



PRESIDENT AND BOARD OF TRUSTEES

Regular Meeting

Monday, January 22, 2024

6:00 PM

East Dundee Police Station, 2nd Floor Meeting Room
115 E. 3rd Street, East Dundee, IL 60118

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Public Comment
Please keep comments to 5 minutes or less
5. Presentation of ILEAP Re-accreditation for the Police Department
6. Consent Agenda
 - a. [Motion to Approve the Regular Village Board Meeting Minutes Dated December 18, 2023](#)
 - b. [Motion to Accept the Warrants Lists in the Amounts of \\$147,460.52, \\$171,290.38, \\$58,055.19, and \\$89,611.43](#)
 - c. [Motion to Approve an Ordinance Amending Village Code Chapter 116, Alcoholic Beverages, Number of Licenses to be Permitted, Reducing the Number of Permitted Class G Alcoholic Beverage Licenses by One \(Infinity Banquet Hall\)](#)
 - d. [Motion to Approve an Ordinance Authorizing Abatement of the Tax Levy for General Obligation Bond 2012A, General Obligation Bond 2012B, 2012 TIF Revenue Bonds \(Route 25 TIF\) and General Obligation 2015 and General Obligation 2016 for the Village Of East Dundee](#)
 - e. [Motion to Approve a Resolution Approving a Settlement Agreement with Commonwealth Edison Company](#)
 - f. [Motion to Approve a FY 2024 Dundee Crossings Business Development District \(BDD\) Façade Improvement Grant in the amount of \\$25,000 to Tequila Val's \(309 Meier St.\)](#)
 - g. [Motion to Approve a Resolution Approving a Declaration of Use Restriction for Real Property Located at 309 Jackson Street and 304 Hill Street](#)
7. Other Agenda Items
 - a. [Motion to Approve a Resolution approving James McHugh Construction Co. as the Prevailing Bidder and Authorizing the Village Administrator to Execute a Standard Form Agreement between the Village of East Dundee and James McHugh Construction Co. for Design-Build Services of a Two-Level Parking Structure Located in the Downtown District](#)

- [of the Village of East Dundee](#)
- b. [Motion to Approve a Resolution Adopting the Liquor Commission Enforcement and Hearings Manual](#)
- c. [Motion to Approve a Special Use Permit Ordinance for a Banquet Hall, as Described in Section 157.065\(A\)\(1\)\(d\)\(2\) of the Zoning Ordinance, for the property located at 201 Christina Drive Units A and B, East Dundee, IL 60118 \(PIN 03-25-150-002\), Located in the M-1 Limited Manufacturing District](#)
- d. [Motion to Provide Advise and Consent to the Appointment of Jeff Baran to the Board of Police Commissioners for a 3-year term concluding in the year 2027](#)
- e. [Motion to Provide Advise and Consent to the Appointment of Liz Kohn to the Arts Council for a 3-year term concluding in the year 2027](#)
- f. [Motion to Provide Advise and Consent to the Appointment of Jordan Johnson to the Arts Council for a 3-year term concluding in the year 2027](#)

8. Village President and Board Reports

9. Staff Reports

10. Executive Session

Closed to the public and media under the provisions of the Illinois Open Meetings Act, 5ILCS, 120/2, (c)(21) Discussion of Minutes, (c)(11) Pending Litigation, (c)(1) Personnel and Legal Counsel, (c)(5) Acquisition of Property, (c)(6) Sale of Property, (c)(3) Appointments and (c)(2) Collective Negotiating Matters.

11. Adjournment

CALL TO ORDER

President Lynam calls to order the Village of East Dundee Regular Village Board Meeting at 6:00 p.m.

ROLL CALL:

Trustees Mahony, Kunze, Brittin, Saviano, Treiber and Sauder and President Lynam.

Also in attendance are Administrator Erika Storlie, Finance and Administrative Services Director Brandiss Martin, Chief of Police Josh Fourdyce, Director of Public Works Phil Cotter, Engineer Joe Heinz, Attorney Caitlyn Culbertson and Clerk Katherine Diehl.

PLEDGE OF ALLEGIANCE: Recited

PUBLIC COMMENT:

Dave Accurso, East Dundee Resident

Mr. Accurso stated that Davey Tree recently removed a village tree from his yard and claims the yard was damaged. He asked why the job was subbed out instead of being performed by East Dundee public works personnel. Accurso also expressed displeasure with the leaf pick up program service on a couple occasions.

Kevin Matter, East Dundee Resident

Mr. Matter stated that he does not see a purpose for the new snow parking signs and does not like one in front of his home. He said there already are signs stating "no parking after 2 inches of snow fall" posted when entering his subdivision and feels the new signs are confusing. He also stated that he does not understand why water main repairs are subcontracted out. He stated that the public works department has always made the repairs.

Motion to allow Trustee Trieber to participate via telephone by Mahony/Brittin.

Roll: Ayes – 5 – Mahony, Kunze, Brittin, Saviano and Sauder. Nays – 0. Absent – 0. Motion carries.

CONSENT AGENDA:

- a. **Motion to Approve the Regular Village Board Meeting Minutes Dated November 20, 2023**
- b. **Motion to Approve the Regular Village Board Meeting Minutes Dated December 4, 2023**
- c. **Motion to Accept the Warrants List in the Amount of \$1,282,654.43**
- d. **Motion to Approve an Ordinance Adopting the Village of East Dundee's Current Paid Leave and Benefits Policy and Opting Out of the Illinois Paid Leave for All Workers Act (820 ILCS 192/1 Et Seq.) for All Village of East Dundee Employees**
- e. **Motion to Approve an Ordinance Amending Sections 150.01, 150.02, 150.03 and 153.15 of the Village of East Dundee Village Code to Consolidate the Historic Commission and the Planning and Zoning Commission**
- f. **Motion to Approve an Ordinance Amending Section 35.17 of the Village of East Dundee Village Code Relating to the Vehicle Parking Tax**
- g. **Motion to Approve an Ordinance Authorizing an Amendment to Ordinance 23-26 and the Issuance of and Increase by One Class E-4 Liquor License (Aliano's JSLS, Inc. Operating at 310 N. River St.)**
- h. **Motion to Approve an Ordinance Repealing Section 50.07 and Amending Section 37.01(D)(3) of the Village of East Dundee Code of Ordinances**
- i. **Motion to Approve a Resolution Approving a Policy Regarding Garbage and Refuse Collection Rates and Fees and Rebates for the Village of East Dundee**
- j. **Motion to Approve a Resolution Approving the Purchase of a new Public Works Vehicle from Altorfer Industries of East Dundee**
- k. **Motion to Approve a Resolution Declaring Certain Equipment as Surplus and Authorizing**

- the Disposal of Said Equipment via Trade-In to Altorfer Industries**
- 1. Motion to Approve a Resolution Approving and Ratifying the Village Administrator's Execution of an Indemnity and Hold Harmless Agreement Regarding the Lease Back of 110 Railroad, in the Village of East Dundee**

Motion to Approve the Consent Agenda by Kunze/Saviano.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0.

Motion carries.

OTHER AGENDA ITEMS:

a. Swearing in of Deputy Police Chief Andrew Ritter

Chief Fourdyce provided a background of Andrew Ritter's law enforcement career, experience, and education. He stated that Deputy Chief Ritter's well-rounded experience, problem-solving abilities, and leadership make him a great fit to be the next Deputy Chief for the East Dundee Police Department.

Deputy Chief Ritter was sworn in by Clerk Diehl.

b. Swearing in of Sergeant Jessica Marinos

Chief Fourdyce provided a background of Jessica Marinos's law enforcement career, experience, education, and charity event involvement. He thanked her for helping train him on the systems that he needed to learn to be effective as Deputy Chief when he joined the East Dundee department earlier this year.

Sergeant Marinos was sworn in by Clerk Diehl.

c. Riverfront Master Plan Discussion

A representative from Hitchcock Design Group, who is the Village's consultant leading this study, gave an update on the project and provided feedback from the community online survey.

d. Motion to Approve an Ordinance Adopting the 2024 Fiscal Year Budget

Motion to Approve an Ordinance Adopting the 2024 Fiscal Year Budget by Brittin/Mahony.

Discussion:

Finance Director Martin stated that as noted in the memo to the Village Board, there were a few changes made to the final Budget since the last discussion. The changes include the addition of the purchase of 304 Hill & 309 Jackson in the amount of \$378,000, an allocation for the Depot Council in the amount of \$10,000, a reduced allocation for the Arts Council from \$50,000 to \$40,000 and for the interior painting of well #3 in the amount of \$11,000 to now be performed in house.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

e. Motion to Approve an Ordinance for the Levy and Assessment of Taxes for the Stub Year Beginning May 1, 2023, and Ending December 31, 2023, for the Village of East Dundee

Motion to Approve an Ordinance for the Levy and Assessment of Taxes for the Stub Year Beginning May 1, 2023, and Ending December 31, 2023, for the Village of East Dundee by Kunze Mahony.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

f. Motion to Approve a Resolution Authorizing the Village Administrator to Enter into an Engineering Services Agreement with Gerald L. Heinz & Associates for the 2024 Street Improvement Program in an Amount Not-To-Exceed \$58,500

Motion to Approve a Resolution Authorizing the Village Administrator to Enter into an Engineering Services Agreement with Gerald L. Heinz & Associates for the 2024 Street Improvement Program in an Amount Not-To-Exceed \$58,500 by Mahony/Saviano.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

g. Motion to Approve a Resolution Waiving Competitive Bidding and Approving the Purchase of a New Public Works Vehicle from Castle Motors of McHenry

Motion to Approve a Resolution Waiving Competitive Bidding and Approving the Purchase of a New Public Works Vehicle from Castle Motors of McHenry by Sauder/Brittin.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

h. Motion to Approve a Resolution Authorizing the Village Administrator to Enter into a Professional Services Agreement with Baxter & Woodman Consulting Engineers for a Water and Sewer Rate Study in an Amount Not-To-Exceed \$40,500

Motion to Approve a Resolution Authorizing the Village Administrator to Enter into a Professional Services Agreement with Baxter & Woodman Consulting Engineers for a Water and Sewer Rate Study in an Amount Not-To-Exceed \$40,500 by Brittin/Sauder.

Discussion:

Director of Public Works Cotter explained that these types of studies are recommended every 5 years. He stated that capital needs, operating expenses, and debt will change over time. He said that a financial model is built and will help determine if the Village's existing water and sewer rates are sufficient, equitable and reasonable to cover the annual operational, maintenance, and capital expenditures for the Water and Sewer Fund.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

i. Motion to Approve a Resolution Authorizing the Village Administrator to Waive Competitive Bidding and Enter into Agreements with Various Subcontractors to Perform Bathroom Renovation Work at The Depot in an Amount Not-To-Exceed \$120,000

Motion to Approve a Resolution Authorizing the Village Administrator to Waive Competitive Bidding and Enter into Agreements with Various Subcontractors to Perform Bathroom Renovation Work at The Depot in an Amount Not-To-Exceed \$120,000 by Kunze/Brittin.

Discussion:

Administrator Storlie stated that the Village received some pretty expensive quotes, and this was a creative

solution to obtain competitive pricing from various subcontractors and have the project managed in house. She added that this project will include ADA compliant and companion care restrooms at one of the most used facilities in town.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

j. Motion to Approve a Resolution Approving a Contract Agreement between the Village of East Dundee and University of Northern Illinois's Center for Governmental Studies for Strategic and Comprehensive Planning and Goal Identification

Motion to Approve a Resolution Approving a Contract Agreement between the Village of East Dundee and University of Northern Illinois's Center for Governmental Studies for Strategic and Comprehensive Planning and Goal Identification by Mahony/Brittin.

Roll: Ayes – 6 – Mahony, Kunze, Brittin, Saviano, Treiber and Sauder. Nays – 0. Absent – 0. Motion carries.

REPORTS: VILLAGE PRESIDENT and BOARD

Lynam: Thanked the Village Board members for managing the last two meetings during his absence. He stated that he heard a lot of feedback that the Dickens in Dundee event was well attended. He commented that the downtown holiday decorations look great and thanked the Public Works crew for that. He congratulated the two Police Officers who were sworn in this evening on their new roles with the department.

Brittin: Reported that there continues to be a regular issue with meeting attendance and establishing a quorum by the Planning and Zoning Commission. President Lynam said that he will make some phone calls. Trustee Mahony added that expired seats should be addressed.

Kunze: None

Mahony: Thanked Franco Bottalico and staff for creating a Depot Council page on the village website. She stated that the Village will be posting a part time Depot Attendant employment opportunity in January. Next, she advised that she saw the Toys for Tots and Shop with a Cop events at Walmart in Carpentersville last Saturday. She thanked Sergeant Marinos for her leadership and participation in this event and the participation by other East Dundee Police personnel. Lastly, she congratulated Administrator Storlie for her efforts with closing on the sale of the Doederlein property located at 110-112 Railroad Street.

Sauder: Reported that the Arts Council is calling for all local artists to submit work for the Black + White Art show on February 10 at Black and Gray Brewing. The submission deadline is January 20. He advised that the Council has received several submissions.

Saviano: Reported that she attended the Wreaths Across America event on Saturday by the True Patriots Care at the Dundee Township Cemetery. She said it was very well attended.

Treiber: None

REPORTS: STAFF

Village Administrator: Storlie thanked Public Works, Katherine Diehl and all village staff who helped with Dickens in Dundee and the entire event season. She said that it was an exceptional year, and it takes an extraordinary amount of planning and organizing.

Village Attorney: None

Police Chief: Fourdyce reported that the police department went live with body cameras last week.

Public Works Director: Cotter stated that he will follow up with Mr. Accurso regarding his public comment this evening regarding Davey Tree.

Building Inspector: None

Finance Director: Martin reported that she received the Police Pension audit report last week and can now wrap up the Village audit. She thanked Finance Manager Ana Lopez for all her help with the budget.

Village Engineer: None

EXECUTIVE SESSION: Yes

Motion to adjourn the Regular Village Board meeting at 7:36 by Kunze/Brittin.

Motion carries by unanimous consent. Meeting adjourns.

Respectfully submitted,

Katherine Diehl

By: _____
Village President, Jeffrey Lynam

Attest: _____
Village Clerk, Katherine Diehl

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
ADVANCED AUTOMATION & CONTROLS INC					
23-4255	WW SCADA SERVICE	12/27/2023	230.00		60-33-5290
23-4256	WW SCADA UPGRADES	12/27/2023	15,352.00		60-33-5291
Total ADVANCED AUTOMATION & CONTROLS INC:			15,582.00		
ARROW ROAD CONSTRUCTION CO.					
74623 * 2	2023 STREET IMPR	10/31/2023	13,771.76		32-31-6090
Total ARROW ROAD CONSTRUCTION CO.:			13,771.76		
ARROW SEPTIC & SEWER					
32928	HILL STREET LS	12/13/2023	245.00		60-33-5141
32929	MILK PAIL LS	12/13/2023	245.00		60-33-5141
32930	PRAIRIE LAKES LS	12/13/2023	245.00		60-33-5141
32931	RICHARDSON LIFT STATION	12/13/2023	245.00		60-33-5141
Total ARROW SEPTIC & SEWER:			980.00		
AT&T					
121323	ATT W/S	12/13/2023	364.17		60-33-5320
Total AT&T:			364.17		
B&F CONSTRUCTION CODE SERVICES INC					
18670	INSPECTIONS	12/28/2023	45.00		01-25-5290
18676	INSPECTIONS	12/28/2023	90.00		01-25-5290
Total B&F CONSTRUCTION CODE SERVICES INC:			135.00		
BATEMAN LAW OFFICES, LTD					
010424	EDPD AA HEARING	01/04/2024	166.25		01-21-5230
010424	AA BUILDING	01/04/2024	166.25		01-25-5230
Total BATEMAN LAW OFFICES, LTD:			332.50		
BAXTER AND WOODMAN CONSULTING ENGINEERS					
249716	WATER PROTECTION PLAN	08/22/2023	495.00		60-33-5220
253568	WATER SYSTEM SURVEY	12/18/2023	1,430.00		60-33-5220
Total BAXTER AND WOODMAN CONSULTING ENGINEERS:			1,925.00		
CASSIDY TIRE & SERVICE					
922019771	STREET SWEEPER TIRES	12/14/2023	755.00		01-31-5120
Total CASSIDY TIRE & SERVICE:			755.00		
CENTURION PLUMBING COMPANY					
2282	VALVE REPLACEMENT	01/03/2024	13,200.00		60-33-5961
Total CENTURION PLUMBING COMPANY:			13,200.00		
CHADWICK CONTRACTING COMPANY					
23-195	DRIVEWAY REPAIR	11/27/2023	4,903.99		01-31-5150

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total CHADWICK CONTRACTING COMPANY:			4,903.99		
CHICAGO COMMUNICATIONS LLC					
347848	RADO MAINT. PD	10/31/2023	220.00		01-21-5130
Total CHICAGO COMMUNICATIONS LLC:			220.00		
CINTAS FIRST AID & SAFETY					
4177687926	MATS - VH	12/20/2023	39.88		01-12-5110
4178996943	MATS - VH	01/03/2024	39.88		01-12-5110
4177488016	MATS PD	12/20/2023	49.19		01-21-5121
Total CINTAS FIRST AID & SAFETY:			128.95		
COM ED					
121123	COM ED VH	12/11/2023	146.21		01-31-5510
121123	COM ED STREETS	12/11/2023	24.34		28-01-5510
Total COM ED:			170.55		
COMED					
122223	COM ED STREETS	12/22/2023	587.79		28-01-5510
Total COMED:			587.79		
CRITICAL REACH, INC.					
3179	ANNUAL SUPPORT FEE	12/11/2023	325.00		01-21-5410
Total CRITICAL REACH, INC.:			325.00		
CURRENT TECHNOLOGIES					
733246	SUPPORT	12/29/2023	165.00		01-21-5630
Total CURRENT TECHNOLOGIES:			165.00		
DOTY & SONS CONCRETE PRODUCTS					
70679	VH PLANTERS	12/19/2023	856.00		01-12-5110
Total DOTY & SONS CONCRETE PRODUCTS:			856.00		
DOWN TO EARTH LANDSCAPING					
114732	SOIL	12/21/2023	30.00		01-31-5150
114752	SOIL	12/28/2023	60.00		01-31-5150
Total DOWN TO EARTH LANDSCAPING:			90.00		
DUNDEE NAPA AUTO PARTS					
464388	PD VEHICLE	12/13/2023	23.90		01-21-5120
464762	MOTOR OIL	12/18/2023	68.37		01-31-5120
465632	TRUCK OIL	12/30/2023	20.99		01-31-5120
464490	OIL ABSORBENT	12/14/2023	20.00		01-31-5630
464720	OIL ABSORBENT	12/18/2023	50.00		01-31-5630
464756	FUNNEL FOR FUEL	12/18/2023	8.84		01-31-5630
465427	OPER SUPPLIES	12/28/2023	10.38		01-31-5630

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total DUNDEE NAPA AUTO PARTS:			202.48		
DUNDEE TOWNSHIP PARK DISTRICT					
122023	PROGRAM GUIDE ADVER	12/20/2023	2,400.00		01-37-5340
Total DUNDEE TOWNSHIP PARK DISTRICT:			2,400.00		
DW-SERVANT FUND (EAST DUNDEE) LLC					
12202023 1	BDD DUNDEE GATEWA	12/20/2023	4,166.67		33-01-5876
Total DW-SERVANT FUND (EAST DUNDEE) LLC:			4,166.67		
ED'S, RENTAL & SALES INC					
410003-3	STUMP GRINDER/TRAILER	12/22/2023	1,104.00		01-31-5530
Total ED'S, RENTAL & SALES INC:			1,104.00		
FASTSIGNS					
97-64782	BAND PARKING SIGNS	12/18/2023	149.08		01-37-5340
97-64782 - CR	BAND SIGNS	12/27/2023	149.08		01-37-5630
97-64782 - CR	CREDIT OVER PAY	12/27/2023	147.50-		34-01-5940
Total FASTSIGNS:			150.66		
GALLS PARENT HOLDINGS, LLC					
26505816/2650	UNIFORM ALLOW. - KM	12/11/2023	105.40		01-21-5080
26505816/2650	UNIFORM ALLOW. AR	12/11/2023	146.91		01-21-5080
26612689	UNIFORM ALLOW	12/21/2023	86.92		01-21-5080
Total GALLS PARENT HOLDINGS, LLC:			339.23		
GASVODA & ASSOCIATES, INC					
23DCF0047CH	NEW CHLORINE SCALE	12/22/2023	3,186.00		60-33-5130
23DCF0047CH	FREIGHT	12/22/2023	62.05		60-33-5130
Total GASVODA & ASSOCIATES, INC:			3,248.05		
GOLD SHIELD DETECTIVE AGENCY, INC					
122623	BG CHECK	12/23/2023	1,149.37		01-21-5290
Total GOLD SHIELD DETECTIVE AGENCY, INC:			1,149.37		
GRAINGER, INC.					
9932240154	STREET SIGN POSTS	12/12/2023	1,191.44		01-31-5150
9950619214	BENCH VISE	01/03/2023	257.44		01-31-5640
Total GRAINGER, INC.:			1,448.88		
H&H ELECTRIC CO.					
42551	STREET LIGHT MAIN	10/05/2023	470.61		01-31-5150
Total H&H ELECTRIC CO.:			470.61		
HAWKINS, INC.					
6646957	WTP CHEMICALS	12/15/2023	200.00		60-33-5650
6646958	WTP CHEMICALS	12/15/2023	10.00		60-33-5650

