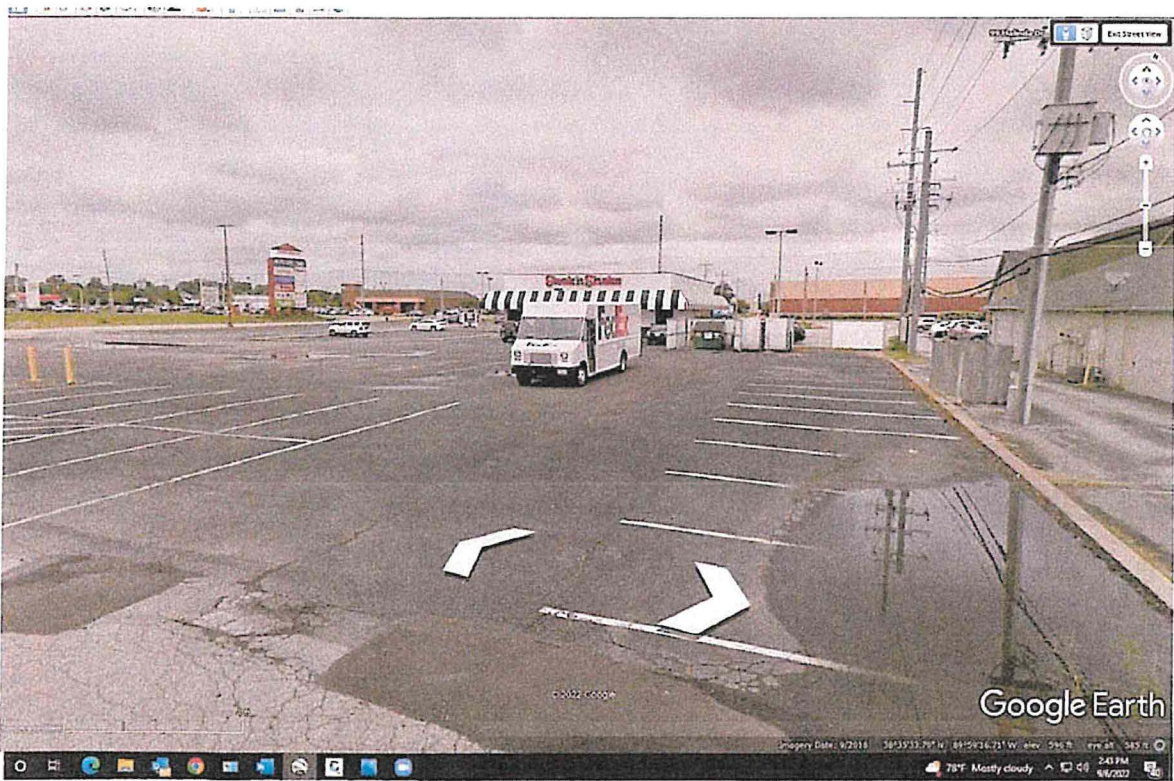
Initiated by:



Ryan Bickings
Project Manager
314.541.8808 x134

ryan.bickings@thecdcompanies.com





Buffered Parcel Report

PARCEL NUMBER	SITEADR1	SITEADR2	OWNER	ADDRESS	ADDRESS2	CITYST	ZIPCODE	ALT_NAME	ALT_ADDRESS	ALT_CITYST	ALT_ZIPCODE
03280200032	LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	COMMERCIAL NET LEASE REALTY LP	ATTN: INGRID IRVIN	450 S ORANGE AVE STE 900	ORLANDO FL	328013339				
03280204002	10865 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	NOVUS-CRESTWOOD SAMS	ATTN: MICHAEL KOCH	20 ALLEN AVE STE 400	SAINT LOUIS MO	63119				
03280204008	8595 N ILLINOIS ST	FAIRVIEW HEIGHTS, IL 6220	SELECT FAIRVIEW CITY CENTRE LL	400 TECHNE CENTER DR STE 320		MILFORD OH	45150				
03280401011	10866 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	CHEROKEE CENTER-ILLINOIS LLC A	5625 VETERANS MEMORIAL PARKWAY		SAINT PETERS MO	63376				
03280401012	10860 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	MRT LLC C/O MICHAEL R TRAVERS	512 CLAYTON MEADOWS CT		BALLWIN MO	63011				
03280401017	105 LANAGHAN DR	FAIRVIEW HEIGHTS, IL 6220	CAPITAL MANAGEMENT LLC	8008 CARONDELET AVE STE 100		CLAYTON MO	631051724				
03280401023	10866 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	CHEROKEE CENTER ILLINOIS LLC	ATTN ROBERT CONNORS	5625 VETERANS MEMORIAL PARKWAY	SAINT PETERS MO	63376				
03280401030	10850 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	CENTRO BRADLEY SPE 3 LLC % RYA	PO BOX 4900-DEPT 124		SCOTTSDALE AZ	85261				
03280401031	2 CROSSROAD CENTRE	FAIRVIEW HEIGHTS, IL 6220	CENTRO BRADLEY SPE 3 LLC % RYA	PO BOX 4900-DEPT 124		SCOTTSDALE AZ	85261	RYAN LLC	PO BOX 4900	SCOTTSDALE AZ	852614900
03280402004	10900 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	MIDWAY BACELINE LLC ATTN JONAT	1391 SPEER BL SUITE 800		DENVER CO	80204				
03280405055	6211 N ILLINOIS ST	FAIRVIEW HEIGHTS, IL 6220	LOWES HOMES CENTERS INC ATTN:	1000 LOWES BLVD		MOORESVILLE NC	28117				
03280401047	10850 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	CENTRO BRADLEY SPE 3 LLC % RYA	PO BOX 4900-DEPT 124		SCOTTSDALE AZ	85261				
03280401046	10850 LINCOLN TR	FAIRVIEW HEIGHTS, IL 6220	CENTRO BRADLEY SPE 3 LLC % RYA	PO BOX 4900-DEPT 124		SCOTTSDALE AZ	85261				

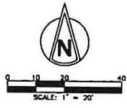
Legal Description

Part of Lot 4 of Assessment Plat of George Neuner Tracts, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats 51 on page 81, and being more particularly described as follows, to-wit:

Commencing the survey thereof at the Northwest corner of Lot 48 of the Second Addition to the Village of St. Ann reference being had to the plat thereof recorded in the Recorders Office of St. Clair County, Illinois, in Book of Plats 51 on page 84, running thence North 01 degrees 03 minutes West (assumed bearing from which all other bearings will be determined) along the Easterly line of said Lot 4 of George Neuner Assessment Plat, a distance of 94.35 feet to the Point of Beginning of the tract herein being described, continuing thence North 01 degrees 03 minutes West along said Easterly line of said Lot 4, a distance of 116.0 feet to a point, running thence North 89 degrees 58 minutes West along a line, a distance of 36.0 feet to a point, running thence North 01 degrees 03 minutes West along a line, a distance of 152.05 feet to a point in the Southerly right of way line of U.S. Route 50, running thence North 89 degrees 56 minutes West along said right of way line, distance of 174.60 feet to a point, running thence North 83 degrees 40 minutes West along said right of way line, a distance of 34.10 feet to a point, running thence South 01 degrees 03 minutes East along a line, a distance of 276.52 feet to a point, running thence North 88 degrees 05 minutes east along a line, a distance of 245.00 feet to the Point of Beginning.