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total HAWKINS, INC.:			210.00		
HELPING HAND IT					
23-44530	IT SERVICES	12/13/2023	743.75		01-12-5286
23-44567	IT SERVICES	12/29/2023	490.00		01-12-5286
Total HELPING HAND IT:			1,233.75		
HINCKLEY SPRINGS					
23907757-122	VH WATER	12/23/2023	39.90		01-12-5630
Total HINCKLEY SPRINGS:			39.90		
HITCHCOCK DESIGN GROUP					
31866	RIVERFRONT MASTER PLAN	12/31/2023	1,561.77		32-31-5955
Total HITCHCOCK DESIGN GROUP:			1,561.77		
HOME DEPOT					
121323	VH PAINTING SUPPLIES	12/13/2023	503.32		01-12-5110
121323	NETTING FOR PLANTERS	12/13/2023	60.00		01-31-5110
121323	FOLDING TABLES - TABLES PW	12/13/2023	330.80		01-31-5110
121323	CONCRETE MIX	12/13/2023	385.92		01-31-5630
121323	BLDG DEPT TOOL	12/13/2023	12.97		01-31-5640
Total HOME DEPOT:			1,293.01		
HUGHES ENVIRONMENTAL CONSULTING					
1062	HUGHES ENVIR	12/01/2023	6,920.00		60-33-5291
Total HUGHES ENVIRONMENTAL CONSULTING:			6,920.00		
IDEMIA IDENTITY & SECURITY USA LLC					
165060	ANNUAL MAINT RENEWAL	12/12/2023	1,990.00		01-21-5130
Total IDEMIA IDENTITY & SECURITY USA LLC:			1,990.00		
ILLINOIS STATE POLICE BUREAU OF ID					
20231104110	LIQ LIC BG CHECK	11/01/2023	28.25		01-12-5290
Total ILLINOIS STATE POLICE BUREAU OF ID:			28.25		
J.G. UNIFORMS, INC					
124656	UNIFORM C JF	12/12/2023	387.00		01-21-5080
124850	UNIFORM JM	12/14/2023	220.90		01-21-5080
124856	UNIFORM AR	12/14/2023	391.75		01-21-5080
124909	UNIFORM JM	12/13/2023	234.00		01-21-5080
125324	UNIFORM AR	12/27/2023	408.69		01-21-5080
Total J.G. UNIFORMS, INC:			1,642.34		
LAKE JULIAN CONTRACTING INC					
1298	CLEAN BRINE TANK	12/21/2023	2,275.00		60-33-5130
Total LAKE JULIAN CONTRACTING INC:			2,275.00		

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
LAUDERDALE ELECTRIC, INC.					
9507	LIGHTING REPPD	12/27/2023	423.89		01-21-5121
9506	STREET LIGHT MAINT	12/27/2023	557.75		01-31-5150
Total LAUDERDALE ELECTRIC, INC.:			981.64		
MENARDS - CARPENTERSVILLE					
15960	VH CEILING TILES	12/13/2023	39.92		01-12-5110
16181	VH PLANTERS	12/19/2023	6.98		01-12-5110
Total MENARDS - CARPENTERSVILLE:			46.90		
MEYER SIGNS					
10475	VH DOOR FROSTING	12/13/2023	312.00		01-12-5110
10475	TRUCK DECALS	12/13/2023	304.00		01-31-5120
10475	TRUCK DECALS	12/13/2023	240.00		01-31-5130
10475	WTP LOGO	12/13/2023	486.00		60-33-5110
Total MEYER SIGNS:			1,342.00		
MIDWEST SALT					
471288	COARSE SALT	12/21/2023	3,288.48		60-33-5650
Total MIDWEST SALT:			3,288.48		
NICOR GAS					
122923	GENERAL VILLAGE G	12/29/2023	558.93		01-31-5510
122923	NICOR S/W	12/29/2023	1,256.15		60-33-5510
Total NICOR GAS:			1,815.08		
NORTH EAST MULTI-REGIONAL TRAINING					
342373	TRAINING RF	12/12/2023	175.00		01-21-5430
Total NORTH EAST MULTI-REGIONAL TRAINING:			175.00		
OTTO ENGINEERING					
1157073	WHAT IS THIS?	12/14/2023	150.31		01-21-5080
Total OTTO ENGINEERING:			150.31		
PACE ANALYTICAL SERVICES, LLC					
9578085	WATER TESTING PROGRAM C	12/12/2023	375.00		60-33-5290
9579977	W TESTING	12/31/2023	394.00		60-33-5290
9579978	WW TESTING	12/31/2023	3,600.20		60-33-5291
Total PACE ANALYTICAL SERVICES, LLC:			4,369.20		
PADDOCK PUBLICATIONS, INC					
274937	PUB HEARING PUBLICATIONS	12/26/2023	66.70		01-12-5330
Total PADDOCK PUBLICATIONS, INC:			66.70		
PITNEY BOWES GLOBAL FINANCIAL SERVICES					
121023	POSTAGE ADMIN	12/10/2023	10.42		01-12-5680
121023	POSTAGE B&Z	12/10/2023	390.39		01-25-5680

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total PITNEY BOWES GLOBAL FINANCIAL SERVICES:			400.81		
REGIONAL TRUCK EQUIPMENT					
60572	INSTALL INVERTER	12/07/2023	1,785.00		01-31-5120
60572	LIFTGATE AND LIGHTING FOR	12/07/2023	6,896.00		32-31-5930
Total REGIONAL TRUCK EQUIPMENT:			8,681.00		
RUBINO ENGINEERING, INC					
8854	WATER MAIN BREAK SOIL TES	11/14/2023	2,350.00		60-33-5290
Total RUBINO ENGINEERING, INC:			2,350.00		
SHARP EXPRESS					
120523	OIL CHANGE #36	12/05/2023	420.00		01-31-5120
121523	TRUCK 33 SERV	12/15/2023	195.50		01-31-5120
Total SHARP EXPRESS:			615.50		
SIKICH					
38734	POL PENSION AUDIT	12/31/2023	2,568.00		01-14-5210
Total SIKICH:			2,568.00		
SPORTSWEREUS, INC					
121923	AMMO	12/19/2023	1,500.00		01-21-5430
Total SPORTSWEREUS, INC:			1,500.00		
SPRING HILL AUTO BODY					
49384	BODY REPAIRS TRUCK 20	12/31/2023	3,142.12		01-31-5120
49384	SUPPLEMENT	12/31/2023	704.59		01-31-5120
49384	BODY REPAIRS TRUCK 20	12/31/2023	3,142.13		60-33-5120
49384	SUPPLEMENT	12/31/2023	704.58		60-33-5120
Total SPRING HILL AUTO BODY:			7,693.42		
STANDARD EQUIPMENT COMPANY					
11935	SWEEPER REPAIRS	12/18/2023	2,731.35		01-31-5120
12026	SWEEPER REPAIR	12/14/2023	3,309.42		01-31-5120
Total STANDARD EQUIPMENT COMPANY:			6,040.77		
STAPLES ADVANTAGE					
8072641899	OFFICE SUPP,LIES	12/16/2023	145.06		01-21-5610
8072711234	OFFICE SUPP,LIES	12/23/2023	53.36		01-21-5610
Total STAPLES ADVANTAGE:			198.42		
STRIKE TACTICAL SOLUTIONS					
110223RR1	SHIELDS	11/02/2023	4,390.00		01-21-5940
Total STRIKE TACTICAL SOLUTIONS:			4,390.00		
SUBURBAN ELEVATOR					
7100546470	ANNUAL PRESSURE T	12/11/2023	490.00		01-21-5121

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total SUBURBAN ELEVATOR:			490.00		
TAPCO					
768870	PEDESTRIAN CROSSING SIGN	12/16/2023	361.03		15-01-5950
Total TAPCO:			361.03		
THOMPSON ELEVATOR SERVICE					
23-2394	ELEVATOR INSP	01/03/2024	558.00		01-01-1112
23-2854	ELEVATOR INSP 311 BARRINGT	12/13/2023	50.00		01-01-1112
23-2854	ELEVATOR INSP 543 MAIN	12/13/2023	50.00		01-01-1112
23-2854	ELEVATOR INSP 105 PRAIRIE L	12/13/2023	50.00		01-01-1112
23-2854	ELEVATOR INSP 175 PRAIRIE L	12/13/2023	43.00		01-01-1112
23-2854	ELEVATOR INSP 220 RIVER ST	12/13/2023	50.00		01-01-1112
23-2394	EDPD ELEV INSP	01/03/2024	50.00		01-21-5130
23-2854	ELEVATOR INSP 611 E MAIN	12/13/2023	93.00		01-31-5197
Total THOMPSON ELEVATOR SERVICE:			944.00		
TLO LLC					
259283-202311	TLO DUES	12/01/2023	75.00		01-21-5410
259283-20231	MEMBERSHIP	12/01/2023	75.00		01-21-5410
Total TLO LLC:			150.00		
TRUE BLUE CAR WASH LLC					
5189	PD CAR WASH	12/31/2023	57.00		01-21-5120
Total TRUE BLUE CAR WASH LLC:			57.00		
ULTIMATE BUILDERS & REMODELERS INC					
010324	VH FRONT COUNTER	01/03/2024	3,830.00		32-15-5948
Total ULTIMATE BUILDERS & REMODELERS INC:			3,830.00		
VERIZON WIRELESS					
9951352508	VERIZON ADMIN	12/10/2023	92.47		01-12-5320
9951352508	VERIZON FIN	12/10/2023	92.47		01-14-5320
9951352508	VERIZON PD	12/10/2023	289.26		01-21-5320
9951352508	VERIZON B&Z	12/10/2023	56.46		01-25-5320
9951352508	VERIZON SWR/WTR	12/10/2023	332.19		01-31-5320
9951352508	VERIZON PW	12/10/2023	156.03		60-33-5320
9951754376	W/WW DIALER MODEMS	12/14/2023	37.16		60-33-5320
Total VERIZON WIRELESS:			1,056.04		
WAREHOUSE DIRECT OFFICE PRODUCTS					
5631947-0	NOTARY STAMP RS	12/20/2023	24.99		01-21-5630
Total WAREHOUSE DIRECT OFFICE PRODUCTS:			24.99		
WELCH BROTHERS, INC.					
3258467	SANITARY SEWER MANHOLE LI	12/12/2023	1,512.00		60-33-5141
3258957	SANITARY SEWER MANHOLE LI	12/15/2023	498.00		60-33-5141
3259234 CRE	RETURN LIDS	12/18/2023	498.00-		60-33-5141

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total WELCH BROTHERS, INC.:			1,512.00		
WEX INC					
94009611	FUEL CHARGES PD	12/23/2023	1,692.47		01-21-5620
94009611	B&Z FUEL	12/23/2023	105.57		01-25-5620
94009611	FUEL CHARGES PW	12/23/2023	1,582.75		01-31-5620
94009611	FUEL CHARGES WS	12/23/2023	1,170.26		60-33-5620
Total WEX INC:			4,551.05		
XYLEM WATER SOLUTIONS USA					
3512	REPLACEMENT MULTI-SMART	12/13/2023	1,444.50		60-33-5141
Total XYLEM WATER SOLUTIONS USA:			1,444.50		
Grand Totals:			147,460.52		

Report Criteria:

Detail report.

Invoices with totals above \$0.00 included.

Paid and unpaid invoices included.

Invoice.Batch = "0"

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
ALVERSON SOUND, INC					
35	OKT FEST STAGE	12/14/2023	2,520.00		01-37-5330
Total ALVERSON SOUND, INC:			2,520.00		
AYRE PRODUCTIONS					
010524	TT STAGE RENTAL	01/05/2024	10,420.00		01-37-5330
Total AYRE PRODUCTIONS:			10,420.00		
BLUE CROSS BLUE SHIELD					
12152023	BCBS ADMIN	12/15/2023	4,889.54		01-12-5060
12152023	BCBS FIN	12/15/2023	926.74		01-14-5060
12152023	BCBS PD	12/15/2023	24,635.14		01-21-5060
12152023	BCBS BLDG	12/15/2023	1,742.57		01-25-5060
12152023	BCBS PW	12/15/2023	5,481.49		01-31-5060
12152023	BCBS EMP CONTRIB	12/15/2023	4,548.36		27-01-2207
12152023	BCBS RETIREES	12/15/2023	5,966.51		27-01-2210
12152023	BCBS WTR/SWR	12/15/2023	7,356.03		60-33-5060
Total BLUE CROSS BLUE SHIELD:			55,546.38		
CASTLE MOTORS OF MCHENRY LLC					
121223	PURCHASE PW PICKUP TRUCK	12/12/2023	45,115.26		32-31-5930
Total CASTLE MOTORS OF MCHENRY LLC:			45,115.26		
COVERALL NORTH AMERICA DBA					
1010723847	CLEANING VH	01/01/2024	329.00		01-12-5110
1010723847	CLEANING POLICE	01/01/2024	1,410.00		01-21-5121
1010723847	CLEANING PW 446 ELGIN AVE	01/01/2024	95.00		01-31-5110
1010723847	CLEANING DEPOT	01/01/2024	95.00		01-31-5196
1010723847	CLEANING PW PRAIRIE LAKE	01/01/2024	236.00		60-33-5110
1010723847	CLEANING PW 401 ELGIN AVE	01/01/2024	236.00		60-33-5111
Total COVERALL NORTH AMERICA DBA:			2,401.00		
DIRECT ENERGY					
233590053330	STREET LIGHTS	12/26/2023	265.41		01-31-5510
233590053330	W & WW UTILITIES	12/26/2023	20,941.00		60-33-5510
Total DIRECT ENERGY:			21,206.41		
DUNDEE TOWNSHIP PARK DISTRICT					
122723	FB FITNESS	12/27/2023	120.00		01-12-5060
122723	JL FITNESS	12/27/2023	120.00		01-12-5060
122723	GH FITNESS	12/27/2023	60.00		01-25-5060
122723	GG FITNESS	12/27/2023	60.00		01-31-5060
122723	MH FITNESS	12/27/2023	60.00		01-31-5060
122723	GH FITNESS	12/27/2023	30.00		01-31-5060
122723	BW FITNESS	12/27/2023	60.00		01-31-5060
122723	GG FITNESS	12/27/2023	60.00		60-33-5060
122723	MH FITNESS	12/27/2023	60.00		60-33-5060
122723	GH FITNESS	12/27/2023	30.00		60-33-5060
122723	BW FITNESS	12/27/2023	60.00		60-33-5060

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total DUNDEE TOWNSHIP PARK DISTRICT:			720.00		
GORDON FLESCH COMPANY, INC					
14506193	COPIER SERVICE -PD	01/02/2024	418.67		01-21-5340
14506193	COPIER SERVICE - WTP	01/02/2024	140.53		60-33-5340
14506193	COPIER SERVICE - WWTP	01/02/2024	26.31		60-33-5340
Total GORDON FLESCH COMPANY, INC:			585.51		
HELPING HAND IT					
23-44954	IT SERVICES LICENSING	01/01/2024	3,503.09		01-12-5286
Total HELPING HAND IT:			3,503.09		
ILLINOIS PUBLIC RISK FUND					
86382	W/C ADMIN	12/18/2023	743.90		01-12-5520
86382	W/C FIN	12/18/2023	374.45		01-14-5520
86382	W/C PD	12/18/2023	4,343.62		01-21-5520
86382	W/C BLDG	12/18/2023	374.45		01-25-5520
86382	W/C W/S	12/18/2023	748.90		01-31-5520
86382	W/C PW	12/18/2023	898.68		60-33-5520
Total ILLINOIS PUBLIC RISK FUND:			7,484.00		
PRINCIPAL FINANCIAL GROUP					
12172023	PRINCIPAL ADMIN	12/17/2023	299.09		01-12-5060
12172023	PRINCIPAL FIN	12/17/2023	85.25		01-14-5060
12172023	PRINCIPAL PD	12/17/2023	1,966.79		01-21-5060
12172023	PRINCIPAL BLDG	12/17/2023	115.36		01-25-5060
12172023	PRINCIPAL PW	12/17/2023	438.03		01-31-5060
12172023	PRINCIPAL EMPL CONTRIB	12/17/2023	750.99		27-01-2208
12172023	PRINCIPAL WTR/SWR	12/17/2023	586.89		60-33-5060
Total PRINCIPAL FINANCIAL GROUP:			4,242.40		
QUAD COM 9-1-1					
24-EDPD-01	DISPATCH SERV	01/01/2024	15,538.87		01-21-5360
Total QUAD COM 9-1-1:			15,538.87		
SHERWIN WILLIAMS					
6324-0	PAINT BRUSH	01/03/2023	9.60		01-31-5630
Total SHERWIN WILLIAMS:			9.60		
STEPHEN D. TOUSEY LAW OFFICES					
010224	PROSECUTION	01/02/2024	750.00		01-21-5230
Total STEPHEN D. TOUSEY LAW OFFICES:			750.00		
ULINE					
172689762	CUPS PW GARAGE	01/03/2024	288.74		01-31-5630
Total ULINE:			288.74		

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
WAGeworks, INC					
6003037	HEALTHCARE BENEFIT	12/26/2023	176.00		01-12-5060
Total WAGeworks, INC:			176.00		
WATER PRODUCTS COMPANY-AURORA					
0320398-0103	WATER MAIN REPAIR CLAMPS	01/03/2024	783.12		60-33-5140
Total WATER PRODUCTS COMPANY-AURORA:			783.12		
Grand Totals:			171,290.38		

Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Paid and unpaid invoices included.
- Invoice.Batch = "FY 24","FY24"

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
ACE HARDWARE					
123123	VH	12/31/2023	1.39		01-12-5110
123123	TORCH KIT	12/31/2023	59.99		01-31-5640
123123	HILL ST LS	12/31/2023	56.16		60-33-5141
Total ACE HARDWARE:			117.54		
AFLAC					
567276	AFLAC	12/29/2023	755.26		27-01-2215
Total AFLAC:			755.26		
AMERICAN LEGAL PUBLISHING CORPORATION					
31009	CODE UP-DATE	12/31/2023	90.00		01-12-5260
Total AMERICAN LEGAL PUBLISHING CORPORATION:			90.00		
AT&T					
0104224	ATT W/S	01/04/2024	337.00		60-33-5320
Total AT&T:			337.00		
COMED					
010924	COM ED STREETS	01/09/2024	1,813.75		28-01-5510
Total COMED:			1,813.75		
ELROD FRIEDMAN LLP					
123123	PROFESSIONAL SERVICES	01/10/2024	8,883.50		01-12-5230
123123	POLICE LEGAL	01/10/2024	88.50		01-21-5230
123123	TIF 3 DOWNTOWN	01/10/2024	9,705.15		39-01-5230
123123	PW WATER FUND	01/10/2024	551.50		60-33-5230
123123	PAL LAND LLC	01/10/2024	1,396.00		85-01-2382
Total ELROD FRIEDMAN LLP:			20,624.65		
FEHR GRAHAM					
120177	SPEEDWAY	12/29/2023	146.00		85-01-2381
Total FEHR GRAHAM:			146.00		
FIRST COMMUNICATIONS					
126212453	VH PHONES	01/06/2024	237.50		01-12-5320
126212453	PHONE DEPOT	01/06/2024	19.18		01-12-5320
126212453	PHONES PD	01/06/2024	1,300.00		01-21-5320
126212453	PHONES WATER	01/06/2024	427.84		01-31-5320
126212453	PHONES P/W	01/06/2024	105.94		01-31-5320
126212453	PHONES SEWER	01/06/2024	463.84		60-33-5320
Total FIRST COMMUNICATIONS:			2,554.30		
HEINZ, GERALD & ASSOC.					
21016	MISC ENGINEERING	01/04/2024	546.00		01-12-5220
21026	JACKSON STREET	01/04/2024	78.00		01-12-5220
21029	HISTORIC MAP UPDATE	01/04/2024	498.00		01-12-5220
21022	519 WENDT	01/04/2024	156.00		01-25-5290
21018	BARRINGTON STP	01/04/2024	780.00		01-31-5220

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
21020	LIONS PARK	01/04/2024	588.00		01-31-5220
21027	2023 STREET PROGRAM	01/04/2024	2,894.00		32-31-6090
21024	REDEEMING LIFE	01/04/2024	156.00		85-01-2027
21025	PENNY RD/RT 68	01/04/2024	4,758.00		85-01-2378
21017	LOT 2 TERRA 5	01/04/2024	390.00		85-01-2386
21019	LOT 2 TERRA 5	01/04/2024	390.00		85-01-2386
21021	590 HEALY	01/04/2024	624.00		85-01-2395
21023	590 HEALY	01/04/2024	1,464.00		85-01-2395
21028	DAVEY TREE	01/04/2024	1,092.00		85-01-2403
Total HEINZ, GERALD & ASSOC.:			14,414.00		
ILLINOIS COUNTIES RISK MANAGEMENT TRUST					
2084	CLAIM 231024W032 DED	01/01/2024	885.11		01-12-6010
Total ILLINOIS COUNTIES RISK MANAGEMENT TRUST:			885.11		
KLEIN, THORPE AND JENKINS, LTD					
123123	POLICE LEGAL SERV	12/31/2023	64.00		01-21-5230
Total KLEIN, THORPE AND JENKINS, LTD:			64.00		
LAUDERDALE ELECTRIC, INC.					
9515	INSTALL PED XINGS ON VAN B	01/08/2024	6,000.00		15-01-5950
9515	INSTALL PED XINGS ON VAN B	01/08/2024	2,200.00		15-01-5950
Total LAUDERDALE ELECTRIC, INC.:			8,200.00		
SYNAGRO TECHNOLOGIES					
44540	DISPOSAL BIOSOLID	01/01/2024	3,450.00		60-33-5287
Total SYNAGRO TECHNOLOGIES:			3,450.00		
THOMPSON ELEVATOR SERVICE					
23-1909	ELEV INSP 201 CHRISTINA	08/07/2023	100.00		01-09-4210
Total THOMPSON ELEVATOR SERVICE:			100.00		
US BANK					
6309 122623 E	AMAZON	12/26/2023	102.18		01-12-5610
2107 122623 J	XMAS TREE	12/26/2023	49.99		01-12-5630
9750 122623 F	VB OPER SUPP	12/26/2023	8.41		01-12-5630
2107 122623 J	MEMBERSHIP	12/26/2023	14.99		01-21-5410
2107 122623 J	TRAINING LUNCH	12/26/2023	137.66		01-21-5420
5738 122623 J	CREDIT HOLIDAY INN	12/26/2023	170.50		01-21-5420
5738 122623 J	TRAINING	12/26/2023	32.00		01-21-5420
5738 122623 J	IACP CONF	12/26/2023	500.00		01-21-5420
5738 122623 J	SUPR TRAINING	12/26/2023	275.00		01-21-5430
2107 122623 J	XMAS TREE	12/26/2023	145.68		01-21-5580
2107 122623 J	COFFEEE	12/26/2023	56.39		01-21-5610
2107 122623 J	FLASH DRIVES	12/26/2023	164.77		01-21-5610
2107 122623 J	CUPS	12/26/2023	20.89		01-21-5610
2107 122623 J	PHONE ACCESS	12/26/2023	60.05		01-21-5630
5541 122623 J	SCALE	12/26/2023	27.00		01-21-5630
5738 122623 J	AED	12/26/2023	237.38		01-21-5630
5738 122623 J	OFFICE SIGNS	12/26/2023	37.86		01-21-5630
5738 122623 J	USG	12/26/2023	21.67		01-21-5630

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
6309 122623 E	AMAZON	12/26/2023	13.95		01-25-5610
2601 122623 P	PLOW PARTS	12/26/2023	47.97		01-31-5160
3999 122623 P	IPHONE STORAGE	12/26/2023	.99		01-31-5320
6309 122623 E	AMAZON	12/26/2023	48.80		01-31-5610
5824 122623 G	HEATERS	12/26/2023	288.20		01-37-5631
3999 122623 P	ARCGIS REGISTRATION	12/26/2023	660.00		60-33-5290
5824 122623 G	I CLOUD	12/26/2023	.99		60-33-5320
5824 122623 G	TRAINING	12/26/2023	275.00		60-33-5430
Total US BANK:			3,057.32		
VCNA PRAIRIE LLC					
891240940	CONCRETE FOR NEW CURB	10/11/2023	488.50		60-33-5140
891252606	CONCRETE FOR NEW CURB -	10/18/2023	450.88		60-33-5140
Total VCNA PRAIRIE LLC:			939.38		
WASTE MANAGEMENT OF ILLINOIS					
9793-2776-4	DISPOSAL OF MISC MATERIAL	01/02/2024	506.88		01-31-5570
Total WASTE MANAGEMENT OF ILLINOIS:			506.88		
Grand Totals:			58,055.19		

Report Criteria:

Detail report.

Invoices with totals above \$0.00 included.

Paid and unpaid invoices included.

Invoice.Batch = "SY23"

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
AXON ENTERPRISES					
5215329	SQUAD CAR CAMERAS	01/01/2024	13,998.36		01-21-5940
219744	BODY CAMS DOCK	01/13/2024	377.64		32-21-5940
Total AXON ENTERPRISES:			14,376.00		
CHICAGO METROPOLITAN AGENCY FOR PLANNING					
110623	CMAP DUES	11/06/2023	143.68		01-12-5410
Total CHICAGO METROPOLITAN AGENCY FOR PLANNING:			143.68		
CIVIC SYSTEMS					
24407	FINANCE/UB SOFTWARE SUPP	12/21/2023	3,598.00		01-14-5286
24407	NEW FINANCE/UB SO	12/21/2023	3,597.00		60-33-5932
Total CIVIC SYSTEMS:			7,195.00		
DUNDEE NAPA AUTO PARTS					
466637	PD VEHICLE	01/15/2024	55.12		01-21-5120
466638	WIPER BLADES	01/15/2024	82.52		01-21-5120
466641	PD VEHICLE	01/15/2024	47.80		01-21-5120
466641	PD VEHICLE RETURN	01/15/2024	82.52-		01-21-5120
466172	AIR FILTER 22	01/08/2024	25.83		01-31-5120
466457	LIGHT BULBS	01/11/2024	6.84		01-31-5120
466497	HYD FILTER	01/11/2024	86.44		01-31-5120
466498	FILTER	01/11/2024	9.38		01-31-5120
466525	FILTER	01/11/2024	8.50		01-31-5120
466619	RETURN	01/15/2024	17.88-		01-31-5120
466645	TRUCK CLEANING	01/16/2024	6.63		01-31-5120
Total DUNDEE NAPA AUTO PARTS:			228.66		
ELGIN KEY & LOCK CO. INC.					
240055	KEYS FOR VH & DEPOT	01/11/2024	14.75		01-12-5110
240055	KEYS FOR VH & DEPOT	01/11/2024	14.75		01-31-5196
Total ELGIN KEY & LOCK CO. INC.:			29.50		
ENTERPRISE FM TRUST					
620259-01052	PD MAINT MGMT ON LEASE	01/05/2024	200.00		01-21-5120
620259-01052	PD LEASE	01/05/2024	3,082.43		32-21-5942
Total ENTERPRISE FM TRUST:			3,282.43		
FLOOD BROTHERS					
010124	REFUSE COLLECTION	01/01/2024	24,019.22		01-33-5180
Total FLOOD BROTHERS:			24,019.22		
GALLS PARENT HOLDINGS, LLC					
026710334	UNIFORM ALLOW. - KM	01/05/2024	123.78		01-21-5080
Total GALLS PARENT HOLDINGS, LLC:			123.78		
GRIFFIN WILLIAMS MCMAHON & WALSH LLP					
19118	LOCAL PROSECUTIONS	01/08/2024	750.00		01-21-5230

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
Total GRIFFIN WILLIAMS MCMAHON & WALSH LLP:			750.00		
HAWKINS, INC.					
6665753	WATER CHEMICALS	01/15/2024	200.00		60-33-5650
6665754	WATER CHEMICALS	01/15/2024	10.00		60-33-5650
Total HAWKINS, INC.:			210.00		
HELPING HAND IT					
24-45061	IT SERVICES	01/11/2024	245.00		01-12-5286
Total HELPING HAND IT:			245.00		
ILLINOIS GOVERNMENT FINANCE OFFICERS					
011223	UNCLAIMED PROP WEB	01/12/2023	40.00		01-14-5430
Total ILLINOIS GOVERNMENT FINANCE OFFICERS:			40.00		
INDESTRUCTO RENTAL COMPANY, INC					
110123	OCT FEST RENTALS	11/01/2023	4,800.00		01-37-5330
Total INDESTRUCTO RENTAL COMPANY, INC:			4,800.00		
INTERNATIONAL CODE COUNCIL					
q15.000017441	RENEWAL	12/31/2023	383.00		01-25-5410
Total INTERNATIONAL CODE COUNCIL:			383.00		
JULIE, INC					
2024-0492	JUILE LOCATE	01/08/2024	525.81		01-31-5290
2024-0492	JUILE LOCATE	01/08/2024	525.81		60-33-5290
Total JULIE, INC:			1,051.62		
LAUDERDALE ELECTRIC, INC.					
9516	STREET LIGHT MAINT	01/11/2024	300.00		01-31-5150
Total LAUDERDALE ELECTRIC, INC.:			300.00		
MIDWEST SALT					
471652	COARSE SALT	11/09/2024	3,436.68		60-33-5650
Total MIDWEST SALT:			3,436.68		
MOTOROLA SOLUTIONS INC					
809802023120	MAINTENANCE AGREEMENT	01/01/2024	861.00		01-21-5940
Total MOTOROLA SOLUTIONS INC:			861.00		
NORTHERN ILLINOIS UNIVERSITY					
CGS003330	COMP PLAN	01/05/2024	19,950.00		32-32-5290
Total NORTHERN ILLINOIS UNIVERSITY:			19,950.00		
RED WING SHOE STORE					
96707	UNFORM SHOES - PETE	01/15/2024	320.32		01-31-5080

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
96708	BOOTS RYAN	01/15/2024	229.49		60-33-5080
96709	BOOTS RAY	01/15/2024	246.49		60-33-5080
Total RED WING SHOE STORE:			796.30		
SUBURBAN ELEVATOR					
8106431444	ELEVATOR MAINT	01/01/2024	568.02		01-21-5121
Total SUBURBAN ELEVATOR:			568.02		
SUMMIT SQUARE ASSOCIATION					
122723	ASSOCIATION DUES	12/27/2023	1,910.27		01-12-5410
Total SUMMIT SQUARE ASSOCIATION:			1,910.27		
THOMPSON ELEVATOR SERVICE					
23-2771	ELEV INSP 201 CHRISTINA	11/28/2023	100.00		01-09-4210
Total THOMPSON ELEVATOR SERVICE:			100.00		
ULINE					
172865454	VH SUPPLIES	01/08/2024	239.16		01-12-5630
172935088	PW SUPPLIES GLOVES	01/09/2024	81.45		01-31-5630
172935088	PW SUPPLIES GLOVES	01/09/2024	81.45		60-33-5630
Total ULINE:			402.06		
US BANK					
1680 122623 K	SUBSCRIPTIONS	12/26/2023	216.83		01-12-5410
5221 122623 bj	ADOBE	12/26/2023	383.84		01-12-5410
5221 122623 bj	TRAINING	12/26/2023	156.00		01-12-5430
1680 122623 K	OFFICE SUPPLIES	12/26/2023	94.94		01-12-5610
1680 122623 K	VH SUPPLIES	12/26/2023	29.64		01-12-5630
1680 122623 K	EVENTS	12/26/2023	1,193.04		01-12-5645
5221 122623 bj	TRAINING	12/26/2023	109.00		01-14-5430
5221 122623 bj	TRAINING	12/26/2023	325.00		01-14-5430
5221 122623 bj	TRAINING	12/26/2023	101.00		01-14-5430
1680 122623 K	OFFICE SUPPLIES	12/26/2023	127.93		01-14-5610
5221 122623 bj	MOUSE	12/26/2023	17.09		01-14-5610
1680 122623 K	ANA LANDS END	12/26/2023	149.18		01-14-5630
5221 122623 bj	COMCAST	12/26/2023	31.62		01-21-5320
1680 122623 K	NOTARY SERV - GAIL	12/26/2023	62.95		01-25-5410
1680 122623 K	DICKENS	12/26/2023	511.56		01-37-5630
1680 122623 K	DICKENS	12/26/2023	115.00		01-37-5630
5221 122623 bj	BLINDS	12/26/2023	705.15		32-15-5948
1680 122623 K	110 RAILROAD	12/26/2023	79.44		39-01-5230
Total US BANK:			4,409.21		
Grand Totals:			89,611.43		

Invoice Number	Description	Invoice Date	Net Invoice Amount	Voided	GL Account Number
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Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Paid and unpaid invoices included.
- Invoice.Batch = "FY24"

Memorandum



To: Village President and Board of Trustees
From: Franco Bottalico, Assistant to the Village Administrator
Subject: Chapter 116 Table Amendment
Date: January 22, 2024

Action Requested:

Staff recommends Village Board approval of an ordinance amending Chapter 116(B) of the Village Code, alcoholic beverages, reducing the number of Class G alcoholic beverage licenses by one.

Background and Summary:

Per State statute, the Village must retain a published number of permitted liquor license classes within the village code. This ordinance updates the table to reflect all current licenses in the Village of East Dundee.

With the closing of Infinity Banquet Hall, located at 408 Dundee Ave., the table in the code will reduce the number of permitted Class G alcoholic beverage licenses from two to one.

Attachments:

Ordinance

ORDINANCE NUMBER 24-_____
AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE
COUNTIES, ILLINOIS, AMENDING VILLAGE CODE CHAPTER 116, ALCOHOLIC
BEVERAGES, NUMBER OF LICENSES TO BE PERMITTED, REDUCING THE
NUMBER OF PERMITTED CLASS G ALCOHOLIC BEVERAGE LICENSES BY ONE
(INFINITY BANQUET HALL)

WHEREAS, the Village of East Dundee ("Village") is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Village desires to amend the Code of the Village of East Dundee ("Village Code") to provide an update relating to the number of alcoholic beverage business licenses due to the closing of Infinity Banquet Hall, pursuant to Chapter 116.05(B) "Classification;" and

WHEREAS, the President and Board of Trustees have determined it to be in the best interest of the Village to amend the Village Code; and

NOW THEREFORE BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION 1: Incorporation. That the recitals above shall be and are hereby incorporated as Section 1 as if restated herein.

SECTION 2: Amendment. That Chapter 116, titled "Alcoholic Beverages" of the Village Code is hereby amended to add a new Section 116.05(B) as follows, with additions **bold** and double-underlined and deletions ~~struck through~~:

(B) *Number of licenses to be permitted.* The number of licenses issued in all preceding classes shall be as follows, except as modified from time to time by ordinance:

Classification	Number Permitted
G	2 <u>1</u>

SECTION 3: Continuation. That all provisions of the Village Code not amended herein shall remain in full force and effect.

SECTION 4: Severability. That if any Section, paragraph, or provision of this Ordinance shall be held to be invalid and unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph, or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 5: Repeal. That all ordinances, resolutions, motions or parts thereof in conflict with this Ordinance shall be hereby repealed.

SECTION 6: Effect. That this Ordinance shall be in full force and effect upon its adoption, approval and publication in pamphlet form as provided by law.

PASSED this _____ day of _____ 2024 pursuant to a roll call vote as follows:

AYES: _____

NAYES: _____

ABSENT: _____

APPROVED by me this _____ of _____ 2024.

Jeffrey Lynam, Village President

ATTEST:

Katherine Diehl, Village Clerk

Memorandum



To: Village President and Board of Trustees
CC: Erika Storlie, Village Administrator
From: Brandiss J. Martin, Finance & Administrative Services Director
Subject: Abatement Ordinance for Tax Year 2023
Date: January 22, 2024

Action Requested:

Staff recommends Village Board approval of an ordinance authorizing abatement of the tax levy for General Obligation Bond 2012A, General Obligation Bond 2012B, 2012 TIF Revenue Bonds (Route 25 TIF), as well as General Obligation Bonds 2015 and 2016 for the Village of East Dundee, Kane and Cook Counties, Illinois.

Funding Source:

Bond payments are allocated as follows:

Bond Description	Bond Payment Funding Source	Payment Amount
General Obligation Bond 2012A	Prairie Lakes Fund 35 (39.1%) Christina Drive Fund 36 (15.3%) Dundee Crossings Fund 38 (34.2%) Downtown Fund 39 (11.4%)	\$567,206
General Obligation Bond 2012B	Dundee Crossings Fund 38 <ul style="list-style-type: none">• JD Byrider – \$176,364• Village – \$39,372	\$215,334
Limited Obligation Revenue Bond 2012	Route 25 Fund 46	\$137,250
General Obligation Bond 2015	Downtown Fund 39	\$910,000
General Obligation Bond 2016	Downtown Fund 39	\$85,950
TOTAL		\$1,915,740

Summary:

The majority of the Village's debt consists of general obligation bonds which are backed by the Village's ability to levy and collect property taxes. As such, the County automatically levies the required annual debt service, also known as debt payments, directly from East Dundee property owners on the property tax bill.

The Village has historically abated, or cancelled, the property taxes that would otherwise be collected to pay the Village's debt and instead, makes these payments from other revenues.

The attached ordinance commits the Village to paying the debt service from other sources and notifies the county to cease any property tax collection that would otherwise be associated with these payments for the corresponding tax year.

Legislative History:

The Village Board reached a consensus to continue this abatement process during the 2023 tax levy discussion that took place at the December 18, 2023 Village Board meeting.

Attachments:

Ordinance

ORDINANCE NUMBER 24 - _____

ORDINANCE AUTHORIZING ABATEMENT OF THE TAX LEVY FOR GENERAL OBLIGATION BOND 2012A, GENERAL OBLIGATION BOND 2012B, 2012 TIF REVENUE BONDS (ROUTE 25 TIF) And GENERAL OBLIGATION 2015 And GENERAL OBLIGATION 2016 FOR THE VILLAGE OF EAST DUNDEE, KANE AND COOK COUNTIES, ILLINOIS

WHEREAS, the Village of East Dundee, Kane and Cook Counties, Illinois (the “Village”) a home rule municipality pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois with power and authority to perform any function pertaining to its government and affairs, and

WHEREAS, the President and Board of Trustees of the Village have deemed it to be in the best interest of the Village that certain taxes heretofore levied as hereinafter provided, be abated.

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

Section One. Abatement of Tax. The taxes levied by Kane and Cook counties for the debt service requirements of General Obligation Bond 2012A in the amount of Five Hundred Sixty-Seven Thousand, Two Hundred Six Dollars (\$567,206), General Obligation Taxable Bond 2012B in the amount of Two Hundred Fifteen Thousand, Three Hundred Thirty-Three Dollars (\$215,334), 2012 Limited Obligation Revenue Bond in the amount of One Hundred Thirty-Seven Thousand, Two Hundred and Fifty Dollars (\$137,250), General Obligation 2015 in the amount of Nine Hundred ten Thousand Dollars (\$910,000), and General Obligation 2016 in the amount of Eighty Five Thousand and Nine Hundred and Fifty thousand Dollars (\$85,950), for the Village of East Dundee, Kane and Cook counties are hereby abated in their entirety.

Section Two. Filing of Ordinance. Upon adoption of this Ordinance, the Village Clerk shall file a certified copy hereof with the Clerk of Cook and Kane Counties, Illinois, and it shall be the duty of said County Clerk to abate said tax levied for the fiscal year commencing January 1, 2024 and ending December 31, 2024 in accordance with the provisions above.

Section Three. Effective Date. This Ordinance shall be in full force and effect upon its passage by the Village Board and signing and approval by the Village President.

Section Four. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section Five. Repeal. All ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

Section Six. Publication. This ordinance shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

Adopted this _____ day of _____, 2024, pursuant to a roll call vote as follows:

Trustee	Motion	Second	Ayes	Nays	Absent	Abstain
Sarah Brittin						
Scott Kunze						
Kathleen Mahony						
Andy Sauder						
Tricia Saviano						
Rich Treiber						

Approved by me this _____ day of _____, 2024.

Jeffrey Lynam, President

Published in pamphlet form this _____ day of _____, 2024, under the authority of the President and Board of Trustees.

ATTEST:

Katherine Diehl, Village Clerk

Recorded in the Village Records on _____, 2024.

Memorandum



To: Village President and Board of Trustees
From: Erika Storlie, Village Administrator
Subject: Settlement Agreement with ComEd
Date: January 22, 2024

Action Requested:

Staff recommends Village Board approval of a resolution authorizing the Village Administrator to execute a settlement agreement with ComEd for previously unpaid municipal utility taxes to the Village in the amount of \$29,000.

Summary:

The Village engaged a consultant, Azavar Audit Solutions, in 2016 to audit all taxes remitted to the Village, including the municipal utility tax (MUT). The audit process revealed that there were some missing MUT payments from ComEd and throughout the past several years the Village and ComEd have been engaged in settlement discussions to resolve this issue. The agreement attached eliminates the extra cost of further litigation and settles all claims without fault. Once executed, ComEd will pay the village \$29,000.

Attachments:

Resolution
Agreement

RESOLUTION NUMBER __-24

**A RESOLUTION OF THE VILLAGE OF EAST DUNDEE,
COOK AND KANE COUNTIES, ILLINOIS, APPROVING A
SETTLEMENT AGREEMENT WITH COMMONWEALTH EDISON COMPANY**

WHEREAS, the Village of East Dundee ("Village") is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Village entered into an agreement with Azavar to audit Commonwealth Edison Company's ("ComEd") collection and remittance of municipal utility taxes ("MUT") for electric service and on April 25, 2016, Azavar issued a Notice of Audit to ComEd; and

WHEREAS, on December 16, 2016, the Village issued a Notice of Tax Liability ("NTL") alleging that ComEd failed to collect and remit certain MUT to the Village; and

WHEREAS, the Parties continue to disagree about the validity of the allegations in the NTL; and

WHEREAS, in recognition of the expense and hazards of litigation, the Village and ComEd wish to enter into a settlement agreement, attached hereto as **Exhibit A** and made a part hereof, ("Agreement") to resolve the allegations in the NTL;

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION 1: Incorporation. Each of the recitals in the Whereas paragraphs set forth above are incorporated into Section 1 of this Resolution.

SECTION 2: Approval. The President and Board of Trustees of the Village approve the Agreement and authorize and direct the Village President and Village Clerk to execute and attest to the attached Agreement.

SECTION 3: Severability. If any Section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 4: Repeal. All resolutions, motions or parts thereof in conflict with this Resolution shall be and the same are hereby repealed.

SECTION 5: Publication. This Resolution shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this ___th day of January, 2024, pursuant to a roll call vote as follows:

AYES:

NAYES:

ABSTAIN:

ABSENT:

APPROVED by me this ___th day of January, 2024.

Jeff Lynam, Village President

ATTEST:

Katherine Holt, Village Clerk

EXHIBIT A

Agreement

(attached)

SETTLEMENT AGREEMENT

This Settlement Agreement dated _____, 2023 (“Settlement Agreement”) is entered into by the Village of East Dundee (the “Municipality”), and Commonwealth Edison Company (“ComEd”) (the Municipality, and ComEd together, the “Parties,” and each a “Party”), and Azavar Audit Solutions, Inc. (“Azavar”).

RECITALS

WHEREAS, ComEd is an Illinois corporation engaged in the transmission, sale, and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act.

WHEREAS, the Municipality is a municipal corporation organized and existing under Article VII of the 1970 Constitution of the State of Illinois.

WHEREAS, Azavar has entered into an agreement with the Municipality to audit ComEd’s collection and remittance of municipal utility taxes for electric service;

WHEREAS, Section 35.03 of the Municipality’s Code of Ordinances imposes a Municipal Utility Tax (“MUT”) on the distribution, supply, furnishing, or sale of electricity within the corporate limits of the Municipality.

WHEREAS, on April 25, 2016 Azavar, as the Municipality’s authorized agent, issued a Notice of Audit to ComEd seeking to audit ComEd’s collection and remittance of MUT for electric service.

WHEREAS, on December 16, 2016 the Municipality issued a Notice of Tax Liability (“NTL”) alleging that ComEd failed to collect and remit certain MUT to the Municipality.

WHEREAS, ComEd timely filed its protest of the NTLs disputing the allegations in the NTLs.

WHEREAS, the Parties continue to disagree about the validity of the allegations in the NTL.

WHEREAS, in recognition of the expense and hazards of litigation, the Parties now wish to resolve the allegations in the NTL.