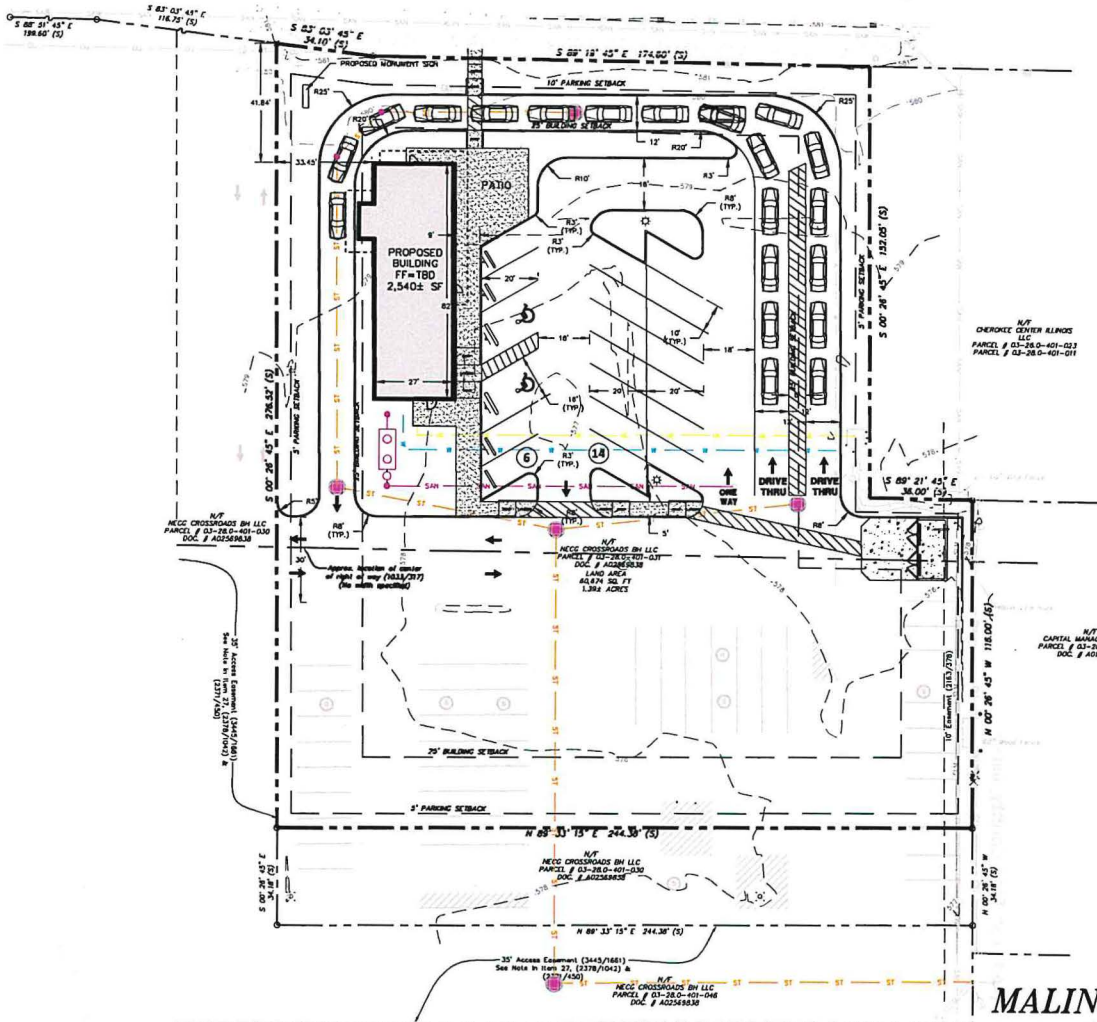
Except any interest in the coal, oil, gas, and other minerals underlying the land which have been heretofore conveyed or reserved in prior conveyances, and all rights and easements in favor of the estate of said coal, oil, gas, and other minerals, if any

Situated in St. Clair County, Illinois.



LINCOLN TRAIL

(VARIABLE WIDTH) PUBLIC ROADWAY



ZONING INFORMATION

LOT SIZE:	±1.39 ACRES
BUILDING SIZE:	2,540 SF
ZONING:	B-3 COMMUNITY BUSINESS DISTRICT (DRIVE-THRU FACILITY IS SPECIAL USE)
ACCESS:	FULL ACCESS FROM FRONTAGE
ACCESS AISLE:	22' TWO-WAY 90° PARKING; 18' ONE-WAY 60° PARKING
PARKING STALL DIMENSIONS:	90° AND 60° PARKING - 10'X20' ADA PARKING - 16'X20'
REQUIRED PARKING:	DRIVE-IN RESTAURANTS: 1 SPACE / 4 SEAT + 3 SPACES/EMPLOYEE AT MAX SHIFT 15 SPACES
PROVIDED PARKING:	20 SPACES INCLUDING 2 ADA STALLS
DRIVE-THRU STACKING:	7 SPACES MINIMUM
DRIVE-THRU QUEUE:	MINIMUM: 18 MAXIMUM: 22
REQUIRED BUILDING SETBACKS:	FROM PUBLIC RIGHT-OF-WAY: 15' INTERIOR SIDE: 25' STREET SIDE: 25' REAR: 20'
REQUIRED PARKING SETBACKS:	FROM PUBLIC RIGHT-OF-WAY: 10' INTERIOR SIDE: 5' STREET SIDE: 10' REAR: 5'
REQUIRED ACCESSORY STRUCTURE SETBACKS:	FROM PUBLIC RIGHT-OF-WAY: 75' INTERIOR SIDE: 0' STREET SIDE: 25' REAR: 20'
SIGNAGE:	MAX AREA: 225 FT SETBACK: 10 FT FROM PUBLIC RIGHT-OF-WAY MAX HEIGHT: 30 FT TYPE RESTRICTION: MONUMENT OR PYLON SIGNAGE
LANDSCAPE:	ALL VEHICULAR USE AREAS SHALL HAVE A MINIMUM TEN (10) FOOT LANDSCAPE SETBACK FROM EXISTING OR PROPOSED RIGHTS-OF-WAY LINES. WHEN THE SITE ABUTS UNDEVELOPED COMMERCIAL PROPERTY, THE LANDSCAPE SETBACK SHALL BE, AT A MINIMUM, FIVE (5) FEET FROM THE PROPERTY LINE.



VICINITY MAP SITE LOCATION



(N.T.S.)



NATIONAL Q.S.R.

PROJECT NAME:
CROSSROADS CENTRE
SHOPPING MALL
ADDRESS:
10860 LINCOLN TRAIL
FAIRVIEW HEIGHTS, IL 62208

CONST. DOC. & REVISIONS	DATE
No. Description	

Drawn/Checked By: SBF/ALA
Project Number: 2302993
Owner Date:
CP-1 05-1-23

SITE PLAN

C1.0

DATE: 04-10-23

MALINDA DRIVE
(60' WIDE)

Planning Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION PC 04-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO APPROVAL OF A SPECIAL USE PERMIT FOR A RESTAURANT WITH DRIVE THRU AT 10860 LINCOLN TRAIL

WHEREAS, Ryan Bickings, hereinafter referred to as the "Applicant," applied for a Special Use permit for approval of a development plan for a restaurant with drive thru on parcel number 03-28.0-401-023, commonly known as 10860 Lincoln Trail; and

WHEREAS, the Fairview Heights Development Code requires that major modifications to a site development plan in PB Planned Business Zoned District be approved as a special use;

WHEREAS, the Applicant has properly applied for a special use permit.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the subject property is zoned "PB" Planned Business Zoned District.
3. That the Applicant shall be responsible for all City costs incurred in administering and enforcing this approval.
4. That the Director of Land Use and Development, and his designee, shall have the right to inspect the premises for compliance and safety purposes.
5. That this Approval shall automatically expire if the use is not initiated within one year of City Council Approval.
6. That the Applicant shall obtain all required permits and comply with all ordinances and codes.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____ upon vote being taken thereon, the following voted in favor thereof: _____

And the following voted against the same: _____

And the following abstained: _____

And the following were absent: _____

Whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Planning Commission Chairman

ATTEST:

Land Use Director

Planning Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION PC 04-23

A RESOLUTION ADOPTING FINDINGS OF FACT RELATING TO DENIAL OF A SPECIAL USE PERMIT FOR A RESTAURANT WITH DRIVE THRU AT 10860 LINCOLN TRAIL

WHEREAS, Ryan Bickings hereinafter referred to as the "Applicant," applied for a Special Use permit for approval of a development plan for a restaurant with drive thru on parcel number 03-28.-401-023, commonly known as 10860 Lincoln Trail; and

WHEREAS, the Fairview Heights Development Code requires that major modifications to a site development plan in PB Planned Business District be approved as a special use;

WHEREAS, the Applicant has properly applied for a special use permit.