THEREFORE, in consideration of the various undertakings and covenants hereinafter provided for, the Parties hereby agree as follows:

SETTLEMENT TERMS

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein and upon acknowledgement by each of the Parties of the receipt of valuable consideration, the Parties agree as follows:

1. **Recitals.** Each of the recitals set forth above is expressly incorporated herein.
2. **Settlement Amount.** In consideration of the foregoing and in further consideration of the statements, representations, promises, covenants and warranties as set forth herein, ComEd will pay to the Municipality in settlement of the NTL the total amount of \$29,000.00 (twenty-nine thousand dollars and zero cents) (the "Settlement Amount"). This payment will constitute full payment and satisfaction of the NTL.
3. **Payment Method and Instructions.** Within 15 business days of the full execution of this Settlement Agreement, ComEd will pay the Settlement Amount to the Municipality in full and final settlement of the NTL, the sufficiency of which is hereby acknowledged and agreed to by the Municipality. ComEd will make payment of the Settlement Amount by check payable to the Village of East Dundee and mailed to the attention of Village Administrator Erika Storlie, 120 East Barrington Avenue, East Dundee, IL 60118.
4. **No Admission.** This Settlement Agreement constitutes the compromise of disputed claims, causes of actions, denials, and/or defenses made or to be made by the Parties or any of them, and attorney fees and costs, and is being entered into solely for the purpose of bringing to an end the real or potential claims referred to herein and to avoid further costs of litigation. The Parties understand and agree that neither the entry into this Settlement Agreement nor the payment of the Settlement Amount shall constitute or be construed as an admission of liability by either Party to any person or entity. This Settlement Agreement, each of its provisions, any prior drafts thereof, any negotiations, proceedings, or agreements relating to it, and any matter arising in connection with such negotiations, proceedings, or agreements, shall not be offered or received in evidence in any litigation other than litigation brought to enforce the terms of this Settlement Agreement.
5. **General Releases.** Effective upon the full execution of this Settlement Agreement by the Parties, the Municipality, on behalf of itself, and its agents, representatives, personal representatives, subsidiaries, partners, managers, members, officers, directors, employees, shareholders, affiliates, divisions, predecessors, successors, and assigns, hereby waives, releases, relinquishes, and forever discharges any and all claims, suits, causes of action, debts, liens, demands, liabilities, obligations, covenants, controversies, agreements, promises, damages, costs, and expenses of any nature or kind whatsoever, at law or in equity, related to the MUT due or allegedly due to the Municipality on or before December 31, 2016, which it has brought or could have brought as of the date of this Settlement Agreement, against ComEd and/or any of its respective affiliates or its respective members, managers, officers, directors, shareholders, owners, partners, agents, lenders, employees, attorneys, personal representatives, successors and assigns. Contemporaneously, and as part of this mutual release, ComEd, on behalf of itself and each

of its agents, representatives, personal representatives, subsidiaries, partners, managers, members, officers, directors, employees, shareholders, affiliates, divisions, successors, predecessors and assigns, hereby waives, releases, relinquishes, and forever discharges any and all claims, suits, causes of action, debts, liens, demands, liabilities, obligations, covenants, controversies, agreements, promises, damages, costs, and expenses of any nature or kind whatsoever, at law or in equity, related to the MUT due or allegedly due to the Municipality on or before December 31, 2016, which it has brought or could have brought as of the date of this Settlement Agreement, against the Municipality and/or its respective affiliates or its respective members, managers, officers, directors, shareholders, owners, partners, agents, lenders, employees, attorneys, successors and assigns.

6. Disclosure and Confidentiality. The Parties and Azavar agree to maintain the negotiations, calculations, and terms of this Settlement Agreement in confidence to the fullest extent permitted by law. In making any disclosure pursuant to this Paragraph, the Parties and Azavar agree that they will limit the content of all disclosures and make only such disclosures as are necessary to comply with such permitted disclosures:

- a. to the Parties' attorneys, accountants, appraisers, agents, and other persons for the purpose of providing accounting or tax advice or services to one of the Parties;
- b. by counsel to the Municipality, as necessary to provide privileged and confidential legal advice to any other municipality that has issued an NTL to ComEd, provided that such municipalities agree to treat such information as confidential;
- c. as deemed necessary by ComEd, in response to inquiries made regarding this Settlement Agreement by other municipalities that have issued a NTL to ComEd, provided that Parties agree to treat the information provided by ComEd as confidential;
- d. in response to a lawful subpoena, court order or written request from a state or federal government official provided that prior notice, is given to the non-disclosing Party or Parties;
- e. as deemed necessary by ComEd to any regulatory body with jurisdiction over it, including but not limited to, the Illinois Commerce Commission;
- f. to the extent necessary to comply with state or federal laws or regulations, including, but not limited to, to the Freedom of Information Act ("FOIA") and the Open Meetings Act ("OMA");
- g. to the extent necessary to enforce the terms of this Settlement Agreement or in any other legal dispute involving only Parties to this Settlement Agreement and/or Azavar.

Moreover, acknowledging that the Municipality is a public body subject to FOIA requests and the OMA, and may be subject by law to other public-disclosure requirements, it is therefore agreed that, if there is a legally required public disclosure on or before December

31, 2025 of any of the terms of this Settlement Agreement pursuant to FOIA, the Open Meetings Act, or any other similar public disclosure-requirement, the Municipality shall notify ComEd by electronic mail at least two (2) business days prior to such disclosure of any of the terms of this Settlement Agreement pursuant to such legal requirements. Notwithstanding the foregoing, the Municipality shall not be required to provide notice pursuant to this paragraph related to the consideration or approval of the Settlement Agreement by the corporate authorities of the Municipality or the publication of related documents including, but not limited to, meeting minutes and agendas.

The Municipality shall provide such electronic mail communication to the following e-mail address:

- litigationattorneys@exeloncorp.com.

ComEd acknowledges that, notwithstanding the notice requirement set forth above, the Municipality retains full discretion as to the manner with which it will comply with FOIA, OMA, and any other public disclosure law or regulation.

Except for the permitted disclosures referenced above, the Parties and Azavar further agree not to initiate any publicity or make any public statement or comment regarding or related to the NTL or this Settlement Agreement except as required by law or as set forth above in this Paragraph. If media requests are received or questions raised regarding the NTL or this Settlement Agreement, Azavar shall decline to comment and the Parties shall provide only the following response, without elaboration: "The Parties decided to settle this matter. Further comment regarding the settlement is prohibited by the Parties' Settlement Agreement, except as required by law."

The Parties and Azavar acknowledge and agree that damages that will result to ComEd if the Municipality or Azavar violates the provisions set forth in this Paragraph shall be extremely difficult or impossible to establish or prove, and agree that the amount of one thousand dollars and zero cents (\$1,000.00) shall constitute liquidated damages for any such violation by the Municipality or ComEd and five thousand dollars and zero cents (\$5,000.00) shall constitute liquidated damages for any such violation by Azavar.

ComEd and the Municipality agree that such liquidated damages shall be in lieu of all other claims that ComEd or the Municipality may make by reason of any such violation.

7. Release as a Defense. This Settlement Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit, or proceeding, which may be prosecuted, instituted, or attempted by any Party in breach thereof.

8. Remedies. The Parties expressly agree that if either Party elects to take any legal action to enforce the terms of this Settlement Agreement, in addition to any other remedies available, the prevailing Party shall be entitled to recover from the other Party all of its associated costs and expenses, including, without limitation, its reasonable attorneys' fees incurred by the prevailing Party in connection with such enforcement steps.

9. **Survival.** All promises, covenants, warranties and representations contained in this Settlement Agreement shall survive execution of this Settlement Agreement, except where explicitly stated otherwise.

10. **Successors and Assigns.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties' respective successors, assigns, beneficiaries, heirs, executors, trustees, administrators, representatives, officers, directors, stockholders, agents, and insurers.

11. **Representation by Counsel.** The Parties acknowledge that they have each been represented by independent counsel of their own choice throughout all of the negotiations that preceded and resulted in the execution of this Settlement Agreement. This Settlement Agreement shall be construed fairly as to all Parties and not in favor of or against any of the Parties regardless of who prepared this Settlement Agreement.

12. **Entire Agreement.** The Parties understand and agree that this is the entire agreement between the Parties.

13. **Modification or Amendment.** This Settlement Agreement shall not be modified, altered, or discharged except by an instrument in writing, signed by the Party against whom enforcement of the amendment, alteration, or modification is sought.

14. **Governing Law.** This Settlement Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without reference to principles of choice or conflict of law.

15. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and shall be admissible in evidence, but all of which together shall constitute one and the same instrument and shall become effective when counterparts executed by each Party have been delivered to counsel for all other Parties. Execution by facsimile, by an electronically transmitted signature, or by Portable Document Format (PDF), shall be fully and legally binding on the Parties.

16. **Headings.** The paragraph headings in this Settlement Agreement are for convenience only and shall not affect the meaning or interpretation of its provisions.

17. **Authority and No Assignment.** Each Party: (a) represents and warrants that it is authorized to enter into this Settlement Agreement and that it is authorized to give the releases contained herein and (b) represents and warrants that, other than as expressly set forth herein, neither it nor any of its agents, representatives, officers, members, employees, or attorneys have made, assigned, transferred, sold, pledged or hypothecated, or have purported to make, assign, transfer, sell, pledge or hypothecate, any actual or alleged claims, demands, causes of action, obligation, liabilities, or any interest in the matters being released by this Settlement Agreement, which, but for such assignment, transfer, sale, pledge, or hypothecation, would be subject to the release in this Settlement Agreement.

18. **Severability.** Should any provision of this Settlement Agreement be declared or determined by a court to be illegal or invalid, the court shall have the power to modify this Settlement Agreement so that it conforms with prevailing law and the validity of the

remaining parts, terms, or provisions shall not be affected thereby. If any provision of this Settlement Agreement shall be held, declared, or pronounced void, voidable, invalid, unenforceable, or inoperative, in whole or in part, for any reason by any court of competent jurisdiction, government authority, or otherwise, such holding, declaration, or pronouncement shall not adversely affect any other provision of this Settlement Agreement, which shall otherwise remain in full force and effect and be enforced in accordance with its terms. To the extent permitted by applicable law, the Parties hereby knowingly, voluntarily and intelligently waive any provision of law that prohibits or renders void or unenforceable any part, provision, representation or warranty hereof.

19. Attorney Fees and Costs. Other than as expressly provided herein, the Parties shall each bear their own attorney fees, costs and expenses incurred in connection with this matter.

Dated this __ day of _____, 2023.

VILLAGE OF EAST DUNDEE

By: _____

Title: _____

Dated this __ day of _____, 2023.

COMMONWEALTH EDISON COMPANY

By: _____

Title: _____

Dated this __ day of _____, 2023.

AZAVAR AUDIT SOLUTIONS, INC.

By: _____

Title: _____

Memorandum

To: Village President and Board of Trustees

From: Brandiss J. Martin, Administrative Services Director

Subject: FY 2024 BDD Façade Grant Award

Date: January 22, 2024



Action Requested:

Staff recommends Village Board approval of a FY 2024 Dundee Crossings Business Development District (BDD) Façade Improvement Grant in the amount of \$25,000 to Tequila Val's (309 Meier St. East Dundee IL 60118).

Funding Source:

Downtown & Dundee Crossings Business Development District Fund (34-01-5876)

Summary:

The FY 2024 Budget includes \$100,000 for a 50/50 façade grant program to be paid from the Dundee Crossings BDD. The Village has received one application so far from Tequila Val's restaurant which is opening in the previous Anvil Club space at 309 Meier St. Tequila Val's anticipates opening in early February.

Façade Grant Program Purpose

The purpose of the Dundee Crossings Commercial Façade Improvement Program (DCCFIP) is to encourage property owners to improve the overall exterior appearance of their businesses and assist in transforming the Village into a well-cared for Village with vibrant neighborhoods. DCCFIP seeks to accomplish the following:

- To improve the overall viability and property values of commercial properties to strengthen the economy, EAV, and quality of life in the Village.
- To remove and alleviate adverse conditions by encouraging private investment in the rehabilitation and maintenance of owner-occupied properties.

Program Goals (Must meet two of these goals to qualify)

DCCFIP seeks to ensure that all eligible commercial property owners and businesses have an equal opportunity to access support while also allowing for public funds to be invested for the public good. The program goals are as follows:

1. Attract, retain, or expand businesses.
2. Attract or retain jobs.
3. Enhance the façade along the Dundee Crossings Corridor.
4. Increase the Village's tax base by facilitating development of underutilized properties.

5. Support Village planning initiatives by advancing catalytic projects identified in Village plans.
6. Provide for the development of public amenities or infrastructure.
7. Encourage development projects that enhance the streetscape and pedestrian experience and improve the vitality of commercial districts by adding interest and activity on the first floor of mixed-use buildings and parking facilities.

Application Received

<i>Tequila Val's</i>	
Address:	309 Meier St
Scope of Work:	New ADA ramp, new garage door, exterior stone & stucco installation
Total Project Cost:	\$126,150
Grant Request:	\$25,000
Goal(s) Fulfilled:	<ul style="list-style-type: none"> • <i>Goal 1:</i> Attract, retain, or expand businesses • <i>Goal 3:</i> Enhance the façade along the Dundee Crossings Corridor • <i>Goal 7:</i> Encourage development projects that enhance the streetscape and pedestrian experience and improve the vitality of commercial districts by adding interest and activity on the first floor of mixed-use buildings and parking facilities.

Staff anticipates additional applications this year and will bring grant requests forward as they are received.

Attachments:

Façade Grant Application



Village of East Dundee



Dundee Crossings Commercial Façade Improvement Program (DCCFIP) Application

Property Owner Name: Colin Hegarty

Applicant Name: Colin Hegarty
(if different from property owner)

Phone Number: 331 551 0026

Email Address: Colin@mapleandhash.com

Property Address: 309 Meier St East Dundee IL 60118

Property Identification Number: 03-23-308-007

Is this property in the Historic District? Yes ☒ No ☐

Description of Project

- Completing exterior work to old unil club.
- New ada ramp / masonry on front of building
- opening up existing patio to downtown area
- adding garage door.

Bid Amount from Proposed Contractors

(include minimum of three)

Contractor Name

Total Bid Amount

JCS Facility Services.

\$ 126,150

\$

\$

Project Budget: \$ 153,000

Reimbursement Request: \$ 25,000 ⊕

Selected Contractor Name:

Checklist of Required Attachments

- ☒ Complete DCCFIP Application
- ☒ Proof of Ownership *Request if needed*
- ☒ Proof of Paid Property Taxes (most recent tax year)
- ☒ Historic District Certificate of Appropriateness (if applicable) *Request if needed.*
- ☒ Photos of Property Structure to be Improved
- ☒ Detailed Description and Sketch/Rendering of the Work to be Performed (including building materials and color scheme)
- ☒ Working Architectural Drawings, if requested *request if needed*
- ☒ Copies of a Minimum of 3 Qualified Bids for each Portion of the Project in which Funding is being Requested *one one as the work is in process or almost complete*
- ☒ Schedule of Work to be Completed

requesting to possibly receive two grants.

Statement of Understanding

☒

I (we), agree to comply with the stipulations, guidelines, and procedures of the DCCFIP. I have read and understand the policy as described.

☒

I (we) certify that the information supplied in this application is, to the best of my (our) knowledge, true, accurate, and complete, and is provided for the purpose of obtaining approval to participate in the Village of East Dundee's DCCFIP.

☒

I (we) understand that I (we) must submit detailed cost documentation, copies of bids, contracts, invoices, receipts, and contractor's final waivers of lien upon completion of the approved improvements.

☒

I (we) understand that any and all work, requiring a Village building permit, must be performance in accordance with and must meet any and all Federal, State, and local building code standards.

☒

I understand that work done before a Façade Improvement Agreement is approved by the Village Board is **not** eligible for a grant.

☒

I (we) understand the Façade Improvement reimbursement grants are subject to taxation and that the Village is required to report the amount and recipient of said grants to the IRS.

☒

I (we) agree to hold harmless, indemnify, and defend the Village of East Dundee, and their employees and agents, for any and all liabilities arising out of this application, loan, construction or other project(s), and any agreement to share costs, including but not limited to any and all lawsuits or other disputes.

Applicant Signature: _____

Date: 11/28/23

Owner Authorization (if applicable)

If the applicant is other than owner, you must have the owner complete the following certificate:

I certify that I am the owner of the property at 309 major st, and that I authorize the applicant to apply for a reimbursement grant under the Dundee Crossings Commercial Façade Improvement Program (DCCFIP) and undertake the approved improvements.

Owner's Printed Name: _____

Colin Hogarty

Phone Number: _____

331 551 0026

Owner's Signature: _____

Colin Hogarty

Date: _____

11/28/23

Date Received: _____

Village Office Use

Was a Completed Application Submitted?

Yes ☐

No ☐

Official's Signature: _____

Date: _____



From: Moniuszko, Paul Paul.Moniuszko@ottoexcellence.com
Subject: Anvil Club Info
Date: Nov 8, 2023 at 4:39:37 PM
To: Colin Hegarty colinhegarty@aol.com

Proof of property tax payment attached.

Regarding the Historic District Certification of Appropriateness...Tom recommended you contact the Dundee Historical Society.

Best regards,

Paul Moniuszko
Director of Finance
OTTO
2 East Main Street
Carpentersville, IL 60110
(847)654-8512 (P)
(847)654-8500 (F)

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

Confirmation #RALAVXAEIT for Jul 30, 2023

Thanks for your payment. For any questions, please contact Kane County Treasurer directly at 630-232-3565.

PAYMENT AMOUNT

\$28,087.88

Payment by Checking:2102

CONVENIENCE FEES

\$0.00

Payment by Checking:2102

TOTAL CHARGE

\$28,087.88

Toni Sances
309 Meier St.
East Dundee, IL 60118
847-426-7710
tsances@theanvilclub.net

5 RESULTS ▼

Item Number	Amount Paid
0323308005	\$22,599.76
0323308006	\$1,811.61
0323314004	\$1,172.18
0323314005	\$672.72
0323308007	\$1,811.61

Friday, June 2, 2023 at 14:07:43 Central Daylight Time

Subject: Receipt for payment to Kane County Treasurer, IL
Date: Thursday, June 1, 2023 at 9:00:16 AM Central Daylight Time
From: Kane County Treasurer, IL
To: tsances@theanvilclub.net

Your Payment to Kane County Treasurer, IL

This message is to confirm your payment for 5 items totaling \$28,087.88

For questions regarding this payment, please contact Kane County Treasurer, IL
directly at 630-232-3565

Your confirmation number is JWOAK6KZFW

Item	Amount
0323308005	\$22,599.76

0323314005	\$692.72
0323308006	\$1,811.61
0323308007	\$1,811.61
0323314004	\$1,172.18

You were charged a convenience fee of \$0.00 for this transaction.

Total Charge \$28,087.88

Checking:2102

Note: This confirmation e-mail merely indicates that your payment is being processed and may take up to 5 business days to post. Transactions can also be rejected by your bank for various reasons. Please retain a copy of this message for your records.



JCS FACILITY SERVICES

INVOICE

JCS Facility Services
Illinois 60607
United States

6307151777

BILL TO
Colin Hagerty
Colin Hagerty

Invoice Number: TEQUILA VAL'S -
EXTERIOR
RENOVATION
INVOICE

Invoice Date: November 29, 2023

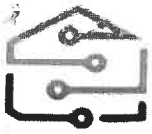
Payment Due: November 29, 2023

Amount Due (USD): \$126,150.00

Items	Quantity	Price	Amount
1 CONCRETE EXTERIOR WORK The project involves the construction of a concrete ramp at Tequila Val's new location in East Dundee. The purpose of the ramp is to provide improved access, functionality, and wheelchair accessibility. - Excavate the designated area to the required depth. - Grade the site appropriately for the ramp. - Set up formwork according to the approved design. - Place and secure reinforcement bars as per design specifications. - Schedule and conduct concrete pours in sections.	1	\$19,508.00	\$19,508.00
1 STUCCO - Assess the condition of the surfaces to be covered with stucco. - Identify any repairs or preparatory work needed. - Clean and prep the surfaces to ensure proper adhesion. - Repair any existing damage, cracks, or imperfections. - Allow the base coat to set to the appropriate tackiness. - Apply the scratch coat and texture as specified.	1	\$18,050.00	\$18,050.00



Items	Quantity	Price	Amount
1 EXTERIOR STONE INSTALLATION <ul style="list-style-type: none">- Install a weather-resistant barrier or building paper over the sheathing.- Apply the appropriate adhesive or mortar for stone veneer installation.- Install the stone veneer according to the approved layout.- Maintain consistent joint spacing and alignments.- Cut and shape stone veneer pieces as needed to fit corners, edges, and other unique areas.	1	\$36,122.00	\$36,122.00
1 EXTERIOR ELECTRICAL WORK <ul style="list-style-type: none">- Remove existing gooseneck lighting on front facade of building- Relocate existing electrical j boxes to accommodate new placement of goose neck lights- Source dedicated circuit for restaurant signage- Install new switch and timer for new lights and sign- Install new goose neck light fixtures	1	\$5,210.00	\$5,210.00
1 PERGOLA <ul style="list-style-type: none">- Demo existing perimeter wall around east and south east corner of patio- Demo existing support posts, electrical conduit, lights and speakers.- Install new, matching 6x6 posts to support existing structure- Remove all debris and existing trim on existing post caps	1	\$20,820.00	\$20,820.00
1 EXTERIOR WOOD CAPS/BARN DOOR INSTALLATION <ul style="list-style-type: none">- Remove existing window drip edge and exterior round trim.- Install new hardie board siding trim on side and bottom trim edges- Install newly finished, cedar cap above all remaining windows.- Finish wood to a professional, natural finish- Install metal, hammered 1 1/2 inch nails to newly installed wood cap- Install wood cap across front building facade, just below newly installed signage- Metal accents on all newly installed cedar caps	1	\$26,440.00	\$26,440.00



JCS FACILITY SERVICES

INVOICE

JCS Facility Services

Illinois 60607

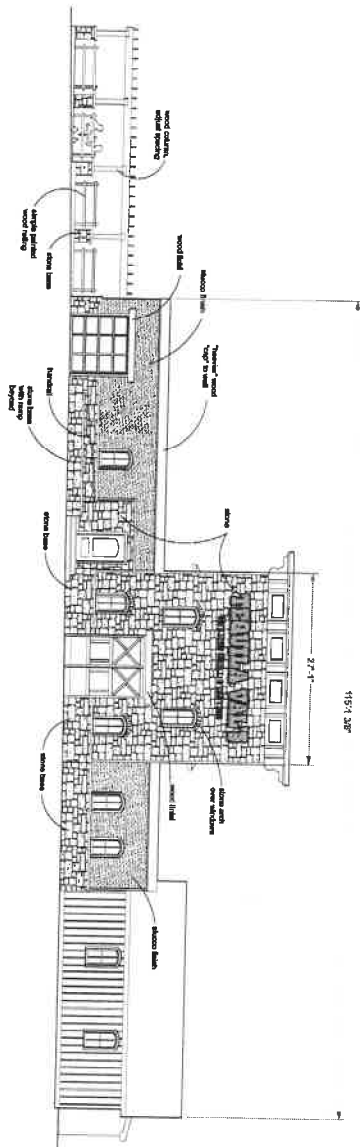
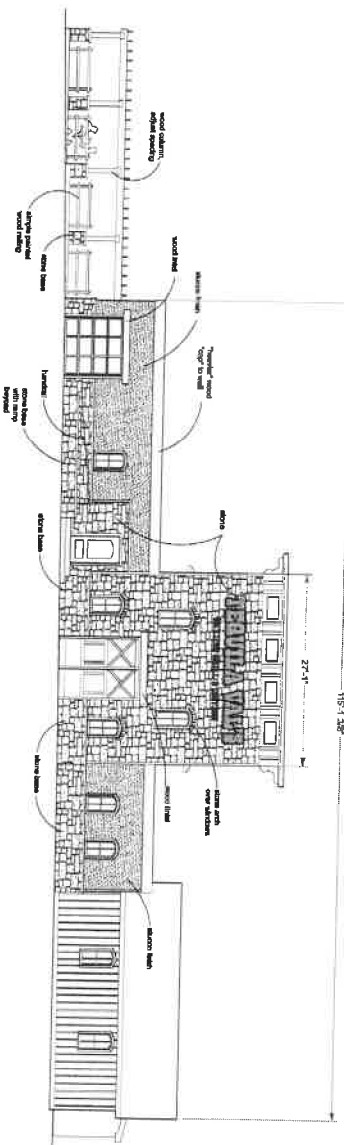
United States

6307151777

Subtotal:	\$126,150.00
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Total:	\$126,150.00
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Amount Due (USD):	\$126,150.00
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Crystal Lake IL 60014 ph 815.444.9150 kortaarchitecture.com

korte architecture

EAST ELEVATION
SCALE 1/8" = 1'-0"

DRAWN BY:

PROJECT
NUMBER:

ISSUANCE

DATE _____

PROJECT:
RESTAURANT
RENOVATION
309 MEIER STREET
EAST DUNDEE, IL. 60118

SHEET CONTENTS:
STRUCTURE PLAN
LOWER LEVEL PLAN

SHEET NO.