NOW THEREFORE, BE IT RESOLVED BY THIS PLANNING COMMISSION OF THE CITY OF FAIRVIEW HEIGHTS, ST. CLAIR COUNTY, STATE OF ILLINOIS that the Findings of Fact relating to the request are as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 14-10-8 of the City of Fairview Heights Development Code on May 9, 2023 and that said public hearing was properly advertised, both of which are incorporated by reference.
2. That the subject property is zoned "PB" Planned Business District.
3. That the Applicants special use permit for a corporate and social event space shall be denied, based on the following criteria

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____ upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

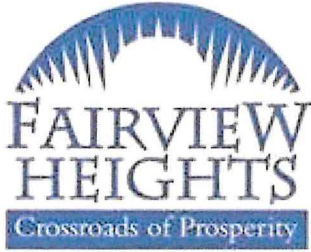
and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Fairview Heights Planning Commission this the 9th day of May, 2023.

Planning Commission Chairman

ATTEST:

Land Use Director



DEPARTMENT OF LAND USE AND DEVELOPMENT

PUBLIC HEARING NOTICE

Notice is hereby given that a public hearing will be held before the Fairview Heights Planning Commission on Tuesday, May 9th, 2023 at 7:00 p.m. This meeting will be held both in-person at the Fairview Heights City Hall, 10025 Bunkum Road, 62208 and virtually. Parties interested in attending the meeting virtually should contact Dallas Alley, Director of Land Use and Development at (618) 489-2061 or alley@cofh.org for instructions and visit the City's website for an agenda and meeting materials at www.cofh.org.

At this meeting, the Commission will consider a Special Use Permit in the "PB" Planned Business zoning district for the placement of a restaurant with drive thru at 10860 Lincoln Trail, also identified by St. Clair County PIN(s) 03-28.0-401-023.

Request was made by Ryan Bickings, 12 Sunnen Dr. Suite 100, St. Louis, MO 63143.

All persons desiring to be heard on this proposal may attend either in-person or virtually.

Dated this 17th day of April 2023.

FAIRVIEW HEIGHTS PLANNING COMMISSION

BY: Greg Moats, Chairman

PC 04-23

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between the City of Fairview Heights, IL (“Owner”) and TWM, Inc. (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: ***St. Ellen Trail – Phase 3, Judy Lane to just west of Old Collinsville Road along Ashland Avenue*** (“Project”).

Engineer’s services under this Agreement are generally identified as (“Services”):

Preliminary Engineering for Federally Funded Shared-Use Path. Scope includes:

- Topographical and boundary survey of the project area
- Attend IDOT/FHWA project coordination meeting
- Provide exhibits and attend Public Informational Meeting (if required)
- Coordinate with Utilities
- Perform Phase I engineering design and prepare a Project Development Report (PDR) with required exhibits (IDOT and County Highway Dept review)
- For up to 7 parcels:
 - Prepare a plat of highway for County Highway Department
 - Prepare temporary easement and/or right of way documents
 - Order Title Commitments
- Perform Phase II engineering design services using federal guidelines and prepare Prefinal and Final construction Plans, Specifications and Estimates for the project (IDOT and County Highway Dept review)
- Complete preliminary environmental assessment according to IDOT federal guidelines – by subconsultant
- Assist with any Requests for Information (RFI’s) during the course of advertisement and bidding
- Prepare any necessary addenda to the plans
- Submit a Notice of Intent to the EPA, if necessary

Items not included in this contract are as follows, but can be provided on an hourly basis:

- Appraisal fees for land acquisition
- Negotiation fees for land acquisition (City may be able to complete this task directly)
- Pedestrian or Traffic counts
- Traffic or pedestrian signal upgrades at the intersection of Ashland and Old Collinsville Road
- Sidewalk improvements at the intersection of Ashland and Old Collinsville Road
- Intersection Design Study (IDS) or “Geometric Details”
- Preliminary Site Investigation (PSI)
- Construction observation services

Owner and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall complete its Services in a timely manner to meet the anticipated late 2024 or early 2025 letting. Review times, land acquisition, and some other unforeseen items can be out of TWM’s control and can sometimes result in the letting date being pushed further back.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s Services is impaired, or Engineer’s Services are delayed or suspended, then the time for completion of Engineer’s Services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer’s invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 Basis of Payment—Hourly Not-to-exceed Rates

- A. Owner shall pay Engineer for Services as follows:
 - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services and Engineer’s consultants’ charges, if any.
 - 2. Engineer’s Standard Hourly Rates are attached
 - 3. The total compensation for Services and reimbursable expenses is estimated to be \$98,400.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.

c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.

d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors,

executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.

- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding

municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 *Attachments: Engineer's Standard Hourly Rates*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Fairview Heights, IL

Engineer: TWM, Inc.

By: _____

By:  _____

Print name: _____

Print name: Jeffrey Reis, PE, PTOE

Title: _____

Title: Transportation Engineering Lead – Southern IL

Date Signed: _____

Date Signed: 5-11-2023

Address for Owner's receipt of notices:

City of Fairview Heights

10025 Bunkum Road

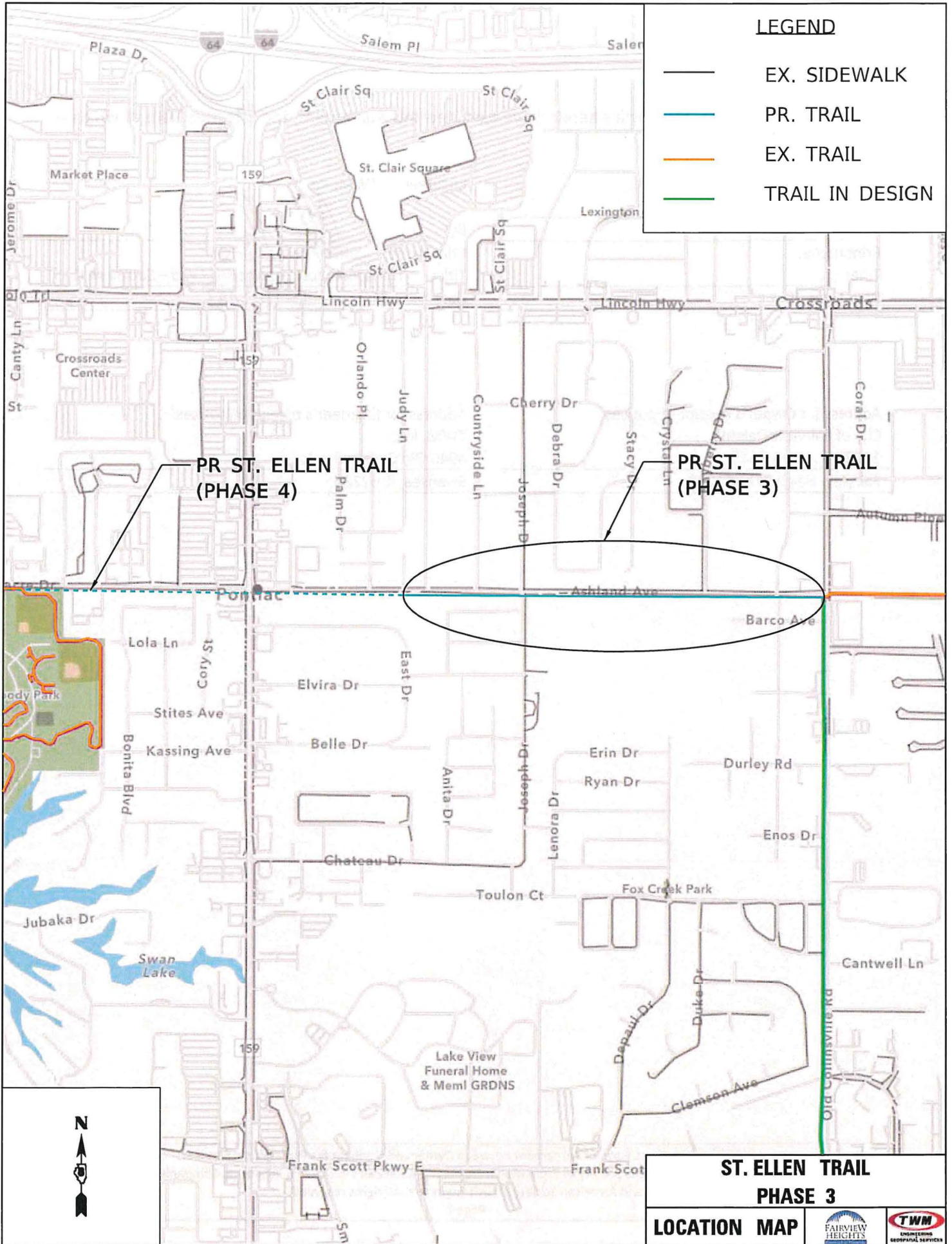
Fairview Heights, IL 62208

Address for Engineer's receipt of notices:

TWM, Inc.