A2.0

KORTE ARCHITECTURE COPY RIGHT 2023



GENERAL SPECIFICATIONS

'TEQUILA VALS': 5" deep fabricated aluminum contour sign with a possible aluminum 1" retainer. Polycarbonate face with 3M vinyl graphics applied to 1st surface. Returns and retainer to be painted black.

'MEXICAN GRILL AND CANTINA': Individual internally illuminated Letter Set Black during the day and illuminated White at night.
3" deep Aluminum returns with acrylic faces with matching 3/4" trim cap and 3M vinyl applied to 1st surface. Illuminated with white LED's.

NOTE: Stand-off's mounts will be required due to the stone facade.

NOTE: Raceway mount Letter Set probably recommended.

95.25 sq ft

PAINT SPECIFICATIONS

P1 ■ Paint to Match - 100% Black

3M VINYL SPECIFICATIONS

V1 ■ #3630-38 Fuchsia

V2 ■ #3635-202 Dual Film Black

Memorandum



To: Village President and Board of Trustees

From: Erika Storlie, Village Administrator

Subject: Use Restrictions for 309 Jackson St, and 304 Hill St, East Dundee

Date: January 22, 2024

Action Requested:

Staff recommends Village Board approval of a resolution approving use restrictions for real property located at 309 N. Jackson St. (PIN 03-23-320-006) and 304 Hill St. (PIN 03-23-320-001), East Dundee, IL 60118 in the Downtown Tax Increment Financing District. The restrictions prevent the Village from holding special events on the property and prohibit a future bar/restaurant from locating in the space for a period of 20 years.

Funding Source:

N/A

Summary:

At the November 6, 2023, Village Board Meeting, the board approved an ordinance authorizing the purchase of 309 N. Jackson St. and 304 Hill St. for the site of future public parking.

Negotiations with the property owner are complete and the Village has found a compromise with the seller to alleviate seller's concerns about a competing business locating on the site should the Village's plan to implement parking not come to fruition.

The use restriction document attached prohibits the Village from holding special events on the property. The second restriction prohibits a bar/restaurant that may compete with seller's business from locating on the property for a period of 20 years.

These restrictions were a fair compromise and once approved, a closing date will be set for the property within the next 45 days.

Attachments:

Ordinance
Declaration of Use Restriction

RESOLUTION NO. 24-R-__

**A RESOLUTION APPROVING A DECLARATION OF USE RESTRICTION FOR
REAL PROPERTY LOCATED AT 309 JACKSON STREET AND 304 HILL STREET,
IN THE VILLAGE OF EAST DUNDEE, ILLINOIS**

WHEREAS, the Village is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the Village Board of Trustees approved Ordinance 23-51 on December 4, 2023 authorizing the purchase of real property commonly known as 309 Jackson and 304 Hill in the Village of East Dundee, Illinois ("**Subject Property**"); and

WHEREAS, pursuant to the terms and conditions of the purchase of the Subject Property, the seller is requiring that the Village agree to and enter into a Declaration of Use Restriction ("**Declaration**") to be recorded on the Subject Property commensurate with the purchase, sale and transfer of the Subject Property to the Village; and

WHEREAS, under the proposed terms and conditions of the Declaration, the Village, its successors and assigns, may only use the Subject Property to construct a parking facility on the Subject Property and use the Subject Property for parking in and about the parking facility along with other ancillary uses;

WHEREAS, under the proposed terms and conditions of the Declaration, the Village agrees to prohibit the holding of Village sponsored special events on the Subject Property, provided that parking on the Subject Property for Village sponsored events held at other locations is acceptable; and

WHEREAS, under the proposed terms and conditions of the Declaration, in the event that the Village does not commence construction of a parking facility on the Subject Property within five (5) years after the date provided for in the Declaration, the Village may use the Subject Property for any permitted use by law; however that such use shall not compete with the seller's bar/restaurant business; and

WHEREAS, the Village President and Board of Trustees find that it is in the best interests of the Village and its residents to approve the Declaration for the purchase of Subject Property and use as a parking facility; and

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE IN KANE AND COOK COUNTIES AS FOLLOWS:

SECTION 1: Recitals. The recitals set forth above are incorporated into this Section 1 by this reference as findings of the Village President and Board of Trustees.

SECTION 2: Approval of Execution Declaration. The Village Board hereby

approves the Declaration; and

SECTION 3: Execution. The Village Administrator and Village Clerk are hereby authorized and directed to execute and attest, on behalf of the Village, any documents necessary to effectuate the Declaration as set forth in **Exhibit A**, in a final form subject to approval by the Village Administrator and Village Counsel.

SECTION 4: Effective Date. This resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

[SIGNATURE PAGE TO FOLLOW]

PASSED this _____ day of _____ 2024 pursuant to a roll call vote as follows:

AYES: _____

NAYES: _____

ABSENT: _____

APPROVED by me this _____ of _____ 2024.

Jeffrey Lynam, Village President

ATTEST:

Katherine Diehl, Village Clerk

EXHIBIT A - DECLARATION

PREPARED BY, RECORDING
REQUESTED BY AND WHEN
RECORDED RETURN TO:

Elrod Friedman LLP
325 North LaSalle Street, Ste. 400
Chicago, Illinois 60654
Attention: Lisa Starcevich

Above Space for Recorder/Clerk Use Only

DECLARATION OF USE RESTRICTION

This Declaration of Use Restriction (“**Declaration**”) is made this ____ day of _____, 2024 by BIG KAHUNA CORPORATION, an Illinois corporation (“**Declarant**”).

RECITALS

WHEREAS, Declarant is the owner in fee simple of certain real property located in East Dundee, Illinois and commonly known as (i) 309 Jackson Street, East Dundee, IL (“**Parcel 1**”), and (ii) 304 Hill Street, East Dundee, IL (“**Parcel 2**”). Parcel 1 and Parcel 2 are collectively referred to herein as the “**Property**”. The Property is legally described on **Exhibit A** attached hereto and incorporated herein;

WHEREAS, Declarant has entered into that certain Real Estate Purchase and Sale Agreement dated _____ (the “**Purchase Agreement**”) to sell the Property to the Village of East Dundee, an Illinois home-rule municipal corporation (the “**Village**”); and

WHEREAS, pursuant to the terms of such Purchase Agreement, Declarant and Village agreed to limit the use of the Property for parking purposes or such other uses as more specifically described in this Declaration (“**Use Restriction**”);

WHEREAS, in consideration of the Purchase Agreement and other consideration, the Declarant desires to subject the Property to the aforestated restriction, all as more specifically set forth below.

DECLARATION

NOW THEREFORE, in consideration of the foregoing recitals and of the covenants contained herein, Declarant declares as follows:

1. **Recitals.** The above recitals set forth above are incorporated herein by reference.
2. **Restrictions on Use.** The use of the Property shall be subject to the following restrictions:

a. The Village, its successors and assigns, may use the Property for the following uses and no others:

i. to construct a parking facility on the Property; and

ii. Parking in and about such parking facility and such ancillary uses as necessary, subject to paragraph 2(b) below;

b. The Village agrees to prohibit the holding of Village sponsored special events on the Property; provided, that parking on the Property for Village sponsored events held at other locations is acceptable.

c. In the event the Village does not commence construction of the parking facility on the Property within five (5) years after the date hereof, the Village may use the Property for any use permitted by applicable law; provided, however that such use shall not compete with Declarant's bar/restaurant business.

3. Amendments; Duration of Declaration. This Declaration shall run with the land and shall be binding upon the owners of the Property and their respective successors, assigns, heirs, agents, licensees, lessees, invitees, and representatives, including, without limitation, all subsequent owners of the Property, or any portion thereof until such date which is twenty (20) years after the date hereof, at which time this Declaration shall terminate automatically and be of no further force or effect

4. Enforcement. Enforcement of this Declaration shall be by any proceeding at law or in equity, brought by the Declarant, its successors or assigns ("**Enforcement Party**"), against any person or persons violating or attempting to violate any covenant, restriction or other provision hereof, either to restrain or prevent such violation or attempted violation or recover damages, or both. Failure by Enforcement Party to promptly enforce any covenant, restriction, or other provision of this Declaration shall in no event be a bar to enforcement thereafter and shall not waive any rights of Enforcement Party.

5. General Provisions.

A. Notices. All notices required to be served by this Declaration must be served in writing and will be deemed to be served when delivered personally or three business days following deposit, by certified or registered mail, return receipt requested, in the United States mail, postage prepaid, at the common address for the Property.

B. Recordation. This Declaration is to be recorded in the Office of the Kane County Recorder, and all leases, contracts, and deeds of conveyance relating to the Property, or any part thereof, are subject to the provisions of this Declaration.

C. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Declaration by any person may be made, or will be valid, against the Village or the Declarant.

D. Severability. If any provision of this Declaration is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Declaration will not be affected, impaired, or invalidated thereby, but

are to remain in full force and effect. The unenforceability of any provision of this Declaration will not affect the enforceability of that provision in any other situation.

E. Authorization. Each of the persons signing this Declaration on behalf of the Declarant hereby warrant and represent that they have the full and complete right, power, and authority to execute this Declaration on behalf of the Declarant and to agree to the terms, provisions, and conditions set forth in this Declaration.

IN WITNESS WHEREOF, the Declarant has executed and delivered this Declaration as of the day and year first above written.

DECLARANT:

BIG KAHUNA CORPORATION,
an Illinois corporation

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by _____, the _____ of BIG KAHUNA CORPORATION, an Illinois corporation, who acknowledged that he/she did sign the foregoing instrument in such capacity on behalf of said limited liability company, and that the same is his/her free act and deed, and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1: 309 JACKSON STREET, EAST DUNDEE, ILLINOIS:

LOT 8 IN BLOCK 2 OF EAST DUNDEE, IN THE SOUTHWEST $\frac{1}{4}$ OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS

PIN: 03-23-320-006

PARCEL 2: 304 HILL STREET, EAST DUNDEE, ILLINOIS:

LOTS 3 AND 4 AND LOT 5 (EXCEPT THE WEST 30 FEET) IN BLOCK 2 OF THE PLAT OF DUNDEE, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.

PIN: 03-23-320-001

Memorandum



To: Village President and Board of Trustees

From: Erika Storlie, Village Administrator

Subject: Downtown Parking Garage Contract Approval

Date: January 22, 2024

Action Requested:

Staff recommends Village Board approval of a resolution authorizing the Village Administrator to execute a contract with McHugh Construction Co. (1737 S. Michigan Ave., Chicago IL 60616) in response to the Request for Proposals (RFP) for the design and construction of a parking garage in downtown East Dundee.

Summary:

At the October 2, 2023 Village Board meeting the Village Board reviewed the responses to the RFP and directed staff to begin contract negotiations with McHugh Construction Co, the low bidder for the project. The construction timeline for the project has a target date of completion of November 2024 and the bid came in at a project cost of \$6,374,317 for 163 stalls for a cost per stall of \$39,106.24.

Staff has been working with McHugh to make progress on the design while the contract was being negotiated between the attorneys for the Village and McHugh. One of the ideas discussed at the October meeting was the concept of adding storefronts to the parking garage to offer a mixed-use project and the ability to receive revenue from the garage as well as adding needed commercial space to the downtown. Over the past month the design team has provided staff with several options for including commercial space in the garage ranging in size from 3,000 to 7,500 square feet. Each option has a number of lost parking spaces associated with it. McHugh is currently working on refining the cost estimate to include this storefront space. When that is available, staff will return to the Village Board to make a decision on whether or not to proceed with the garage as originally designed with 163 stalls for the price above or to go forward with the option with commercial space for a price to be determined.

The contract for approval today binds the Village to pay McHugh \$168,000 for the design of the parking garage. The design-build nature of the contract requires the Village to subsequently approve the construction contract once a final design is approved and the price is established

based on the design process. Staff will return to the board with that contract once the design process is complete.

Property Acquisition

The Village has a contract with the property owner to acquire the property for this parking garage and will have possession of the property within 60 days if the agenda item regarding the use restrictions on the agenda for this evening is approved.

Funding

The proposed funding for this project will come from multiple sources. The estimate below details the funding mix:

Funding Source	Amount
Grants (State of IL)	\$950,000
TIF Funding (cash on hand)	\$1,439,317
Bond (borrowing)	\$3,985,000
Total	\$6,374,317

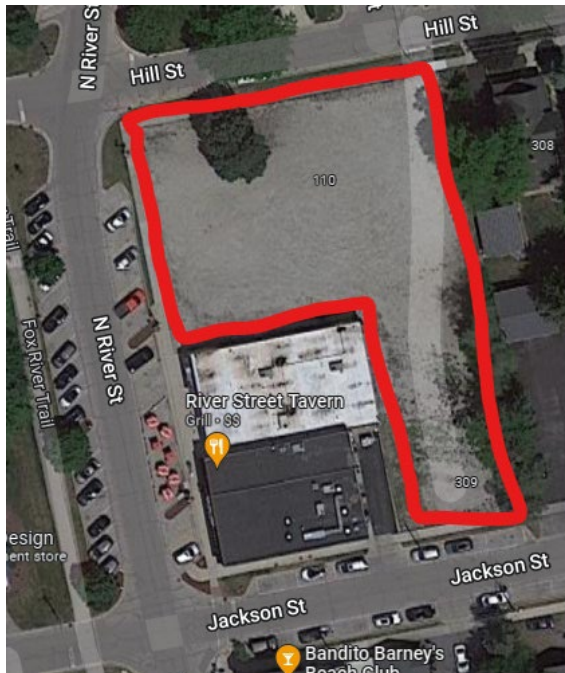
Attached to this memo is a draft bond proposal from Baird detailing a payback schedule for a potential \$3,985,000M borrowing with both a 10 year and a 15-year payback schedule. Once bonds are issued in the spring a final schedule will be provided based on actual interest rates at the time.

The Village Board discussed utilizing the Downtown/Dundee Crossings Business Development District (BDD) fund as a funding source to pay for the bonds for the parking garage project. The BDD fund receives revenue from an additional sales tax imposed on all businesses in the district. Utilizing this funding would place the financial burden of the project on patrons to area establishments instead of East Dundee residents. The most recent audit available confirms that the BDD has annual revenues of \$449,586 for FY 2023 (ending April 30, 2023). This annual revenue would be sufficient to cover most of the bond payments in the 10-year payback scenario. The remainder of the annual payment could be provided by TIF revenues. If the 15-year option is chosen, the BDD could fund the entire portion of the debt service until the BDD expires in 2032. For the remaining 6 years of repayment under the 15-year schedule, the board would have to decide what funding source to utilize. It should also be noted that the BDD has a positive fund balance in it currently, however the board will have to make a decision on whether or not to continue other activities that are currently funded by the BDD, such as the facade improvement program. Alternatively, the board could fund these activities with other funding sources.

Staff is currently working on TIF projections that could also support the repayment of the bonds in the future.

Staff has had conversations with the assigned grant manager for the State of Illinois and has confirmed that two separate grants, one for \$350k and one for \$600k were authorized as part of both the 2023 and 2024 State of IL capital bill and are going to be received to support this project.

Staff requests board feedback on the repayment options and will return with a final funding proposal once direction is provided.



Proposed Site of Parking Garage at 110 N. River

Attachments:

Resolution

Updated Bond Analysis

Contract

RESOLUTION NUMBER __-23

**A RESOLUTION APPROVING JAMES MCHUGH CONSTRUCTION CO. AS THE
PREVAILING BIDDER AND AUTHORIZING THE VILLAGE ADMINISTRATOR TO EXECUTE
A STANDARD FORM AGREEMENT BETWEEN THE VILLAGE OF EAST DUNDEE AND
JAMES MCHUGH CONSTRUCTION CO. FOR DESIGN-BUILD SERVICES OF A TWO-
LEVEL PARKING STRUCTURE LOCATED IN THE DOWNTOWN DISTRICT OF THE
VILLAGE OF EAST DUNDEE**

WHEREAS, the Village of East Dundee ("**Village**") is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, in June of 2023, subject to the direction of the Village Board of Trustees, a Request for Proposals ("**RFP**") was released and published in the Daily Herald on June 21, 2023 requesting proposals for a design-build contract for a two-level parking garage to be located in the Village's downtown district ("**Services**"); and

WHEREAS, three proposals were received following the RFP and scored according to evaluation criteria and percentages noted in the RFP; and

WHEREAS, on October 2, 2023, Village staff presented the responses to the RFP to the Village Board of Trustees; and

WHEREAS, direction was given to Village staff by the Village Board of Trustees to negotiate a contract with James McHugh Construction Co. ("**Design-Builder**"); and

WHEREAS, the Village President and Board of Trustees finds that Design-Builder is the lowest, responsible bidder to the RFP; and

WHEREAS, pursuant to the RFP, the Village and Design-Builder have negotiated a contract for design-build services of a two-story parking structure located in the downtown district of the Village (hereinafter "**Contract**"); and

NOW, THEREFORE, BE IT RESOLVED by the Village President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

Section One. Recitals. The foregoing recitals are hereby incorporated into, and made a part of, this Resolution as the findings of the President and Board of Trustees of the Village of East Dundee.

Section Two. Approval of Design-Builder and Contract. The Village Board of Trustees hereby approves the selection of Design-Builder as the lowest, responsible bidder to perform the Services and approves the Contract, attached hereto as **Exhibit A**, and in a final form to be approved by the Village Administrator and Village Attorney.

Section Three. Authorization. The Village Administrator and Village Clerk are authorized and directed to execute the Contract on behalf of the Village.

Section Four. Effective Date. This Resolution shall be in full force and effect from and after its passage by a vote the Village Board of Trustees and approval in the manner required by law.

[SIGNATURE PAGE TO FOLLOW]

PASSED this _____ day of _____ 2023 pursuant to a roll call vote as follows:

AYES: _____

NAYES: _____

ABSENT: _____

APPROVED by me this _____ of _____ 2023.

Jeffrey Lynam, Village President

ATTEST:

Katherine Diehl, Village Clerk

Village of East Dundee, Illinois
Hypothetical Illustration of General Obligation Bonds, Series 2024 ⁽¹⁾
\$3.985 Million Project - Parking Garage

Bond Year Ending December 1	10 Year Term					15 Year Term					
	Principal	Assumed Coupon	Assumed Yield	Assumed Interest	Total Debt Service	Principal	Assumed Coupon	Assumed Yield	Assumed Interest	Total Debt Service	
	(12/1)			(6/1 & 12/1)		(12/1)			(6/1 & 12/1)		
2024	\$370,000	5.000%	3.800%	\$124,323	\$494,323	\$240,000	5.000%	3.800%	\$123,681	\$363,681	
2025	\$320,000	5.000%	3.850%	\$175,250	\$495,250	\$185,000	5.000%	3.850%	\$180,750	\$365,750	
2026	\$335,000	5.000%	3.700%	\$159,250	\$494,250	\$195,000	5.000%	3.700%	\$171,500	\$366,500	
2027	\$350,000	5.000%	3.600%	\$142,500	\$492,500	\$205,000	5.000%	3.600%	\$161,750	\$366,750	
2028	\$370,000	5.000%	3.550%	\$125,000	\$495,000	\$215,000	5.000%	3.550%	\$151,500	\$366,500	
2029	\$385,000	5.000%	3.500%	\$106,500	\$491,500	\$225,000	5.000%	3.500%	\$140,750	\$365,750	
2030	\$405,000	5.000%	3.500%	\$87,250	\$492,250	\$235,000	5.000%	3.500%	\$129,500	\$364,500	
2031	\$425,000	5.000%	3.550%	\$67,000	\$492,000	\$245,000	5.000%	3.550%	\$117,750	\$362,750	
2032	\$445,000	5.000%	3.550%	\$45,750	\$490,750	\$260,000	5.000%	3.550%	\$105,500	\$365,500	
2033	\$470,000	5.000%	3.600%	\$23,500	\$493,500	\$270,000	5.000%	3.600%	\$92,500	\$362,500	
2034						\$285,000	5.000%	3.650%	\$79,000	\$364,000	
2035						\$300,000	5.000%	3.850%	\$64,750	\$364,750	
2036						\$315,000	5.000%	3.850%	\$49,750	\$364,750	
2037						\$330,000	5.000%	4.100%	\$34,000	\$364,000	
2038						\$350,000	5.000%	4.100%	\$17,500	\$367,500	
	<u>\$3,875,000</u>			<u>\$1,056,323</u>	<u>\$4,931,323</u>	<u>\$3,855,000</u>			<u>\$1,620,181</u>	<u>\$5,475,181</u>	
Assumed Sources and Uses						Assumed Sources and Uses					
Sources of Funds						Sources of Funds					
Par Amount					\$3,875,000	Par Amount					\$3,855,000
Reoffering Premium					\$265,461	Reoffering Premium					\$289,996
Total Sources					\$4,140,461	Total Sources					\$4,144,996
Uses of Funds						Uses of Funds					
Deposit to Project Fund					\$3,985,000	Deposit to Project Fund					\$3,985,000
Assumed Costs of Issuance ⁽²⁾					\$152,825	Assumed Costs of Issuance ⁽²⁾					\$158,377
Rounding Amount					\$2,636	Rounding Amount					\$1,619
Total Uses of Funds					\$4,140,461	Total Uses of Funds					\$4,144,996
Potential True Interest Cost ⁽³⁾						Potential True Interest Cost ⁽³⁾					
					3.57%						3.90%
Potential True Interest Cost Minus 10 Basis Points ⁽³⁾						Potential True Interest Cost Minus 10 Basis Points ⁽³⁾					
					3.47%						3.80%
Potential True Interest Cost Plus 10 Basis Points ⁽³⁾						Potential True Interest Cost Plus 10 Basis Points ⁽³⁾					
					3.67%						4.00%

(1) This illustration represents a mathematical calculation of potential interest cost, assuming hypothetical rates based on current bank qualified rates for general obligation bonds rated Baa1 with AA rated insurance as of January 16, 2024. Actual rates may vary. If actual rates are higher than those assumed, the interest cost would be higher. This illustration provides information and is not intended to be a recommendation, proposal or suggestion for a financing or otherwise be considered as advice. Structure assumes ten and fifteen year amortization level debt service with delivery date of April 10, 2024. Preliminary, subject to change.