4940 Old Collinsville Road

Swansea, IL 62226



LEGEND

- EX. SIDEWALK
- PR. TRAIL
- EX. TRAIL
- TRAIL IN DESIGN

**PR ST. ELLEN TRAIL
(PHASE 4)**

**PR ST. ELLEN TRAIL
(PHASE 3)**

**ST. ELLEN TRAIL
PHASE 3**

LOCATION MAP





THOUVENOT, WADE & MOERCHEN, INC.
SCHEDULE OF FEES

Principal	\$221.00
Senior Engineer	\$183.00
Senior Project Manager	\$183.00
Project Engineer V	\$181.00
Project Engineer IV	\$178.00
Project Engineer III	\$156.00
Project Engineer II	\$149.00
Project Engineer I	\$144.00
Project Manager IV	\$177.00
Project Manager III	\$164.00
Project Manager II	\$148.00
Project Manager I	\$134.00
Senior Structural Engineer	\$194.00
Structural Engineer V	\$192.00
Structural Engineer IV	\$184.00
Structural Engineer III	\$175.00
Structural Engineer II	\$163.00
Structural Engineer I	\$153.00
Survey Crew (3 person crew)	\$257.00
Survey Crew (2 person crew)	\$200.00
Survey Crew (2 person crew w/Robotics or GPS)	\$212.00
Survey Crew (1 person w/Robotics or GPS)	\$152.00
Survey Crew (2 person w/3D Scanner)	\$272.00
Survey Crew (1 person w/3D Scanner)	\$211.00
Engineer III	\$126.00
Engineer II	\$122.00
Engineer I	\$114.00
Surveyor V	\$183.00
Surveyor IV	\$167.00
Surveyor III	\$149.00
Surveyor II	\$131.00
Surveyor I	\$115.00
3D Scanning Technician	\$162.00
Technician VI	\$114.00
Technician V	\$107.00
Technician IV	\$98.00
Technician III	\$91.00
Technician II	\$88.00
Technician I	\$81.00
Jr. Technician	\$56.00
IT Manager	\$148.00
Systems Administrator	\$127.00
Cad Manager	\$127.00
Cad Designer III	\$117.00
Cad Designer II	\$109.00
Cad Designer I	\$90.00
Accountant III	\$133.00
Accountant II	\$111.00
Accountant I	\$96.00
Word Processing	\$84.00
Air & Vacuum Testing 2 Technicians w/ Equipment	\$226.00
Live Sewer Testing	\$291.00
Mandrel Testing 2 Technicians w/ Equipment	\$208.00
Live Sewer Testing	\$273.00
Video Testing 1 Technician w/ Equipment	\$242.00
2 Technicians w/Equipment	\$330.00
Outside Services (Consultants, Delivery Service, Express Mail, etc.)	At Cost plus 15%
Commercial Travel, Meals, Lodging & Other Expenses	At Cost
4 X 4 Polaris (per Day)	\$78.00
Travel (Non local) per Mile at current GSA rate.	

Estimate of Staff Hours

DATE: 5/10/2023
 Route: Ashland Avenue
 Client: Fairview Heights, IL
 County: St. Clair
 Consultant: Thouvenot, Wade & Moerchen, Inc.

Scope: Preliminary Engineering for Federal (TAP) funded project.
 St. Ellen Trail Phase 3 (Judy to Old Collinsville Rd)

	CONSULTANT HOURS										TOTAL CONSULTANT HOURS
	DEPT HEAD	ENG III	ENG II	ENG I	SR CADD	STRUCT ENG	PLS SURV	Crew Chief	Instr Tech	WP & ACCN	
Topo & Boundary Survey											
Control					4			8			12
Boundary/ROW					4		10	16			30
Topo					2			30			32
Locate Gas Line, other utilities											0
Data Reduction					12						12
Sub-Total:	0	0	0		22	0	10	54	0	0	86

	CONSULTANT HOURS										TOTAL CONSULTANT HOURS
	DEPT HEAD	ENG III	ENG II	ENG I	SR CADD	STRUCT ENG	PLS SURV	Crew Chief	Instr Tech	WP & ACCN	
Phase I Engineering											
Get plans from Co Hwy / Review project data	1	2									3
Site Visit		2	2								4
ESR		4	2								6
Coordinate for PESA		2	2								4
ADA Ramp Prel Design (est 12 ramps x 2 hr each)			12	12							24
Driveway Design (est 8 driveways x 1 hr each)			4	4							8
Prel. Drainage Design & Plan		8	16	8							32
Prel. Trail Design / P&P Sheets			24								24
Utility Coordination, Plot utility data		4		4							8
Design Variances			2	2							4
Preliminary Cross Sections (40 @ .25 hr each)			10								10
Set preliminary ROW and easement lines (approx 7 parcels)		4	2								6
FHWA Coordination Meeting Form Prep, Attend, Mins	2	6	4								12
Public Coordination and/or Public Meeting	2	4	2								8
Preliminary Quantities / Cost Estimate for PDR	1	6	3								10
Draft Preliminary PDR		12	8	4							24
PDR Exhibits (incl crash summary)		2	8	2							12
QA/QC, printing, & delivery Draft PDR	4	1	2	1						4	12
Address PDR Comments		2	8	2							12
QA/QC, printing, & delivery Final PDR	2	2	2	2						4	12
Sub-Total:	12	61	113	41	0	0	0	0	0	8	235

Phase II Engineering

Prefinal Plan Submittal

	CONSULTANT HOURS										TOTAL CONSULTANT HOURS	
	DEPT HEAD	ENG III	ENG II	ENG I	SR CADD	STRUCT ENG	PLS SURV	Crew Chief	Instr Tech	WP & ACCN		
Continue coordinate with/Plot Utilities			1	1								2
ADA Final Ramp Design (est 12 ramps x 1 hr each)			6	6								12
Quantity Calculations & Schedules			8	8								16
Plan Sheets:												
· Cover Sheet			1	1								2
· General Note Sheet			1	1								2
· Summary of Quantities Sheets				1								1
· Typical Section Sheets		1	2	2								5
· Schedule of Quantity Sheets			2	2								4
· Alignment, Ties & Benchmark Sheet			2									2
· P&P Sheets (assume 1)		2	4	2								8
· Stages of Construction			2									2
· Drainage P&P Sheets (assume 2)			2	2								4
· ADA Ramp Detail Sheets			2	2								4
· Intersection Details		2	2	1								5
· Flashing Beacon Details			8	4								12
· Striping and Signage Sheets (plan over plan)			4									4
· Erosion Control Sheets (plan over plan)			4									4
· ROW POHs/Land Acq documents (7 parcels)		2	2	1	32		28					65
· Miscellaneous Detail Sheets as needed			2	1								3
· Cross Sections Sheets (40 xsecs)			2	2								4
· Prepare Technical Special Provisions			4									4
· Prepare Estimate of Time			3									3
· Prepare Estimate of Cost			3									3
QA/QC, printing, & delivery	4	2	6	1						4		17
Address County Comments, Submit to IDOT												
Review Comments and Prepare Disposition		1	1									2
Address Plan comments			8	2								10
Adjust Quantities, Schedules & SOQ			8	2								10
Adjust Technical Special Provisions		2	1									3
Adjust Estimates of Time & Cost			2	1								3
QA/QC, printing, & delivery	4		1	1						4		10
Address IDOT comments, Final PS&E Package												
Review Comments and Prepare Disposition		1	1									2
Address Plan comments			6	2								8
Adjust Quantities, Schedules & SOQ			6	2								8
Finalize Technical Special Provisions		1	1									2
Finalize Estimates of Time & Cost			2	1								3
QA/QC, printing, sealing, filing & delivery	3	2	2							4		11
Sub-Total:	11	16	112	49	32	0	28	0	0	12		260

Assume 24 months

Project Management and Coordination

Coordination/Meetings with County & IDOT
 Project administration (contract, billing, etc.)

Sub-Total:

Total Hours TWM

Appr. Ave. Hourly Rates (taking into account 2 year ave)
 2023 rates

Total TWM Labor Cost

CONSULTANT HOURS											TOTAL CONSULTANT HOURS
DEPT HEAD	ENG III	ENG II	ENG I	SR CADD	STRUCT ENG	PLS SURV	Crew Chief	Instr Tech	WP & ACCN		
4	10	4									18
6	6								6		18
10	16	4	0	0	0	0	0	0	6		36
33	93	229	90	54	0	38	54	0	26		617
											617
\$194	\$165	\$158	\$153	\$121	\$186	\$158	\$113	\$96	\$89		
183	156	149	144	114	175	149	107	91	84		
\$6,401	\$15,378	\$36,168	\$13,738	\$6,525	\$0	\$6,002	\$6,125	\$0	\$2,315		\$92,652

Subconsultants

Special Waste Screening
 Order Title commitments

\$2,250

\$3,500

\$98,402

AGREEMENT TO LEASE

THIS AGREEMENT TO LEASE is made and entered into on the 16th day of February, 2001, by and between THE CITY OF FAIRVIEW HEIGHTS, ILLINOIS, an Illinois municipal corporation ("Landlord"), and THE FOUNTAINS AT FAIRVIEW, LLC, an Illinois Limited Liability Company ("Tenant").

RECITALS

WHEREAS, Landlord owns certain property and improvements consisting of land and buildings (the "Leased Premises") located in the County of St. Clair, State of Illinois, described in Exhibit A ("Legal Description") together with the improvements thereon; and

WHEREAS, Landlord and Tenant have agreed to enter into an agreement pursuant to which Tenant will lease, occupy and use the Leased Premises; and

WHEREAS, Landlord and Tenant have entered into a Development Agreement dated 16th day of February, 2001, ("Development Agreement") for the development of a conference center; and

WHEREAS, Landlord and Tenant have entered into an Agreement for the Sale of Real Property dated 16th day of February, 2001 ("Real Estate Agreement"); and

WHEREAS, the parties hereto have agreed to set forth in writing the terms and conditions of their agreements regarding the foregoing.

NOW, THEREFORE, in consideration of the premises, one dollar and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
LEASE, PREMISES AND RENT

1.1 **Lease.** In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, Landlord hereby demise, lease and rent to Tenant, and Tenant leases from Landlord (the "Leased Premises") which Leased Premises are described in Exhibit A attached hereto and by this reference made a part hereof. The Leased Premises are leased by Landlord to Tenant in its present as is condition.

1.2 **Rent.** Tenant agrees to pay to Landlord at the office of Landlord, or at such other place designated by Landlord, during the term hereof without prior notice, annual rent in the amount of One Dollar (\$1.00) due and payable on the first day of each year.

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1.3 Conveyance. At the completion of the term described in Section 2.1, and at any time thereafter while Tenant shall continue in occupancy of the Leased Premises, Tenant shall have the option to purchase the Leased Premises from Landlord for the sum of One Dollar (\$1.00). At any time prior to the completion of the term described in Section 2.1, Landlord shall have the right to convey the Leased Premises to Tenant, provided that, for the balance of the term described in Section 2.1: the Leased Premises shall continue to be used as authorized in Section 3.1; and the adjacent property now owned by The Fountains at Fairview, LLC, or its assigns, shall continue to be operated as a hotel.

ARTICLE II INITIAL TERM

2.1 Term. The initial term of this Lease shall be the period commencing upon the delivery of the Certificate of Completion, as described in paragraph 3.3 of the Development Agreement (the "Commencement Date") and ending twenty (20) years after the Commencement Date. Prior to the commencement of the initial term, Tenant shall have the right to enter upon and use the Leased Premises and the Property to install improvements and equipment therein to make the Leased Premises ready for Tenant's full use and occupancy on the Commencement Date.

Unless such cessation of authorized usage shall be caused by circumstances described in Sections 11.1, 12.1 or 19.5, if the premises should cease to be used as authorized in Section 3.1 for a period of more than ninety (90) days, Landlord shall have the right to terminate this Lease by giving Tenant at least ninety (90) days prior written notice that Landlord elects to terminate the Lease. Tenant shall vacate and return the Leased Premises to Landlord by the end of the ninety (90) day notice period.

2.2 Maintenance and Repair. Tenant shall be solely responsible for all maintenance, repairs, and replacements on the Leased Premises. Tenant agrees to maintain the Leased Premises at all times in good order and repair in a safe and clean condition, and in accordance with all applicable laws and regulations. Tenant shall not permit any hazardous or toxic substances to be used, stored, or installed upon the Leased Premises, and Tenant agrees to comply with all applicable laws and regulations with respect to hazardous, toxic, or infectious materials and waste, and the use, handling, storage, transportation, removal, and disposal of same.

ARTICLE III USE OF THE LEASED PREMISES

3.1 Use of the Leased Premises. Tenant shall have the right under this Lease to use and occupy the entirety of the Leased Premises for the purpose of operating a conference center and any activities necessary to maintain, manage and promote a conference center. While and

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only for so long as the Tenant shall operate a conference center on the Leased Premises, the Tenant may also operate related businesses, including but not limited to catering, cleaning, restaurant, security, supply and vending services.

3.2 Landlord's Usage of Premises. Other provisions of this Agreement notwithstanding, Landlord shall have the right to the exclusive use of the Leased Premises, in the manner provided for in paragraph 4 of the Development Agreement.

3.3 Operation of Business. Tenant shall, except as herein otherwise provide, from and after the commencement of the term of this Lease, (a) continuously and uninterruptedly occupy and use the entire Leased Premises for the uses herein specified and conduct Tenant's business therein in a reputable manner; (b) keep and maintain the Leased Premises and Tenant's personal property and signs therein or thereon and the exterior and interior plate glass in a neat, clean, sanitary and safe condition; (c) comply with all ordinances, laws and regulations of all governmental authorities having jurisdiction and apply for, secure, maintain and comply with all licenses or permits which may be required for the conduct by Tenant of the business herein permitted to be conducted in the Leased Premises and to pay, if, as and when all license and permit fees and charges of a similar nature in connection therewith.

3.4 Utilities. Tenant, at Tenant's expense, shall furnish, maintain, and provide all utilities and utility service of every kind serving the Premises.

ARTICLE IV EXTERIOR DISPLAY

4.1 Signs. Tenant may erect, install or maintain any signs or other advertising or display devices, on the exterior of the Building which devices may be visible to public view outside the Leased Premises, subject to all relevant statutes, regulations and ordinances. Tenant shall at Tenant's own expense, maintain and keep in good repair all signs, advertising and display devices in or about the Building and shall pay for all electric current required in connection with any such advertising and display devices.

ARTICLE V FIXTURES AND PERSONAL PROPERTY

5.1 Tenant to Fully Equip Leased Premises. Tenant shall equip the Leased Premises with all trade fixtures and equipment, furniture, furnishings, and floor treatment or covering, and any other fixtures and equipment necessary for Tenant's use and occupancy of the Leased Premises.

5.2 Ownership and Right of Personal Property. Any personal property of Tenant shall remain the property of Tenant, and the Landlord agrees that Tenant shall have the right, and Tenant may, at any time, and from time to time, remove any and all of its fixtures and other

personal property which Tenant may have stored or installed in the Leased Premises. Tenant at its expense shall repair any damage occasioned to the Leased Premises by reason of the removal of any such educational fixtures and other personal property, and upon expiration or earlier termination of this Lease, shall leave the Leased Premises in a neat and clean condition, free of debris.

5.3 Ownership and Removal of Leasehold Improvements. All partitions and ceiling, wall, and floor coverings and finishes installed by Tenant in or about the Leased Premises shall be deemed the property of the Landlord upon installation.