(2) Assumed costs of issuance of 2.50% of bond proceeds and a bond insurance premium of 100 basis points. Preliminary, subject to change.

(3) True Interest Cost is the rate of interest, compounded semi-annually, required to discount the payments of principal and interest to bondholders to the original purchase price.

Robert W. Baird & Co. Incorporated ("Baird") is not recommending any action to you. Baird is not acting as an advisor to you and does not owe you a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934. Baird is acting for its own interests. You should discuss the information contained herein with any and all internal or external advisors and experts you deem appropriate before acting on the information. Baird seeks to serve as an underwriter (or placement agent) on a future transaction and not as a financial advisor or municipal advisor. The primary role of an underwriter (or placement agent) is to purchase, or arrangement for the placement of, securities in an arm's length commercial transaction with the issuer, and it has financial and other interests that differ from those of the issuer. The information provided is for discussion purposes only, in seeking to serve as underwriter (or placement agent). See "Important Disclosures" contained herein.



Important Disclosures

Robert W. Baird & Co. Incorporated ("Baird") is not recommending that you take or not take any action. Baird is not acting as financial advisor or municipal advisor to you and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to the information contained herein and/or accompanying materials (collectively, the "Materials"). Baird is acting for its own interests. You should discuss the Materials with any and all internal or external advisors and experts that you deem appropriate before acting on the Materials.

Baird seeks to serve as underwriter in connection with a possible issuance of municipal securities you may be considering and not as financial advisor or municipal advisor. Baird is providing the Materials for discussion purposes only, in anticipation of being engaged to serve as underwriter (or placement agent).

The role of an underwriter includes the following: Municipal Securities Rulemaking Board Rule G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors. An underwriter's primary role is to purchase the proposed securities to be issued with a view to distribution in an arm's length commercial transaction with the issuer. An underwriter has financial and other interests that differ from those of the issuer. An underwriter may provide advice to the issuer concerning the structure, timing, terms, and other similar matters for an issuance of municipal securities. Any such advice, however, would be provided in the context of serving as an underwriter and not as municipal advisor, financial advisor or fiduciary. Unlike a municipal advisor, an underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is therefore not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests. An underwriter has a duty to purchase securities from the issuer at a fair and reasonable price but must balance that duty with its duty to sell those securities to investors at prices that are fair and reasonable. An underwriter will review the official statement (if any) applicable to the proposed issuance in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the proposed issuance.

The Materials do not include any proposals, recommendations or suggestions that you take or refrain from taking any action with regard to an issuance of municipal securities and are not intended to be and should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934 or Rule 15Ba1-1 thereunder. The Materials are intended to provide information of a factual, objective or educational nature, as well as general information about Baird (including its Public Finance unit) and its experience, qualifications and capabilities.

Any information or estimates contained in the Materials are based on publicly available data, including information about recent transactions believed to be comparable, and Baird's experience, and are subject to change without notice. Baird has not independently verified the accuracy of such data. Interested parties are advised to contact Baird for more information.

If you have any questions or concerns about the above disclosures, please contact Baird Public Finance.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that the Materials do not constitute tax advice and shall not be used for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the day of in the year 2024
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Village of East Dundee
120 Barrington Avenue
East Dundee, Illinois 60118
Attn: Erika Storlie

and the Design-Builder:
(Name, legal status, address and other information)

James McHugh Construction Co.
1737 South Michigan Avenue
Chicago, Illinois 60616
Attn: Andrew Totten

for the following Project:
(Name, location and detailed description)

Downtown East Dundee Parking Structure
Design and construct a two-level parking structure located in the downtown district of East Dundee

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	COST PROPOSAL DATED AUGUST 25, 2023
D	PRELIMINARY SCHEDULE
E	CLARIFICATIONS DATED AUGUST 25, 2023

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.) Conceptual and final design and construction of a two-level parking structure to provide parking and to reflect and compliment other buildings in the East Dundee downtown district.

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

TBD

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

See Attachments to RFP

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See Attachments to RFP.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

N/A

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

N/A

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

See Exhibit C

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

See Exhibit D

.2 Submission of Design-Builder Proposal:

See Exhibit D

.3 Phased completion dates:

See Exhibit D

.4 Substantial Completion date:

See Exhibit D

Init.

.5 Other milestone dates:

See Exhibit D

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

Desman Design Management, 20 North Clark Street, #400, Chicago Illinois 60602

.2 Consultants

N/A

.3 Contractors

TBD

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

TBD

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

TBD

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

TBD

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

TBD

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

James McHugh Construction Co.
1737 South Michigan Avenue
Chicago, Illinois 60616
Attn: Andrew Totten

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party unless the Owner reasonably determines that a change must be made sooner.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 14.4
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

\$168,700 which shall include: (i) coordination and estimating in the amount of \$40,000; (ii) conceptual design/schematic design (100%) in the amount of \$52,500; (iii) design development package (100%) in the amount of \$46,200; and (iv) MEP design build subcontractors design development package (100%) in the amount of \$30,000.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

TBD

Individual or Position

Rate

Init.

/

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of three percent (3%) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1

(Paragraphs deleted)

Payment applications shall be submitted by Design Builder to Owner at the address set forth above, together with reasonable supporting documentation, Owner may require such additional supporting documentation as Owner reasonably deems necessary or desirable. Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*), after the Owner's receipt of an invoice and all such supporting documentation. Any payment approved for payment pursuant to Section 3 of the Illinois Government Prompt Payment Act shall be paid within 30 days after the date of approval. If payment is not made within such 30 day period, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction. Design-Builder and each subcontractor, must give all notices, pay all fees, and take all other action that may be necessary to ensure that the Work is provided, performed, and completed in accordance with all required

governmental permits, licenses or other approvals and authorizations that may be required in connection with providing, performing, and completing the Work, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 **et seq.** (if the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid, the revised rate applies to this Contract); any other applicable prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 **et seq.**; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 **et seq.**, the Illinois Human Rights Act, 775 ILCS 5/1-101 **et seq.**, and the Public Works Discrimination Act, 775 ILCS 10/0.01 **et seq.**; the Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 **et seq.**; or and any statutes regarding safety or the performance of the Work, including the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1 **et seq.**, and the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 **et seq.** Design-Builder is solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Design-Builder's, or its subcontractors' or suppliers', performance of, or failure to perform, the Work or any part thereof. This Agreement calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 **et seq.** (the "Act"). Design-Builder must pay all workers completing the Work no less than the prevailing wage in effect at the time the Work is performed as determined by the Illinois Department of Labor ("IDOL"), which can be found on IDOL's website. If the IDOL revises the prevailing rate of hourly wages to be paid, the revised rate will apply to this Agreement. Design-Builder and any subcontractors rendering services under this Agreement must comply with all requirements of the Act, including, but not limited to, all wage, notice, and recordkeeping duties and certified payrolls. In the event the Illinois Department of Labor revises the prevailing rate of hourly wages during the Project and such revision will increase the amount expended by Design Builder on labor for the Project, then Design Builder shall be entitled to a change order for that increased amount.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;

- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing

of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranty and repair obligations owed by any Contractor to Design-Builder shall also be deemed to be owed to Owner. All warranties issued to Design-Builder by any Contractor or Subcontractor of any tier shall be assigned to Owner upon Substantial Completion. Such an assignment of warranties to Owner shall be deemed to automatically occur and shall not require further action on behalf of Owner, Design-Builder, Contractor, or Subcontractor. Design-Builder and Owner shall both have the right to enforce any warranty required by the Contract Documents. To the extent the Contract Documents require a specific warranty, Design-Builder shall take all reasonable steps to obtain such a warranty, but if the specified warranty is not reasonably commercially available, Design-Builder shall provide the warranty offered or available from the Contractor or Subcontractor.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's elected and appointed officials, agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent or willful acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement.

Nothing contained herein shall be construed as prohibiting the Owner, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. The Design-Builder shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits provided the claims, actions, or suits are caused by the negligent or willful acts or

omissions of Design-Builder, or anyone directly or indirectly employed by Design-Builder. Nothing herein shall be construed as a limitation or waiver of defenses available to the Owner, its officials, employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

To the extent permissible by law, Design-Builder both waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any losses, including any claim by any employee of Design-Builder that may be subject to the Illinois Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision, including but not limited to, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991). The Owner, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute.

Design-Builder shall be responsible for any losses and costs to repair or remedy work performed under this Agreement resulting from or arising out of any act or omission, neglect, or misconduct in the performance of its Work. Acceptance of the Work by the Owner will not relieve the Design-Builder of the responsibility for subsequent correction of any such error, omissions and/or negligent acts or of its liability for loss or damage resulting therefrom. All provisions of this Section shall survive completion, expiration, or termination of this Agreement.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement,

installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

TBD

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;

- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters. Nothing in this paragraph shall be construed to limit Design-Builder's ability to delegate such obligations to others though it is understood that Owner shall be entitled to rely upon Design-Builder's services.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

In accordance with Section 130.2075 of the Retail Occupation Tax, sales to construction contractors of tangible property for incorporation in real estate for governmental entities are exempt and sales tax is therefore excluded – see Exhibit E. Any pricing shall include tariff costs and tax interpretations known as of the date of this Agreement, but to the extent any governmental entity imposes new tariffs or interprets laws allowing tariffs or taxes differently than it has as of the date of this Agreement, such a new tariff or interpretation shall require an equitable adjustment to the Amendment pricing to reflect the increased cost due to the tariff for new tax interpretation.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. The Owner shall be responsible for any zoning and special use permits as well as the "certificate of appropriateness" reflecting any historic standards. The Owner shall also reasonably cooperate in the Design-Builder's efforts to obtain the building permit.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs

and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site, and electronically, for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule,

with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. Unless the Submittal is unusual in nature, "reasonable promptness" is understood to be within five (5) days. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 The Contract Time shall be extended by Change Order if the Design-Builder is delayed at any time in the commencement or progress of the Work by (a) an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner (all of this subsection (a) shall collectively be defined as "Compensable Delay"); or by (b) labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay (all of this subsection (b) shall collectively be defined as "Excusable Noncompensable Delay").

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 Design-Builder shall only be entitled to additional monetary compensation for Compensable Delay and Design-Builder's sole remedy for Excusable Noncompensable Delay shall be an extension of the Contract Time.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge,

information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment to Design-Builder as set forth according to the Illinois Local Government Prompt Payment Act.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled under their agreement with Design-Builder, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the

Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond or letter of credit in the full penal sum of 150% of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. If Design-Builder elects to hold such payments as set forth in this Section 9.6.7, Design-Builder is required to hold the funds in a separate account and not commingled with money of the Design-Builder.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, or timely pay Design-Builder, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat,

utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. Design-Builder further agrees, as and to the extent of payment made hereunder, to execute a sworn affidavit respecting the payment and lien waivers of all subcontractors, suppliers and materialmen, at such time or times and in such form as may be reasonably requested by the Village. Provided Owner has paid all undisputed amounts owed and is not otherwise in breach of this Agreement, Design-Builder shall indemnify Village from all liens for labor performed, material

supplied or used by Design-Builder and/or any other person in connection with the Services and Work undertaken by Design-Builder hereunder.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents
- .4 claims against Owner of injury or loss resulting from any of Design-Builder's, Architect's, or Consultant's employees, contractors or subcontractors.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

Nothing in this paragraph shall be construed to limit Design-Builder's ability to delegate such obligations to others though it is understood that such delegation shall not limit Design-Builder's liability or indemnity obligations to Owner.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

Design-Builder is solely responsible for locating all existing underground installations by prospecting no later than two workdays prior to any scheduled excavation or trenching, whichever is earlier. Design-Builder must check all dimensions, elevations, and quantities indicated in this Contract within the same time period as set forth above for

prospecting underground installations. Design-Builder must lay out the Work in accordance with this Contract and must establish and maintain such locations, lines and levels. Wherever pre-existing work is encountered, Design-Builder must verify and be responsible for dimensions and location of such pre-existing work. Design-Builder must notify Owner of any discrepancy between the dimensions, elevations and quantities indicated in this Contract and the conditions of the Work Site or any other errors, omissions or discrepancies which Contract may discover during such inspections. Full instructions will be furnished by Owner should such error, omission, or discrepancy be discovered, and Design-Builder must carry out such instructions as if originally specified and without any increase in Contract Price.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence or willful conduct on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the

rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's

licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work under this Section 13.1.1, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted..

§ 13.1.3 Unless otherwise agreed to by the Parties, if the Owner suspends the Project for more than 90 cumulative days after the execution of the Design Build Amendment for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, which include but are not limited to, approving submittals, approving change orders, responding to requests for information, and making payments, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the

other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision in writing regarding any Claim submitted prior to final payment shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) request Design-Builder furnish additional supporting data, which shall be supplied within seven days, (5) suggest a compromise or (6) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part within seven days.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. Design-Builder shall still continue work while Parties mediate any dispute.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. If the Owner and Design-Builder do not select a method of mediation or binding dispute resolution within the time period stated herein and not withstanding any other provisions of Section 14, Claims will be resolved by litigation in a court of competent jurisdiction limited to the Circuit Court of Kane County, Illinois, or the US District Court for the Northern District of Illinois.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

This Contract and the rights of Owner and Design-Builder under this Contract will be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

All notices required or permitted to be given under this Contract must be in writing and are deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day

after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner must be addressed to, and delivered at, the following address:

Village of East Dundee

Village Administrator

120 Barrington Ave.

East Dundee, Illinois 60118

estorlie@eastdundee.net

with a copy to: Elrod Friedman LLP

Village Attorney for East Dundee

325 N. LaSalle St., Ste. 450

Chicago, IL 60654

Kelley.gandurski@elrodfriedman.com

Notices and communications to Design-Builder must be addressed to, and delivered at, the following address:

James McHugh Construction Co.

1737 South Michigan Avenue

Chicago, Illinois 60616

Attn: Andrew Totten (atotten@mchugh.com)

Attn: Tina Paries (tparies@mchugh.com)

The foregoing may not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means which includes e-mail to the above-referenced parties' last known e-mail addresses.

By notice complying with the requirements of this Section, Owner and Design-Builder each have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address is effective until actually received.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law, including the Illinois Freedom of Information Act, Illinois Local Records Act, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 Exhibit B, Insurance and Bonds
- .4 Exhibit C, Cost Proposal dated August 25, 2023
- .5 Exhibit D, Preliminary Schedule
- (Paragraphs deleted)
- .6 Exhibit E, Clarifications dated August 25, 2023

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

Andrew Totten, Vice President
(Printed name and title)

Exhibit A – Design Build Amendment TBD

Exhibit B – Bond and Insurance Requirements

Bonds

Unless otherwise agreed to by the parties, the Design-Build Team shall secure with a responsible corporate surety or corporate sureties, satisfactory bonds conditioned upon faithful performance by the Design-Build Team of all requirements under the contract and upon the payment of claims of material, men, and laborers thereunder. The Performance Bond shall be in the sum of not less than one hundred and fifteen percent (115%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the proposal. The Performance Bond shall convert to a Maintenance Bond in in the amount of twenty-five percent (25%) of the amount of the contract price plus all change orders and shall cover warranty of the work and materials for a period of two years after the recordation of the Notice of Completion. At the time of submitting the Performance Bond the surety shall submit to the Village of East Dundee the following:

- (a) The original bond; and
- (b) The original, or certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond.

All bonds must be issued by a surety company with an A.M. Best's rating of A-VII or better, be on the Treasure Department of approved sureties and be licensed to conduct surety business in the State of Illinois.

Insurance

All insurance issued in compliance with this section shall be issued in the form, and by an insurer or insurers, satisfactory to and first approved by the Village of East Dundee in writing. Certificates of insurance in the amounts required shall be furnished by the Design-Build Team to the Village of East Dundee prior to the commencement of work. All subcontractors should be insured under the Design- Build Team's policies or shall furnish separate certificates and endorsements for each contractor.

The Design-Build Team shall maintain adequate workers' compensation insurance including \$1,000,000 Employer's Liability insurance under the laws of the State of Illinois for all labor employed by Design-Build Team or by any Subcontractor under Design-Build Team who may come within the protection of such workers' compensation insurance laws.

The Design-Build Team shall maintain during the life of this Contract general liability insurance on an occurrence basis on a ISO GL 00 01 04/13 or equivalent form including bodily injury, property damage, personal injury & advertising and products & completed operations coverage in which the Village of East Dundee shall be named as an additional insured, and which shall protect the Design- Build Team or any subcontractor performing

work covered by the contract from claims which may arise from the operations under any contract entered into whether such operations shall be performed by the Design-Build Team or any subcontractor, or by anyone directly or indirectly employed by any one of them. Products & Completed Operations coverage should be maintained for a minimum of five (5) years or the statute of repose in the state of Illinois after completion of the contract.

The Design-Build Team shall maintain an Automobile Liability policy with a \$5,000,000 combined single limit per accident for bodily injury and property damage including hired and non-owned liability. The Village of East Dundee should be named as an additional insured.

The Design-Build Team shall maintain a Professional Liability E&O policy with a \$10,000,000 limit for the length of the contract and a minimum of five (5) years after completion of the project. The retroactive date of the policy must be on or before the effective date of the contract.

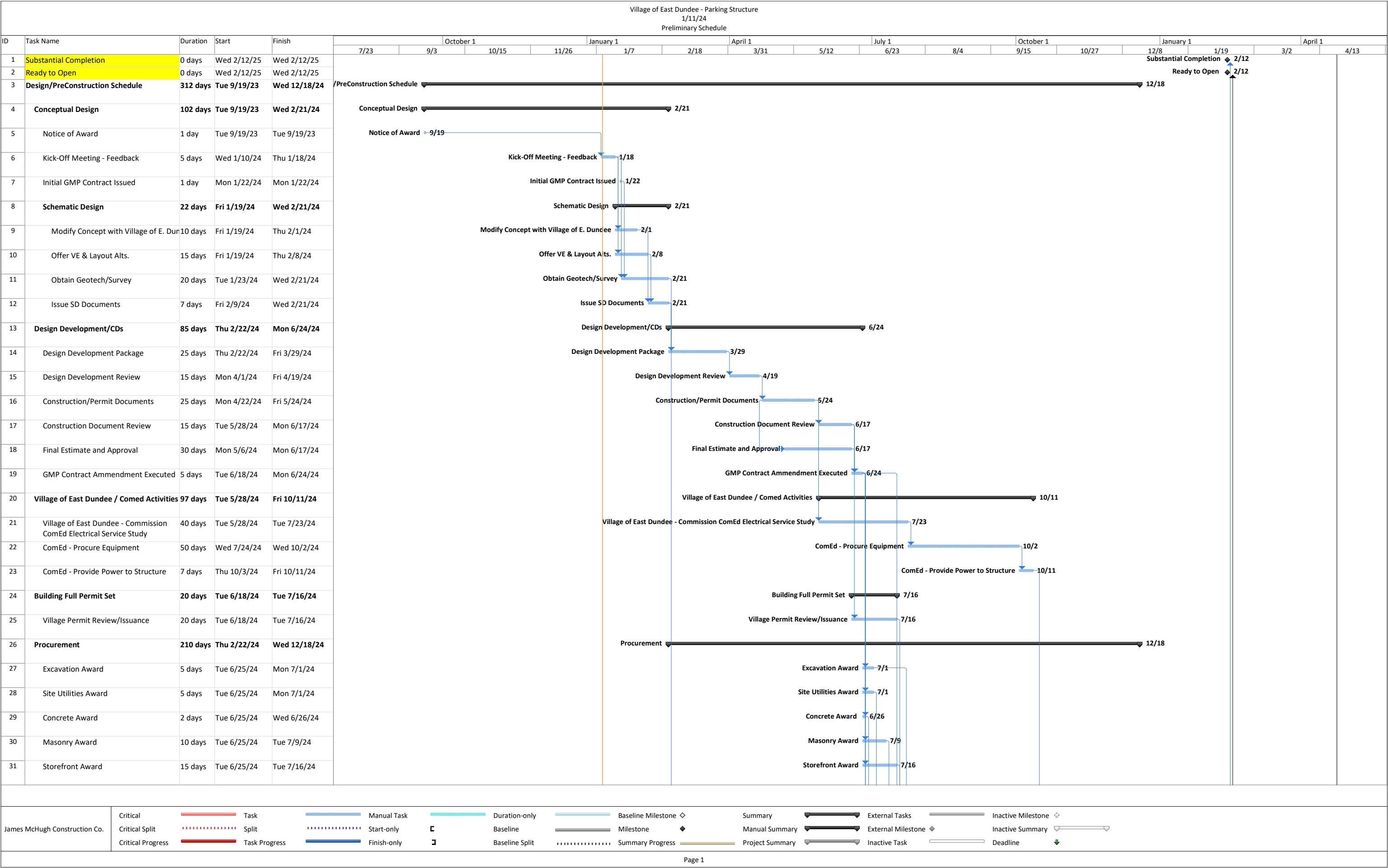
The Village of East Dundee and its elected or appointed officials, directors, officers, agents, employees, professional consultants, or volunteers shall be named as "Additional Insureds" under general, automobile and umbrella liability policies.