ARTICLE VI SPECIAL SERVICES TO BE PROVIDED BY TENANT

Tenant, at Tenant's sole expense, shall provide to the Leased Premises alarm systems, refuse collection and storage, and telephone as may be used in or to service the Leased Premises. Tenant agrees that all services Tenant shall provide and all business in the Leased Premises shall comply in all respects with all laws and regulations of the City of Fairview Heights, the County of St. Clair, the State of Illinois, and the United States shall be deemed the property of the Landlord upon installation.

ARTICLE VII ALTERATIONS

Tenant may, at Tenant's own expense, from time to time during the term of this Lease, make alterations, additions, changes and improvements in and to the exterior of the Leased Premises (except those of a structural nature) but only with Landlord's prior written consent which consent shall not unreasonably be withheld. All such work shall be done in a good and workmanlike manner, in accordance with all applicable laws and building regulations and shall be diligently prosecuted so that the Leased Premises shall at all times be complete except during the period of work.

ARTICLE VIII MECHANIC'S LIENS

Tenant agrees that Tenant will pay or cause to be paid all costs for work done by Tenant or caused to be done by Tenant on the Leased Premises.

ARTICLE IX TAXES

Tenant shall pay when due all real estate taxes, assessments and other governmental levies and charges of every kind and nature whatsoever, general and special, extraordinary as well as ordinary, which shall or may, during the term of this Lease, be levied, assessed, imposed,

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become due and payable, or arise in connection with the ownership, use, occupancy or possession of the Leased Premises or any part thereof or any improvements thereon.

Tenant shall pay prior to delinquency, any and all taxes and assessments levied or assessed during the term hereof on or against (a) all furniture, fixtures, equipment and any other personal property installed or located within the Leased Premises and (b) all alterations, additions, betterments or improvements of whatsoever kind or nature, made by Tenant to the Leased Premises.

ARTICLE X INSURANCE-WAIVER OF SUBROGATION

10.1 Tenant's Insurance. Tenant further covenants and agrees that from and after the date of delivery of the Leased Premises, Tenant shall carry and maintain, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(a) **PUBLIC LIABILITY AND PROPERTY DAMAGE.** Bodily injury liability insurance with a single limit of not less than Twenty-Five Million and 00/100 Dollars (\$25,000,000.00) insuring against any and all liability of the insured with respect to injury or damage to person and property occurring on or about the use or occupancy thereof. All such liability insurance shall specifically include, in addition to the above, contractual liability insurance covering the insuring provisions of this Lease.

(b) **FIRE AND EXTENDED COVERAGE INSURANCE.** Insurance covering Tenant's leasehold improvements, the building, the Landlord's fixtures, furniture and other items of personal property for their full replacement cost from time to time during the term of this Lease providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler leakage, vandalism and malicious mischief.

The policies of insurance required to be carried by Tenant under subparagraphs (a) and (b) above shall name both Landlord and Tenant as named insureds, and shall be submitted to Landlord for Landlord's approval which shall not be unreasonably withheld or delayed. All such policies shall further provide that they may not be cancelled except upon ten (10) days' prior written notice to Landlord and Tenant.

10.2 Tenant's Blanket Policies. Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant. Tenant agrees to furnish to Landlord a copy of the policies of insurance covering the above-described risks or to furnish a certificate of insurance if part of a blanket policy.

ARTICLE XI
ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP

11.1 Transfer by Tenant, Requirements. Tenant shall not assign this Lease or sublet the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any attempted, assignment, subletting, without the Landlord's reasonable written consent shall be void and confer no rights upon any third person and Landlord may treat such third person as a trespasser. Such assignment or subletting shall not relieve the Tenant of its obligation created under this Lease nor constitute a release from further performance hereunder.

11.2 Restrictions Concerning Consent to Transfer. Any consent by Landlord to any assignment, subletting, license or concession shall be upheld to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment, subletting, license or concession. If this Lease or any interest therein be assigned, or if the Leased Premises or any part thereof be sublet or occupied by anyone other than Tenant without the Landlord's prior written consent having been obtained thereto, Landlord may nevertheless collect rent from the assignee, sublessee or occupant and apply the net amount collected to the rents herein reserved; but no assignment, subletting, occupancy or collection shall be deemed a waiver of the covenant herein against assignment and subletting or the acceptance of the assignee, subtenant or occupant as Tenant hereunder, or constitute a release of Tenant from the further performance by Tenant of the terms and provisions of this Lease. If this Lease or any interest of Tenant therein be assigned or if the whole or any part of the Leased Premises be sublet, after having obtained the Landlord's prior written consent thereto, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant, and Tenant shall not be released therefrom in any manner.

11.3 Consent to Transfer To Be In Writing. Each transfer, assignment and subletting, to which there has been consent by an instrument in writing in form satisfactory to Landlord, shall be executed by the assignor, sublessor, assignee, sublessee, in each instance, as the case may be; and each assignee, sublessee shall agree in writing for the benefit of the Landlord herein to assume to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by the Tenant. One executed copy of such written instrument shall be delivered to Landlord.

ARTICLE XII
DEFAULT OF THE TENANT

12.1 Injunctive Relief. In the event of any breach or threatened breach by Tenant or Landlord of any of the terms and provisions of this Lease, either Tenant or Landlord shall have the right to injunctive relief as if no other remedies were provided herein for such breach.

12.2 Rights and Remedies Cumulative. The rights and remedies herein reserved by or granted to Landlord or Tenant are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Landlord's or Tenant's right to exercise any or all others.

12.3 Waiver of Defense Based on Merger. Tenant and Landlord hereby expressly waives any right to assert a defense based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein shall bar Tenant and Landlord from bringing any subsequent actions or proceedings from time to time.

12.4 "Re-entry" Not Restricted to Technical Legal Meaning. Wherever in this Lease the Landlord has reserved or is granted the right of re-entry into the Leased Premises the use of such word is not intended, nor shall it be construed, to be limited to its technical legal meaning.

ARTICLE XIII ACCESS BY LANDLORD

13.1 Right of Entry. Landlord and Landlord's agents shall have the right to enter the Leased Premises at reasonable times during Tenant's business hours upon reasonable notice to Tenant (except in the case of an emergency in which event Landlord may enter at any time without notice), to examine the same, and to show them to prospective purchasers or tenants, and to make such repairs and alterations to the Leased Premises and the Building, as Landlord may deem necessary, and Landlord shall be allowed to take all material into and upon Leased Premises so long as such activity does not interrupt Tenant's business that may be required therefor without the same constituting an eviction of Tenant in whole or in part and the rent reserved shall in no wise abate while said repairs are being made so long as there is no substantial interruption of business of Tenant.

ARTICLE XIV SURRENDER OF PREMISES

Upon the expiration or sooner termination of the term of this Lease, Tenant shall quit and surrender the Leased Premises, in good condition and repair, reasonable wear and tear expected, together with all keys and combination to locks, all improvements, alterations, and additions, except personal property and other trade fixtures, furnishings and equipment that Tenant may remove pursuant to the terms hereof, all of which shall thereupon become the property of Landlord without any claims by Tenant therefore; but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder; however, notwithstanding the generality of the foregoing provisions, Landlord shall have the right to require Tenant, upon written notice given at any time during the term or within sixty (60) days thereafter, to remove any improvements, alterations, or additions made by or on behalf of Tenant and to repair any damage to the Leased Premises caused by such removal. Before surrendering the Leased Premises, Tenant shall remove all of Tenant's said personal property and unattached

movable trade fixtures, furnishings and equipment.

ARTICLE XV
QUIET ENJOYMENT

Upon payment by the Tenant of the rents herein provided, and upon the observation and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly occupy, use, hold and enjoy the Property, Building and Leased Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject to the terms and conditions of this Lease; to all easements and restrictions, if any, now of record; to the rights of other tenants; and to all mortgages now or hereafter of record subject, however, to the provisions of Article XIV above.

ARTICLE XVI
SUCCESSORS

16.1 Binding Effect of Lease. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties. No rights, however shall inure to the benefit of any assignee of Tenant unless the assignment has been approved by Landlord in writing.

ARTICLE XVII
MISCELLANEOUS

17.1 Controlling Law. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Lease.

17.2 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing by Landlord.

17.3 Entire Agreement. This Lease and the Exhibits attached hereto and forming a part hereof, set forth all the covenants and premises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other

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than are herein set forth. Except as herein provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or Tenant unless reduced to writing and signed by them.

17.4 Relationship of Parties. Nothing contained in this Lease shall be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint ventures or any other relationship between the parties hereto, other than the relationship of Landlord and Tenant.

17.5 Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, shortages of materials or supplies, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 20.7 shall not operate to excuse Tenant from prompt payment of rent, required by the terms of this Lease.

17.6 Notices. Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by first class United States certified mail, postage prepaid, and shall be addressed as set forth in Exhibit C attached hereto, or such other address as such party shall designate by written notice to the others. Proof of any such notice so addressed with postage prepaid shall be by the addressee "green card" used for certified mail duly signed and returned to the sender.

17.7 Captions and Section Numbers. The captions, section numbers, article numbers and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles nor in any way affect this Lease.

17.8 Partial Invalidity. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provisions of this Lease is capable of two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

17.9 No Option. The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a lease only upon the execution and delivery thereof by Landlord and Tenant.

17.10 Brokers. Tenant warrants and represents that Tenant has not directly or indirectly

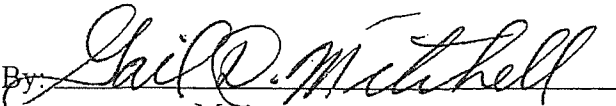
dealt with any broker or agent with respect to this Lease or had its attention called to the Leased Premises by any broker or agent, or dealt with any broker or agent with respect to any negotiations between Landlord and Tenant with respect to this Lease to the Leased Premises.

17.11 Recording. Tenant shall record this Lease, however, upon the request of either party hereto the other party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purpose of recordation. Said memorandum or short form of this Lease shall describe the parties, the Leased Premises and the term of this Lease and shall incorporate this Lease by reference.

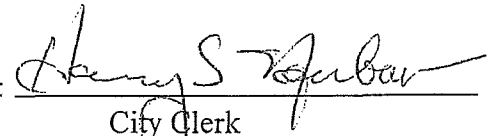
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD

THE CITY OF FAIRVIEW HEIGHTS

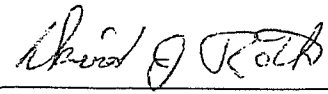
By: 
Mayor

(SEAL)

Attest: 
City Clerk

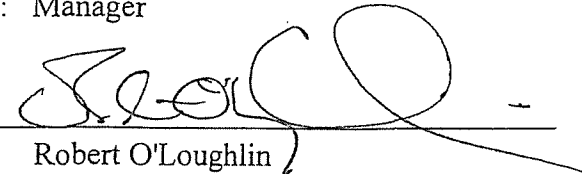
TENANT

THE FOUNTAINS AT FAIRVIEW, LLC

By: 

David J. Roth, General Partner of the
Roth Family Limited Partnership

Title: Manager

By: 

Robert O'Loughlin

Title: Manager

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

LEGAL DESCRIPTION: Part of Lot 2, Fountains of Fairview – 2.558 acres.

A tract of land being a part of Lot 2 of the Fountains of Fairview, a subdivision recorded in Platbook 99, Page 24 of the St. Clair County Recorder's Office, also being a part of Section 22 of Township 2 North, Range 8 West of the 3rd Principal Meridian, City of Fairview Heights, St. Clair County, Illinois, and being more particularly described as follows:

Beginning at the northwest corner of the aforementioned Lot 2;
thence *North 73 degrees 47 minutes 07 seconds East a distance of 497.01 feet* to a point;
thence *South 00 degrees 00 minutes 00 seconds East a distance of 165.00 feet* to a point;
thence *North 90 degrees 00 minutes 00 seconds East a distance of 35.00 feet* to a point;
thence *South 00 degrees 00 minutes 00 seconds East a distance of 100.00 feet* to a point;
thence *North 90 degrees 00 minutes 00 seconds West a distance of 20.00 feet* to a point;
thence *South 00 degrees 00 minutes 00 seconds East a distance of 291.58 feet* to a point on the north right of way of Fountains Parkway;
thence following said north right of way *along a curve to the right having a radius of 1965.00 feet, on a Chord Bearing of North 85 degrees 23 minutes 47 seconds West for an arc length of 40.13 feet* to a point;
thence leaving said north right of way, *North 00 degrees 00 minutes 00 seconds West a distance of 269.05 feet* to a point;
thence *South 90 degrees 00 minutes 00 seconds West a distance of 373.24 feet* to a point;
thence *North 28 degrees 29 minutes 47 seconds West a distance of 165.59 feet* to the **Point of Beginning**.

Said tract contains 111,433.83 square feet, or 2.558 acres, more or less.

This legal description is based on an assumed bearing.

EXHIBIT B

ADDRESSES FOR NOTICE

LANDLORD

City Clerk
THE CITY OF FAIRVIEW HEIGHTS
City Hall, 10025 Bunkum Road
Fairview Heights, Illinois 62208

with a copy to:

Robert E. Becker, Esq.
Becker, Paulson & Hoerner, P.C.
5111 West Main Street
Belleville, Illinois 62223

and a copy to:

Kelly K. Kost, Esq.
Chapman & Cutler
111 West Monroe Street
Chicago, Illinois 60603

TENANT

THE FOUNTAINS AT FAIRVIEW, LLC
#1 River Ridge
Grafton, IL 62037

with a copy to:

Robert T. Bruegge, Esq.
COX BRUEGGE
#10 Sunset Hills Professional Centre
Edwardsville, Illinois 62025-0467

PROPERTY CONVEYANCE AGREEMENT

This Property Conveyance Agreement (“Agreement”) is made and entered into as of this _____ day of June, 2023, between the City of Fairview Heights, Illinois, a municipal corporation, and Cloud 9 Hospitality, LLC, an Illinois limited liability company.

RECITALS

WHEREAS, the City of Fairview Heights is the owner of the real estate located at 319 Fountains Parkway, Fairview Heights, St. Clair County, Illinois, improved with a conference center (St. Clair County Permanent Parcel No. 03-22.0-306-005, and legally described in Exhibit A attached hereto) (“Property”), subject to a Lease dated February 16, 2001 between the City of Fairview Heights and Cloud 9 Hospitality, LLC as assignee of The Fountains at Fairview, LLC, a copy of which is attached hereto as Exhibit B (“Lease”).

WHEREAS, Section 1.3 of the Lease provides Cloud 9 Hospitality, LLC as Tenant with the option to purchase the Property at the completion of the Lease, as follows:

1.3 Conveyance. At the completion of the term described in Section 2.1, and at any time thereafter while Tenant shall continue in occupancy of the Leased Premises, Tenant shall have the option to purchase the Leased Premises from Landlord for the sum of One Dollar (\$1.00). At any time prior to the completion of the term described in Section 2.1, Landlord shall have the right to convey the Leased Premises to Tenant, provided that, for the balance of the term described in Section 2.1: the Leased Premises shall continue to be used as authorized in Section 3.1; and the adjacent property now owned by The Fountains at Fairview, LLC, or its assigns, shall continue to be operated as a hotel.

WHEREAS, Section 2.1 of the Lease pertinently defines the term of the Lease as follows:

2.1 Term. The initial term of this Lease shall be the period commencing upon the delivery of the Certificate of Completion, as described in paragraph 3.3 of the Development Agreement (“Commencement Date”) and ending twenty (20) years after the Commencement Date. Prior to the commencement of the initial term, Tenant shall have the right to enter upon and use the Leased Premises and the Property to install improvements and equipment therein to make the Leased Premises ready for Tenant’s full use and occupancy on the Commencement Date.

WHEREAS, because the Certificate of Completion of the development on the Property was issued on February 18, 2003, the term of the Lease was completed on February 18, 2023 and the aforementioned option to purchase the above-referenced property became effective on that date.

WHEREAS, Cloud 9 Hospitality, LLC hereby agrees to exercise its option to purchase the Property with the condition that the Property shall continue to be operated as a conference center, and the adjacent property (327 Fountains Parkway, Fairview Heights, Illinois – St. Clair

County Permanent Parcel No. 03-22.0-306-006) shall continue to be operated as a hotel with a brand identified as “Upscale”, “Upper Upscale” or “Luxury” under the then-current J.D. Power North America Hotel Guest Satisfaction Index (NAGSI) StudySM, for at least ten (10) years from the date of conveyance of the Property hereunder.