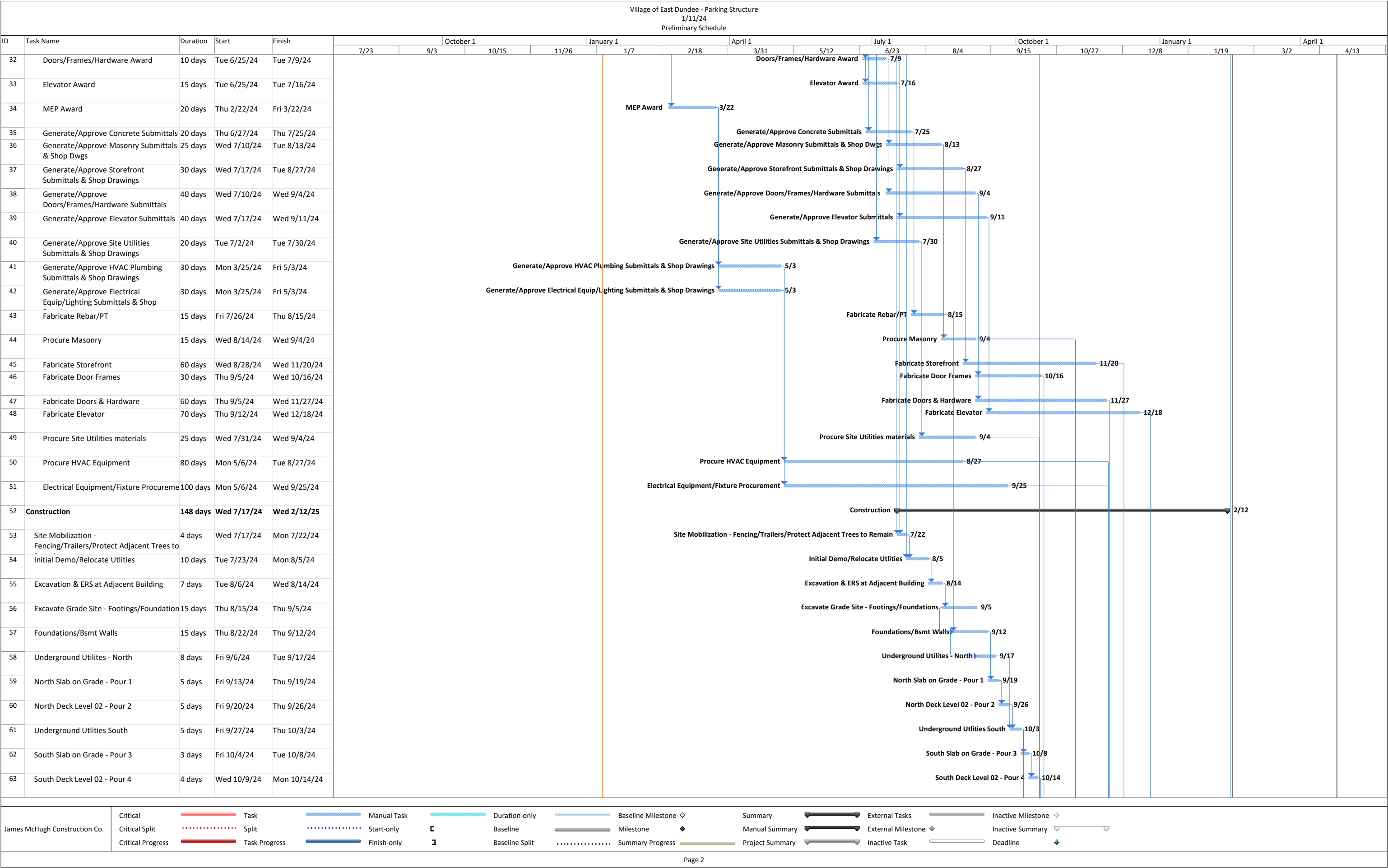
All insurance policies must be underwritten by a company with an AM. Best's rating of A-VII or better and be licensed to conduct insurance business in the state of Illinois.

The insurance requirements are further outlined below:

Workers' Compensation	
Coverage Workers' Compensation Employer's Liability	Minimum Limits Statutory coverage per the State of Illinois \$1,000,000
General Liability	
Coverage General Liability (Including Bodily Injury, Property Damage and Personal & Advertising Injury) Products-Completed Operations Liability Occurrence ISO GL 00 01 04 13 or its equivalent including Products & Completed operations	Minimum Limits \$25,000,000 per occurrence/aggregate \$25,000,000 per occurrence/aggregate
Automobile Liability Insurance	
Coverage Automobile Liability (Including owned, non-owned and hired automobiles, trucks and trailers)	Limits \$5,000,000 minimum single limit

Professional Liability Insurance		
Coverage	Limits	
Professional Liability	\$10,000,000	
<p align="center">Coverage may be written with a primary General Liability and Automobile Liability policy and additional limits via an Umbrella policy.</p>		
<p align="center">General Requirements</p>		
<p>Additional Insured - Village of East Dundee (VOED), its elected or appointed officials, directors, officers, agents, employees, professional consultants, volunteers or contractors shall be named as an additional insured under the General Liability, Automobile Liability, and Umbrella policies.</p>		
<p>Proof of Coverage - Design-Build Team shall provide VOED with a certificate of insurance annually including additional insured endorsements as required.</p>		
<p>Financial Strength - Such insurance and surety bonds shall be placed with one or more companies with an AM Best rating of A- or better, and financial size rating of VII or better.</p>		
<p>Waiver of Subrogation - Policies should include a Waiver of Subrogation in favor of VOED.</p>		
<p>Cancellation Requirements - All policies shall contain a provision that the coverage may not be cancelled or materially changed without first giving VOED not less than thirty (30) days prior written notice.</p>		





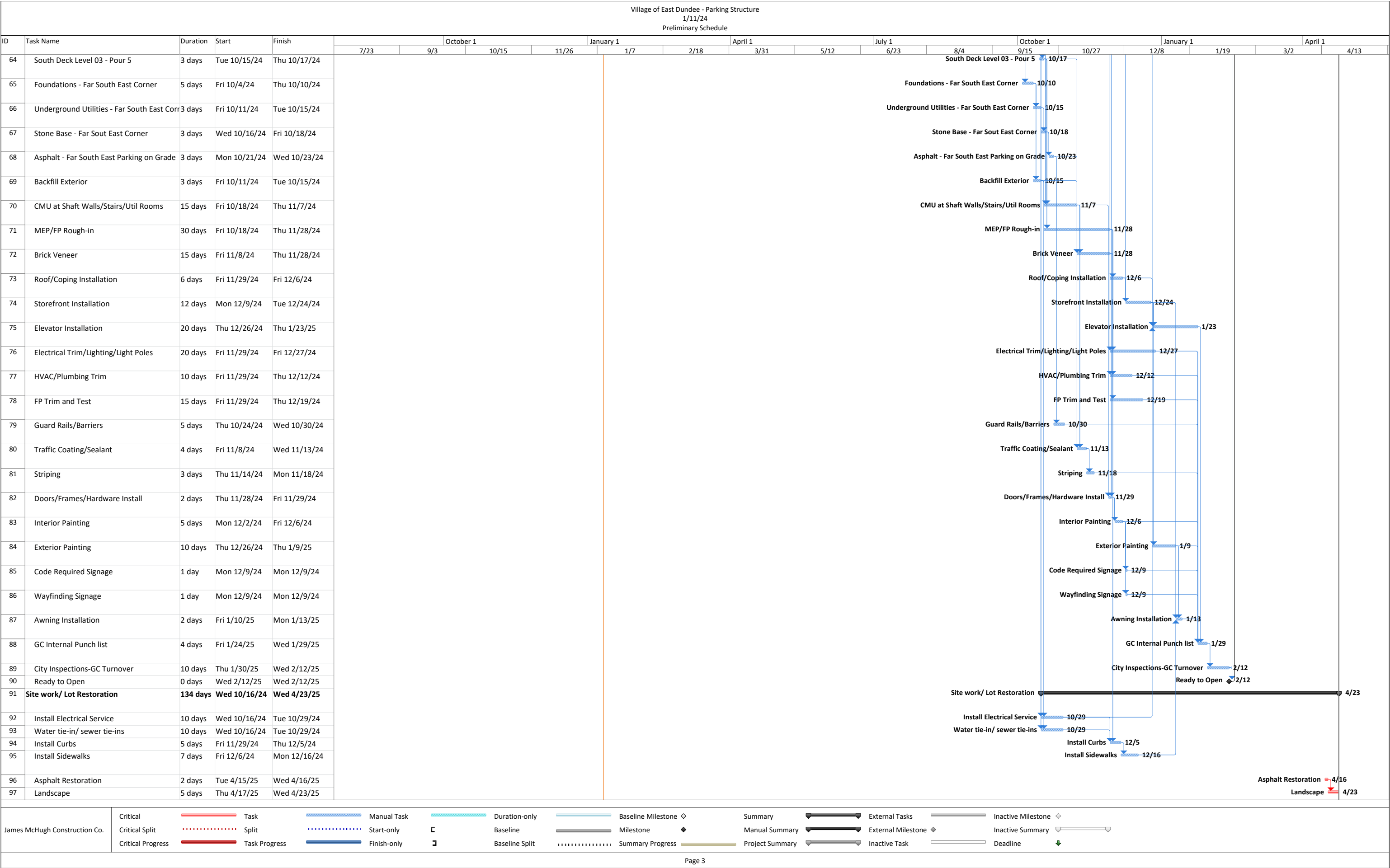


EXHIBIT E

CONFIDENTIAL / PROPRIETARY / TRADE SECRET DESIGNATION

This document and the information contained within it represent confidential, proprietary and trade secret information of James McHugh Construction Co. This document and its information are shared with the understanding and agreement of the recipient that they are at all times to be used and maintained in confidence, are to be shared with members of the recipient's project team on a strict need-to-know basis, and shall not be disclosed to third parties without the express permission of McHugh.

McHUGH

EAST DUNDEE PARKING STRUCTURE DESIGN-BUILD PROPOSAL CLARIFICATIONS – DATED AUGUST 25, 2023

McHugh Construction's **Design-Build Proposal** for the **East Dundee Parking Structure at 100 N River Street, East Dundee, IL** is based upon the **Request For Proposal** dated **June 14, 2023**, **McHugh's Design-Build Proposal** package dated **August 25, 2023**, and the clarifications stated below.

General Clarifications

1. **Proposal** is based solely on the following documents:
 - a. **Request For Proposal** prepared by **Village of East Dundee**, dated **June 14, 2023**;
 - b. Geotechnical Investigation Report, prepared by **Soil and Material Consultants, Inc.**, dated **April 07, 2023**;
 - c. Topographic Survey prepared by **Gerald L. Heinz & Associates, Inc.**, dated **January 20, 2023**;
 - d. **Addendum Memorandum** prepared by **Gerald L. Heinz & Associates, Inc.**, dated **July 28, 2023**;
 - e. **Addendum Memorandum with Email** prepared by **Gerald L. Heinz & Associates, Inc.**, dated **August 08, 2023**;
 - f. **Conceptual Drawings** prepared by **Desman**, dated **August 2023**;
2. Proposal is based upon a **April 2024** construction start.
3. Proposal **does not** include sales tax.
4. Our proposal is based on all ComEd service costs to be paid by the owner as ComEd will not provide this cost until the facility owner enters into a service engineering agreement.
5. We are relying on the owner provided Geotech report and soil borings. We have not included the cost for further Geotech services.
6. Environmental studies and reports are not included.
7. Proposal does not include an add alternate to provide photovoltaic shade structures over the rooftop parking at this time. We would expect the Village of East Dundee to enter into a service contract with an approved vendor, that vendor would provide the design, furnishing and installation as part of their agreement with the Village.
8. The owner must provide a plat of survey for the property.
9. Proposal does not include fasteners less than 1/2" in diameter in compliance with Illinois Steel Procurement Act as manufacturers cannot meet this requirement.
10. We have included 5 lost weather days in our construction schedule.
11. Proposal does not include the following customary Owner related costs/expenses:
 - a. Special or hazardous or classified material testing, handling, disposal or remediation.
 - b. Cost to modify any systems or structures for publicly or privately-owned utilities or entities located outside of the property lines or utilities that are attached to any surrounding structures.
 - c. We have included an allowance of \$20,000 for removal of piles, asphalt, old foundations or other underground obstructions
 - d. Conditions identified in the geotech report shall not constitute a specifically identified condition at any location other than at that particular boring or location. Generalizations made about site conditions shall not constitute a specifically identified condition.
 - e. Utility relocation cost and fees as required.

12. Proposal recognizes that MBE/WBE/DBE Participation and Local/Preferential Hiring are to be considered. We will work in good faith to identify and engage certified DBE firms for this project. This process will evolve as the design and scope is further developed with the Village of East Dundee to fulfill DBE participation.

Insurance, General Contractor's Bonds & Safety

13. Proposal does not include the requirement on page 16 of the RFP under the General Requirements- Additional Insured the Owner is requiring that VOED et al be added as an additional insureds on the Professional Liability policy. This requirement cannot be met by any RFP respondent. Professional liability policies do not add third parties as additional insureds.

Permits / Codes / City / Utilities

14. Contractor shall coordinate with Owner and utility companies and shall use its best efforts to obtain service in accordance with the project schedule requirements but shall not be responsible for delays or resulting costs incurred if the temporary or permanent utility work is not completed when required by Contractor.
15. Proposal does not include cut-off/relocation fees for any existing utilities (water, sewer, telephone / data or electrical etc.).
16. Contractor **has** included costs for temporary utility consumption costs during construction. Temporary and Permanent power service (ComEd) to be supplied by Owner. At the time of substantial completion or beneficial occupancy the utility cost will become the responsibility of the Owner.

LEED/Sustainability

17. Proposal does not include costs to meet sustainability requirements unless clearly specified in the documents – no requirements provided.

Divisions 2, 31-33

1. Proposal assumes that the excavated material on site is free of contamination and will be accepted by landfills non-hazardous non special waste. Geotechnical report did not indicate the existence of any soil requiring remediation, special disposal, or environmental fees. No contaminated soil remediation included.
2. Proposal does not include the cost to relocate any existing utilities. We will protect any existing utilities that are not in conflict with the proposed construction.
3. Proposal includes excavation to design subgrade only. Proposal does not include any undercut of unsuitable soils. Any unsuitable soil would be handled as an additional cost.
4. Proposal includes earth retention as required to protect adjacent properties.
5. Proposal does not include removal of existing living trees on adjacent sites unaffected by this scope of work, however, these trees may be damaged by earthwork occurring within the project site
6. Proposal anticipates that the Owner will assume all responsibility for existing hazardous materials, contaminated soils, underground storage tanks, asbestos, etc., and the associated disposal costs and documentation. The Owner will be identified as the generator of record on waste manifests if hazardous materials are encountered.
7. Proposal assumes existing buildings on the southwest corner of the site are on shallow foundations and do not have basements.
8. Proposal assumes existing domestic water utility is available for tap on Hill Street.
9. Proposal assumes existing storm water line is available for tap on River Street.
10. Proposal includes new concrete sidewalk with tactile tiles tie-ins at the southeast corner of Hill St. and River St only; no crosswalks or sidewalks at or to the other three street corners are included.

Division 3

1. Owner acknowledges that exposed concrete elements of the project will exhibit normal cracking and that despite architectural details that include various measures to prevent water migration into the building, water may nevertheless migrate into the building and that Contractor is not responsible for water migration through these concrete cracks unless the cracks and water migration were caused solely by Contractor's deficient construction.
2. Proposal anticipates standard grey cement for all concrete.

Division 4

1. Proposal includes a brick/masonry veneer as utility brick sizing in standard colors.
2. Proposal includes CMU (painted) in lieu of brick cladding on the elevator shaft at the inside of the vestibule.

Division 14

1. Proposal does not include elevator materials in compliance with Illinois Steel Procurement Act as the elevator manufacturers cannot meet this requirement.

MEP/FP General

1. Proposal anticipates that the MEP/FP trades will be design-build, and the MEPFP subcontractors will provide Permit Drawings. The Design-Build subcontractors will be the Engineers of Record.

Divisions 15, 21, 22, and 23

Fire Protection

1. Proposal is based on a design-build fire protection system with entire building to be provided with sprinkler protection.
2. Proposal includes a Dry Pipe Type System with (2) Automatic Dry Standpipes.

Plumbing

1. Proposal includes a Triple Oil Basin.
2. Proposal includes an Elevator Pit Sump Pump.
3. Proposal includes Hose Bibs on each level.

Divisions 16, 26, 27, and 28

Electrical

1. Proposal includes ceiling mounted garage high bay LED fixtures with occupancy sensors, lighting at stairwells, back of house lighting, Exterior Decorative Type lighting, Pole Mounted lighting with single and double heads with nuisance light limiting hoods, and Battery Pack Exit Signs.
2. Proposal includes one empty 4" PVC conduit to property line for Low Voltage service.
3. Proposal includes a code compliant Fire Alarm system in full conduit.
4. Proposal includes conduit and power provisions to two (2) 1st floor EV car charger locations.

Memorandum

To: Village President and Board of Trustees

From: Franco Bottalico, Assistant to the Village Administrator

Subject: Local Liquor Control Commission Manual

Date: January 22, 2024



Action Requested:

Staff recommends Village Board approval of a resolution adopting the Liquor Commission enforcement and hearings manual.

Summary:

At the November 8, 2023 Local Liquor Control Commission ("Commission") meeting, the Commission reviewed a draft policy for prosecuting local liquor code violations and that provides direction on a process for notification, adjudication, and disposition, and also serves as guidance to the Commission. The purpose of this resolution is to inform the Board of the Commission's policy going forward.

Staff have been working with several stakeholders over the course of the past year to improve the process for the prosecution of local liquor code violations. Previously, the process was inconsistent, not well documented, and generally unclear. To provide the community, the Village Board, and local liquor licensees with clear expectations and a documented process that will be consistently followed, staff worked with the Village Attorney to provide the Commission with the manual for their review.

At the November 8th meeting, the following was decided: 1) once a *notice to liquor commission* form has been issued by the police department to a liquor license holder/employee of the establishment, Staff will share a copy of that form along with the police report narrative with the Commissioners; and the Commission also agreed that 2) the Village President, as the Liquor Commissioner, will work with the police chief, and the Village prosecutor, Joseph H. McMahon, on determining if charges can be brought against a liquor license holder (Section IV A. of the Manual).

Attachments:

Resolution
Manual

RESOLUTION NUMBER __-24

A RESOLUTION OF THE VILLAGE OF EAST DUNDEE,
COOK AND KANE COUNTIES, ILLINOIS, ADOPTING
THE LIQUOR COMMISSION ENFORCEMENT AND HEARINGS MANUAL

WHEREAS, the Village of East Dundee ("**Village**") is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Illinois General Assembly sets forth its laws governing alcoholic beverages in the "Liquor Control Act of 1934," 235 ILCS 5 *et seq* ("**Act**"), which authorizes local governments to enact regulations regarding the sale, classification, and consumption of alcoholic beverages; and

WHEREAS, the Village sets forth its rules and regulations regarding alcoholic beverages in Chapter 116 ("**Liquor Ordinance**") of the Code of the Village of East Dundee ("**Code**"); and

WHEREAS, pursuant to Section 116.02 of the Liquor Ordinance, the East Dundee Liquor Control Commission ("**Liquor Commission**") administers the laws of Illinois and the Village pertaining to alcoholic beverages; and

WHEREAS, Sections 32.10(F) of the Code requires the Liquor Commission to adopt bylaws governing procedures to regulate its business as it deems necessary; and

WHEREAS, on November 8, 2023, the Liquor Commission approved the "Liquor Enforcement and Hearings Manual" ("**Liquor Manual**"), which establishes procedures for prosecuting violations of the Liquor Ordinance, in the form attached to and, by this reference, made a part of this Resolution as **Exhibit A**; and

WHEREAS, the Village now desires to adopt the Liquor Manual to ensure that the Village complies with all notice, adjudication, and disposition requirements pertaining to violations of the Liquor Ordinance; and

WHEREAS, the Village has determined that it will serve and be in the best interest of the Village and its residents to adopt the Liquor Manual pursuant to this Resolution;

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION 1: Incorporation. The foregoing recitals are hereby incorporated into, and made a part of, this Resolution as the findings of the President and Board of Trustees of the Village of East Dundee.

SECTION 2: Ratification of Handbook. The President and Board of Trustees of the Village adopts the Liquor Manual, on behalf of the Liquor Control Commission, in substantially the form attached to this Resolution as ***Exhibit A***; and

SECTION 3: Severability. If any Section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 4: Repeal. All resolutions, motions or parts thereof in conflict with this Resolution shall be and the same are hereby repealed.

SECTION 5: Publication. This Resolution shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this ____ day of January, 2024, pursuant to a roll call vote as follows:

AYES:

NAYES:

ABSTAIN:

ABSENT:

APPROVED by me this ____ day of January, 2024.

Jeff Lynam, Village President

ATTEST:

Katherine Holt, Village Clerk

EXHIBIT A

LIQUOR COMMISSION HANDBOOK AND POLICY

(attached)



LIQUOR ENFORCEMENT AND HEARINGS MANUAL

DATED JANUARY 17, 2024

TABLE OF CONTENTS	PAGE
SECTION I. GOVERNING LAW	1
A. LIQUOR CONTROL ACT OF 1934	1
B. LIQUOR ORDINANCE OF THE VILLAGE	1
SECTION II. PERSONNEL	1
A. THE LIQUOR COMMISSION	1
B. LIQUOR ORDINANCE PROSECUTOR.....	1
C. COUNSEL FOR THE LIQUOR COMMISSION.....	1
SECTION III. LIQUOR COMMISSION MEETINGS	2
SECTION IV. LIQUOR HEARING PROCEDURES	2
A. DETERMINATION OF CHARGES.....	2
B. PRE-HEARING PROCEDURES	3
C. PLEAS OF LIABLE	3
D. LIQUOR HEARINGS	3
E. FINDINGS AFTER HEARING.....	4
F. APPEAL	4
Attachment - Notice of Hearing Template	6

SECTION I. GOVERNING LAW

A. Liquor Control Act of 1934

Illinois sets forth its laws governing alcoholic beverages in the “Liquor Control Act of 1934,” 235 ILCS 5 *et seq.* (“**Act**”). The Act authorizes local governments such as the Village to enact regulations regarding the sale, classification and consumption of alcoholic beverages. This authorization includes the classification of liquor licenses, the regulation or prohibition of the presence of persons under the age of 21 on the premises of establishments where alcoholic liquor is served for onsite consumption, the establishment of further regulations not inconsistent with law as the public good and convenience may require, and the provision of penalties for the violation of regulations and restrictions.