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the parties agree as follows:

SECTION I: INCORPORATION OF RECITALS

The foregoing Recitals are hereby incorporated herein as terms and conditions of this Agreement.

SECTION II: PROPERTY

The City of Fairview Heights is the owner of the real estate located at 319 Fountains Parkway, Fairview Heights, St. Clair County, Illinois, improved with a conference center (St. Clair County Permanent Parcel No. 03-22.0-306-005, and legally described in Exhibit A attached hereto) (“Property”).

SECTION III: CONVEYANCE

Pursuant to Section 1.3 of the Lease dated February 16, 2001 between the City of Fairview Heights and Cloud 9 Hospitality, LLC as assignee of The Fountains at Fairview, LLC, a copy of which is attached hereto as Exhibit B (“Lease”), Cloud 9 Hospitality, LLC hereby agrees to exercise its option to purchase the Property with the condition that the Property shall continue to be operated as a conference center, and the adjacent property (327 Fountains Parkway, Fairview Heights, Illinois – St. Clair County Permanent Parcel No. 03-22.0-306-006) shall continue to be operated as a hotel with a brand identified as “Upscale”, “Upper Upscale” or “Luxury” under the then-current J.D. Power North America Hotel Guest Satisfaction Index (NAGSI) StudySM, for at least ten (10) years from the date of conveyance of the Property hereunder.

SECTION IV: PRICE

Subject to any adjustments stated in this Agreement, the purchase/sale price for the Property under this Agreement shall be One Dollar (\$1.00), calculated and payable by wire transfer or Purchaser’s certified check at Closing.

SECTION V: CLOSING

(a) The word “Closing”, or words similar import means the originally fixed time and Closing date specified in this Agreement or any date and time otherwise agreed to in writing by the parties. The transaction contemplated by this Agreement will be closed at the office of Town & Country Title, 221 West Pointe Drive, #1, Belleville, Illinois 62226 on or before August 1, 2023 or such other date and time as the parties may agree in writing. Time is of the essence of this Agreement.

(b) At the Closing, Cloud 9 Hospitality, LLC shall pay the City of Fairview Heights the purchase/sale price set forth in Section III hereof.

(c) At the Closing, the City of Fairview Heights shall convey and quitclaim the Property to Cloud 9 Hospitality, LLC, by quitclaim deed with a deed restriction/reverter providing that such deed is given subject to the condition that the Property shall the continue to be operated as a conference center, and the adjacent property (327 Fountains Parkway, Fairview Heights, Illinois – St. Clair County Permanent Parcel No. 03-22.0-306-006) shall continue to be operated as a hotel with a brand identified as “Upscale”, “Upper Upscale” or “Luxury” under the then-current J.D. Power North America Hotel Guest Satisfaction Index (NAGSI) StudySM, for at least ten (10) years from the date of conveyance of the Property; otherwise, all right, title and interest to the Property immediately reverts to the City of Fairview Heights.

(d) No personal property is transferred under this Agreement.

SECTION VI: WARRANTIES

(a) Cloud 9 Hospitality, LLC hereby expressly acknowledges and agrees that the Property shall continue to be operated as a conference center, and the adjacent property (327 Fountains Parkway, Fairview Heights, Illinois – St. Clair County Permanent Parcel No. 03-22.0-306-006) shall continue to be operated as a hotel with a brand identified as “Upscale”, “Upper Upscale” or “Luxury” under the then-current J.D. Power North America Hotel Guest Satisfaction Index (NAGSI) StudySM, for at least ten (10) years from the date of conveyance of the Property hereunder.

(b) Cloud 9 Hospitality, LLC hereby expressly acknowledges and agrees that Cloud 9 Hospitality, LLC has thoroughly inspected and examined the Property to the extent deemed necessary by Cloud 9 Hospitality, LLC in order to enable Cloud 9 Hospitality, LLC to evaluate the conveyance of the Property. Cloud 9 Hospitality, LLC hereby further acknowledges and agrees that Cloud 9 Hospitality, LLC is relying solely on the inspection, examination, and evaluation of the Property by Cloud 9 Hospitality, LLC and that Cloud 9 Hospitality, LLC is acquiring the Property on an “as is, where is,” and “with all faults” basis and not on any information provided or to be provided by the City of Fairview Heights. Cloud 9 Hospitality, LLC expressly acknowledge that, in consideration of the agreements of the City of Fairview Heights herein, the City of Fairview Heights makes no warranty or representation, express or implied, or arising by operation of law, other than that explicitly listed in this Agreement, including, but in no way limited to, any warranty of condition, habitability, merchantability, or fitness for a particular purpose, and further disclaims any other such warranties.

(c) Cloud 9 Hospitality, LLC hereby expressly acknowledges and agrees that, upon conveyance of the Property hereunder, Cloud 9 Hospitality, LLC assumes any and all risk of loss or damage to the Property, and agrees to hold the City of Fairview Heights harmless and indemnified from any claim arising out of the condition thereof both before and after the date of conveyance.

(d) Cloud 9 Hospitality, LLC hereby expressly acknowledges and agrees that Cloud 9 Hospitality, LLC retains responsibility for any and all taxes and assessments upon the Property both before and after the date of conveyance.

SECTION VII: CLOSING COSTS

Cloud 9 Hospitality, LLC shall pay all costs associated with the transfer of the Property, including but not limited to the cost of any commitment for title policy, the premium applicable to any title policy, survey charges, transfer taxes and escrow fees. However, each party will pay its own legal fees and expenses.

SECTION VIII: SURVIVAL

All representations, warranties, covenants and agreements herein will survive the Closing and will not merge in the deed or any other document executed and delivered in performance of this Agreement.

SECTION IX: INDEMNIFICATION

Cloud 9 Hospitality, LLC shall indemnify and hold the City of Fairview Heights harmless and will assume the defense of any liability or claim asserted before or after the Closing date for any liabilities and expenses related to the Property.

SECTION X: NOTICES

Any notice required to be given in this Agreement will be in writing and either delivered personally or sent postage prepaid by certified United States mail, return receipt requested, addressed, if to Cloud 9 Hospitality, LLC, to Sam Desai, 319 Fountains Parkway, Fairview Heights, Illinois 62208, and if to the City of Fairview Heights, to Mayor Mark Kupsy at City Hall, 10025 Bunkum Road, Fairview Heights, Illinois 62208, with a copy to City Attorney Garrett P. Hoerner, 5111 West Main Street, Belleville, IL 62226. Either party may designate a different address for notices by written notice to the other party.

SECTION XI: REMEDIES

(a) If Cloud 9 Hospitality, LLC defaults under this Agreement, the City of Fairview Heights may pursue any legal or equitable remedy that may be available to it.

(b) If the City of Fairview Heights defaults under this Agreement, Cloud 9 Hospitality, LLC may pursue any legal or equitable remedy that may be available to it.

(c) In the event that litigation arises out of this Agreement between the City of Fairview Heights and Cloud 9 Hospitality, LLC, the prevailing party shall be entitled to collect its reasonable attorney's fees and litigation costs from the other.

SECTION XII: GOVERNING LAW; JURISDICTION

This Agreement is governed by and will be construed in accordance with the laws of the State of Illinois. The City of Fairview Heights and Cloud 9 Hospitality, LLC hereby consent to Illinois jurisdiction and agree that any litigation to enforce this Agreement must be brought in the Circuit Court of St. Clair County, Illinois.

SECTION XIII: ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains all terms and conditions agreed upon, and there are no conditions, representations, warranties, covenants, or agreements not contained in this Agreement. Any subsequent conditions, representations, warranties, covenants or agreements will not be valid and binding on the parties unless in writing and signed by both parties.

The parties agree to the above terms by signing below.

City of Fairview Heights, Illinois

Cloud 9 Hospitality, LLC

By: _____
Mark T. Kupsky
Mayor

By: _____
Sam Desai
Member-Manager

Attest: _____
Karen Kaufhold
Clerk

MOTION

“Motion to direct staff to solicit bids for the Market Place Streetscape landscape & Lighting project”