B. Liquor Ordinance of the Village

The Village’s rules and regulations regarding alcoholic beverages is in Chapter 16 of the “Code of the Village of East Dundee” (“**Liquor Ordinance**”). The Liquor Ordinance governs liquor licenses and sets forth regulations regarding the service and consumption of alcoholic beverages within the Village. The Liquor Ordinance specifies offenses relating to alcoholic beverages and distinguishes between conduct applicable to liquor license holders (§116.08) and conduct applicable to non-license holders (§116.09).

SECTION II. PERSONNEL

A. The Liquor Commission

The Liquor Ordinance designates the Village President as the local liquor commissioner (“**Liquor Commissioner**”) and charges the Liquor Commissioner with the administration of the laws of the Village and the state regarding the sale of alcoholic beverages. The Liquor Commissioner may appoint two Village trustees to serve as assistant liquor control commissioners. The Liquor Commissioner and the assistant liquor control commissioners constitute the Village’s Local Liquor Control Commission (“**Liquor Commission**”). The Liquor Commissioner is the presiding officer of meetings and hearings of the Liquor Commission.

B. Liquor Ordinance Prosecutor

The Village has designated a prosecutor for violations of the Liquor Ordinance (“**Prosecutor**”). The Prosecutor is responsible for interviewing and preparing the Village’s witnesses, reviewing police reports, compiling evidence, drafting the complaint, and prosecuting the respondent-license-holder. Prior to filing a complaint, the Prosecutor should work with the Village Police Department to determine whether the evidence is sufficient to support a violation. Once the Prosecutor determines that a complaint should be filed against a respondent for a violation of the Liquor Ordinance, the Prosecutor should forward the complaint to the counsel for the Village’s Local Liquor Control Commission (“**Commission**”).

C. Counsel for the Liquor Commission

Counsel for the Liquor Commission is responsible for the administrative business of the Commission. Counsel for the Liquor Commission arranges the court reporter and location of the liquor hearing (“**Hearing**”) and assists the Liquor Commissioner in all procedural and legal aspects of a Hearing. This includes assistance in the forming of motions, and guidance for

parliamentary and evidentiary issues. Once a determination is made by the Liquor Commission, Counsel for the Liquor Commission drafts the order with the findings of the Liquor Commission and represents the Village in appeals before the Illinois Liquor Control Commission ("**State Commission**").

SECTION III. LIQUOR COMMISSION MEETINGS

The Liquor Commission is a public body of the Village and is subject to the "Open Meetings Act," 5 ILCS 120 et seq ("**OMA**"). As such, all meetings and hearings before the Liquor Commission must be open to the public unless an exception delineated in the OMA applies. The Liquor Commission must provide public notice 48 hours in advance of its meetings, must have an agenda for all meetings, and must keep and approve written minutes of its meetings.

As a public body, the Liquor Commission should decide upon and approve rules of procedure to assist in the orderly conduct of its meetings. Public bodies often adopt Robert's Rules of Order to govern the proceedings of meetings where it is not in conflict with its own rules of procedure.

The Liquor Commission conducts hearings on alleged violations of the Liquor Ordinance. The Liquor Commission hears testimony from respondents and witnesses, makes rulings on the admissibility and relevance of evidence, decides on whether the Village has sufficiently proven a violation of the Liquor Ordinance, and what penalty should be imposed.

Coordination of the schedules of the Liquor Commission, the Prosecutor, respondents and witnesses has led to significant delays in the commencement and conclusion of hearings. Because of this, the Liquor Commission should approve and adopt a schedule with regular meeting dates in which to conduct the hearings. In the event that no hearings or other business are set for a regularly scheduled date, the meeting may be canceled and notice provided in accordance with the OMA. Counsel for the Liquor Commission will notify all parties in advance that the regularly scheduled meeting is canceled.

SECTION IV. LIQUOR HEARING PROCEDURES

A. Determination of Charges

When the Village's Police Department receives notice that there has been a violation of the Liquor Ordinance at the premises of a liquor license holder, an officer will report to the site of the complaint, conduct an investigation, and complete any case report or documentation describing the incident. After concluding the investigation, the officer may: (i) choose not to issue a citation, or (ii) issue a citation for a minor violation. Nothing is intended to prohibit an officer from making arrests during the investigation, if the officer deems it appropriate.

A minor violation is a violation in which: (i) the licensee has not been issued a complaint in the past year; (ii) there is no allegation of violence, injury, or property damage during the incident; (iii) the incident does not result in an arrest; and (iv) there are no more than two citations that are issued for that incident. If the officer issues a citation for a minor violation, such citation will inform the respondent that they are alleged to have violated the Liquor Ordinance and that a notice will follow to inform them of a hearing date.

For major violations (*i.e.*, habitually offending establishments, brawls, incidents leading to an arrest), the officer should not issue the citation, but should forward the case report and related

materials to the Prosecutor and the Police Chief. The Prosecutor will work with the Police Chief to analyze the materials and conduct necessary interviews to determine the charges to be issued.

If the Prosecutor approves charges, the Prosecutor will incorporate the charges into the Notice of Hearing template ("**Notice of Hearing**") and forward it to Counsel for the Commission.

B. Pre-hearing Procedures

Once Counsel for the Liquor Commission receives the Notice of Hearing, they will coordinate the liquor hearing by arranging the court reporter, drafting the Liquor Commission's meeting agenda, and coordinating with the Police Department to serve the Notice of Hearing to the respondent. Prior to the meeting, staff liaison to the Liquor Commission will provide a packet with all relevant materials and memoranda, as needed, and minutes of previous meetings. The hearing must be held at least three days after service of the Notice of Hearing to the respondent. Counsel for the Liquor Commission will also prepare the meeting packet for the Liquor Commission, which will include the agenda, the Notice of Hearing, copies of the Village's evidence, and a bench memorandum. Counsel for the Liquor Commission will ensure that a quorum of the Liquor Commission will be present at the Liquor Commission meeting.

C. Pleas of Liable

The Liquor Commission may not accept a plea of liable from a respondent without a hearing. Section 7-5 of the Act requires a public hearing before the Liquor Commission may order any fine, suspension, or revocation. However, to increase efficiency, the respondent should be given an opportunity to communicate their intention to plea liable or not liable in advance of their hearing. Negotiations should be conducted between the respondent and the Village's liquor prosecutor. In the event that the parties reach a contemplated plea agreement, such can be heard, considered, and approved or rejected by the Liquor Commission at a public hearing. Hearings are conducted at regularly scheduled meetings of the Commission.

D. Liquor Hearings

Hearings are conducted during scheduled meetings of the Commission. Hearings before the Liquor Commission should proceed in the following order:

1. Opening statement by Prosecutor
2. Opening statement by Respondent
3. Prosecutor presents case-in-chief
4. Respondent cross-examines each witness after testimony
5. Liquor Commission questions each witness
6. Respondent presents case-in-chief
7. Prosecutor cross-examines each witness after testimony
8. Liquor Commission questions each witness
9. Prosecutor presents rebuttal, if any
10. Closing statement by Prosecutor
11. Closing statement by Respondent

Prior to, during, or after the hearing, for good cause shown, the Liquor Commission can continue the matter to a date certain. The Liquor Commission should endeavor to continue the hearing to the regularly scheduled dates. Upon the conclusion of a hearing, the Liquor Commissioner should make a finding as to whether the respondent is liable or not liable for each of the counts alleged

in the Notice of Hearing. In order to make any decision on the matter, including continuing the matter or making a determination of liability, the Liquor Commissioner should solicit a motion and a second from a Liquor Commission member. For purposes of clarity, a motion as to a finding of liability may be phrased as in the following example: *“I motion that this Commission finds that the Village has met its burden as to Counts 1 and 2 and has failed to meet its burden as to Count 3.”* It is good form that the Liquor Commission member making the motion should not speak against their own motion during deliberations. However, the Liquor Commission member seconding the motion is free to speak against the motion. After a motion is made and seconded, the Liquor Commission should enter into public deliberations to discuss the motion. The Liquor Commissioner may end deliberations once it is determined that the Liquor Commission has concluded its discussions.

E. Findings after Hearing

Once the Liquor Commission has finished deliberating, the hearing is concluded. The Liquor Commissioner should call for a vote for a finding of liability or a finding of no liability. The burden of proof to find that a violation exists is preponderance of the evidence, which means that a violation is more likely than not to have occurred. Votes should be conducted by roll call. All actions and findings of the Liquor Commission must be approved by a majority vote. As the Liquor Commission is a three-person body, at least two votes are required for approval. If a motion for a finding of liability on a particular count fails, then the Village is deemed not to have met its burden and the respondent is accordingly not liable for that count. Alternatively, if the motion for a finding of liability on a given count is approved, the respondent is deemed liable for that count. Because the Village carries the burden of proving a violation, a tie vote will result in a finding of not liable.

After a vote of liability, the Liquor Commission should determine the appropriate penalties by separate motion. The Liquor Commission may revoke or suspend the liquor license of the respondent. Suspension may not exceed a duration of 30 days. In lieu of or in addition to revocation or suspension, the Liquor Commission may levy fines against the respondent. The Act limits fines to a maximum of \$1000 for a first violation within a 12-month period, \$1,500 for a second violation within a 12-month period, and \$2,500 for a third or subsequent violation within a 12-month period. Each day on which a violation continues constitute a separate violation, though no more than \$15,000 in fines may be imposed against any respondent during the period of their license. Though the Act does not explicitly provide for it, local liquor commissions in other communities have also ordered respondents to implement a security plan or to reimburse the municipality's hearing costs. Such additional penalties have not been reversed by the Illinois Liquor Control Commission (“**State Liquor Commission**”).

Once the Liquor Commission has made findings of liability, Counsel for the Liquor Commission will draft an order reflecting those findings. The members of the Liquor Commission will separately review the order for correctness and sign the final order. The final order will be issued to the respondent.

F. Appeal

The respondent, the Village, any resident of the Village, or any interested party may appeal the decision of the Liquor Commission within 20 days of date of the order. Findings of the Liquor Commission are reviewed by the State Liquor Commission. In reviewing the propriety of the order or action of the Commission, the purview of the State Liquor Commission is limited to three issues:

- (a) whether a local commission has proceeded in the manner provided by law;

- (b) whether a local commission's order is supported by the findings; and
- (c) whether the findings are supported by substantial evidence in the light of the whole record.

Within 30 days of the date of the hearing of the appeal, the State Liquor Commission must render a decision sustaining or reversing the order of the Commission.

Attachment:

- Notice of Hearing Template

ATTACHMENT
NOTICE OF HEARING TEMPLATE

**LOCAL LIQUOR CONTROL COMMISSION
VILLAGE OF EAST DUNDEE, ILLINOIS**

**IN THE MATTER OF THE REVOCATION,
SUSPENSION OR OTHER PENALTIES IN
REGARD TO THE LIQUOR LICENSE OF**

[_____]

No. 202__ LH ____

NOTICE OF HEARING

**TO: [Licensee]
[Address Line 1]
East Dundee, Illinois 60118**

PLEASE TAKE NOTICE that on the ____ **day of** _____, **2023**, at the hour of **5:30 p.m.**, a **public hearing** will be held in the East Dundee Village Hall located at 120 Barrington Avenue, East Dundee, Illinois, regarding the imposition of disciplinary measures to the retail liquor license of [_____] ("**Licensee**"), located at [_____] East Dundee, Illinois ("**Premises**"). The public hearing will determine whether the liquor license should be suspended or revoked or whether a fine should be levied for the reasons hereinafter set forth:

COUNT I

That on _____, 202__ at or about __:__ a.m./p.m. or an earlier undetermined time, the Licensee [*description of the incident*] occurred within the premises. Such an incident constitutes a violation of the Village of East Dundee Code of Ordinances, Title XI, Chapter 116, Section 116.____.

COUNT II

That on _____, 202__ at or about __:__ a.m./p.m. or an earlier undetermined time, the Licensee [*description of the incident*] occurred within the premises. Such an incident constitutes a violation of the Village of East Dundee Code of Ordinances, Title XI, Chapter 116, Section 116.____.

PLEASE TAKE FURTHER NOTICE that at said public hearing you may 1) be represented by an attorney; 2) schedule a hearing on the merits of the matters set forth in the counts described above where you may produce witnesses and introduce evidence on your own behalf; and 3) negotiate a proposed settlement of the matters set forth in the counts described above for consideration by the Local Liquor Control Commission. If you fail to appear for this public hearing, the Commission may make a determination of liability and may impose a penalty in your absence, including, without limitation, the suspension or revocation of your Village of East Dundee liquor license and the imposition of a monetary fine. Such penalties will be imposed without further notice to you.

Jeff Lynam
Local Liquor Control Commissioner
Village of East Dundee

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Notice of Hearing to _____,
_____, East Dundee, Illinois 60118, by personal delivery, on _____,
2023, at _____ a.m./p.m. to _____.

Print Name: _____
Dated: _____, 2023

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ day of _____, 2023.

Notary Public

Received By: _____

Print Name: _____

Memorandum



To: Village President and Board of Trustees

From: Franco Bottalico, Assistant to the Village Administrator

Subject: Special Use Request for a Banquet Hall at 201 Christina Dr. Units A and B

Date: January 22, 2024

Action Requested

The Planning, Zoning, and Historic Commission (PZHC) recommend Village Board approval of a special use permit ordinance for a banquet hall, as described in Section 157.065(A)(1)(d)(2) of the Zoning Ordinance, for the property located at 201 Christina Dr. Units A and B, East Dundee, IL 60118 (PIN 03-25-150-002) located in the M-1 Limited Manufacturing District.

Background

At the May 15, 2023 Village Board meeting, the Board approved Ordinance 23-24 which allows a banquet hall to be approved by special use permit ordinance in the B and M districts. In addition to the special use locations being amended in that ordinance, the Board also adopted the below definition of a Banquet Hall:

 BANQUET HALL. A business conducted on premises at which the exclusive activity is the hosting of private events with food and/or beverage consumption at a prearranged, fixed unit price, and at which alcoholic liquor may or may not be served or sold incidental to such services, provided that each of such private event is prearranged under the sponsorship of a particular person or organization.

Summary

Staff has received a special use application from Jeff Newing and Joe Palumbo of Pal 201 LLC ("Applicant") for a proposed banquet hall to be called "Magnum Opus" at their existing building of 201 Christina Drive ("Property") in units A and B. The Property is approximately 20,000 square feet and has been newly remodeled. Their existing use is office and warehouse where it currently houses several of their privately owned exotic vehicles.

The Applicant anticipates hosting approximately four events per month with up to 150 guests at each event during off-business hours that will not conflict with other activities in that area during the business hours. Food and beverages would be catered in with each catering company complying with our Village codes and liquor licenses required. The Building Inspector, the Fire Protection District, and the Applicant have agreed to a 350-person occupancy load. The Fire Protection District's memo is attached to this memo.

At the January 18, 2024 public hearing, the Applicant stated he anticipates there to be no more than 150 guests at a time during these high-end events which would typically be tailored to high-caliber clients. Applicant stated that a management company may be hired to facilitate the rentals of their events.

It appears that this use will act more as a private event space or conference space rather than a traditional wedding banquet hall one may associate with the term “banquet hall”. With that being said, the PZHC agreed this would be an acceptable use for this space considering the Applicant owns a majority of the surrounding businesses.

Staff has recommended certain conditions for the PZHC to consider, and during their discussion the PZHC built off of staff’s recommendations and formed the below conditions along with their recommendation of approval for the Village Board to consider:

1. This special use permit is specifically limited to units A and B of 201 Christina Drive as depicted in the site plan attached to the Application;
2. Physical outdoor marketing for specific or individual event(s), or displays, or lighting promoting or advertising of the banquet hall’s specific or individual events, other than what is permitted under the Village Code or the Property’s PUD approvals, is prohibited without the prior approval of the Village Board;
3. No banquet activities may be conducted on the Property between the hours of 12:00 a.m. to 9:00 a.m. These hours may be extended or modified by the approval of the Village Board;
4. All entertainment and banquet-related events and rentals must be confined to the interior of units A and B of 201 Christina Drive; and
5. The Property must comply with all applicable requirements of the Village Code, including without limitation all requirements for the service and sale of alcoholic liquor, all noise regulations and requirements and all fire and building codes and standards.

Attachments

Ordinance

Redacted Application with documents

Fire Protection District Memo

Certificates of Publication in the Daily Herald

ORDINANCE NUMBER 24 - __

**AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE, COOK
AND KANE COUNTIES, ILLINOIS GRANTING A SPECIAL USE PERMIT FOR A
BANQUET HALL, AS DESCRIBED IN SECTION 157.065(A)(1)(d)(2) OF THE
ZONING ORDINANCE, FOR THE PROPERTY LOCATED AT 201 CHRISTINA DRIVE,
UNITS A AND B, EAST DUNDEE, IL 60118, PIN 03-25-150-002, LOCATED IN THE
M-1 LIMITED MANUFACTURING DISTRICT**

WHEREAS, the Village of East Dundee ("Village") is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, pursuant to Section 157.224 of the Village of East Dundee Zoning Ordinance ("Zoning Ordinance") and the Village's home rule authority, the Village President and Board of Trustees of the Village ("Corporate Authorities") may provide for and allow the classification of special uses in its zoning districts; and

WHEREAS, pursuant to the Zoning Ordinance, any person owning or having an interest in property may file an application to use such property for one or more of the special uses provided for in the zoning district in which the land is situated; and

WHEREAS, Jeff Newing and Joe Palumbo of Pal 201 LLC ("Applicant") operate the building at 201 Christina Drive, which is currently used as an office and warehouse ("Property"); and

WHEREAS, Applicant filed an application ("Application") with the Village seeking a special use permit to operate a banquet hall at the Property, as more fully described in the Application; and

WHEREAS, public notice of a public hearing was published in the Northwest Suburbs and Fox Valley Daily Heralds on December 22, 2023 regarding the Application before the Village's Planning and Zoning Commission was duly given, and a public hearing was held on the Application on January 18, 2024; and

WHEREAS, the Planning and Zoning Commission reviewed the standards set forth in Section 157.224 of the Zoning Ordinance for a special use permit and recommended approval of the Application, and related findings of fact; and

WHEREAS, the Corporate Authorities have reviewed the Planning and Zoning Commission's findings of fact and recommendations on the Application, and find it to be in the best interests of the health, safety and welfare of its residents to approve the requested special use for a banquet hall on the Property, subject to the conditions contained within Section 3 of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Village President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

SECTION 1: Incorporation. That each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Ordinance.

SECTION 2: Approval of Special Use Permit. The Corporate Authorities hereby approve the Application and grant a special use permit for the Property legally described as:

PIN 03-25-150-002

LEGAL DESCRIPTION –The legal description for the Property is attached hereto and incorporated herewith as **Exhibit A** and Units A and B in the site plan herewith as **Exhibit B**;

Commonly known as 201 Christina Drive, East Dundee, Illinois 60118 for a banquet hall.

SECTION 3: Conditions of Approval. That the special use permit granted herein shall be constructed, operated and maintained in accordance with any plans and diagrams submitted as part of the Application, and shall be subject to the following terms and conditions:

1. This special use permit is specifically limited to units A and B of 201 Christina Drive as depicted in the site plan attached to the Application;
2. Physical outdoor marketing for specific or individual event(s), or displays, or lighting promoting or advertising of the banquet hall's specific or individual events, other than what is permitted under the Village Code or the Property's PUD approvals, is prohibited without the prior approval of the Village Board;
3. No banquet activities may be conducted on the Property between the hours of 12:00 a.m. to 9:00 a.m. These hours may be extended or modified by the approval of the Village Board;
4. All entertainment and banquet-related events and rentals must be confined to the interior of units A and B of 201 Christina Drive; and
5. The Property must comply with all applicable requirements of the Village Code, including without limitation all requirements for the service and sale of alcoholic liquor, all noise regulations and requirements and all fire and building codes and standards.

SECTION 4: Failure to Comply with Conditions. The failure of Applicant, or its successors or assigns, to comply with one or more of the conditions listed in Section 3 above shall be grounds for the potential revocation of the Special Use Permit. Upon notice, a hearing will be held. The notice will provide Applicant 14 days in which to

respond and answer. A hearing will be held no sooner than 30 days after the service of the notice.

SECTION 5: Severability. That if any Section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 6: Repeal. That all ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

SECTION 7: Effect. That this Ordinance shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

PASSED this ____ day of _____ 2024 pursuant to a roll call vote as follows:

AYES: _____

NAYES: _____

ABSENT: _____

APPROVED by me this ____ day of _____ 2024.

Jeffrey Lynam, Village President

ATTEST:

Katherine Diehl, Village Clerk

Published in pamphlet form this _____ day of _____ 2024, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on _____, 2024.

The Applicant acknowledges hereby the reasonableness of the above and foregoing terms and conditions in the Ordinance, and hereby accepts the same.

By: _____
Applicant

Date: _____, 2024

EXHIBIT A

LEGAL DESCRIPTION

LOT 2 OF TERRA BUSINESS PARK SUBDIVISION BEING A SUBDIVISION OF PART OF SECTION 24 AND SECTION 25, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 26, 2007 AS DOCUMENT NUMBER 2007K124883, IN KANE COUNTY, ILLINOIS.

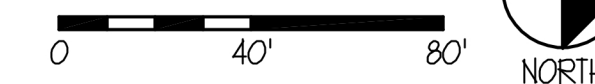
1. ARCHITECTURAL SITE PLAN IS PROVIDED AS A REFERENCE ONLY. SEE CIVIL DRAWINGS FOR ANY DIMENSIONS.

1. ALL ACCESSIBLE PARKING SPACES AND ACCESS ISLE SURFACES SHALL BE A LEVEL SURFACE NOT EXCEEDING 1:50 (2%) IN ALL DIRECTIONS

1. ALL BUILDING DOORS SHALL BE ACCESSIBLE - PROVIDE MAX. SLOPE OF 1:20 BETWEEN ALL CURB CUTS AND BUILDING DOORS ALONG ACCESSIBLE ROUTES

PROJECT DATA	
LOT AREA:	4.43 ACRES
BUILDING AREA:	
FUTURE OFFICE	8540 SQ. FT.
WAREHOUSE	<u>42,303 SQ. FT.</u>
TOTAL:	51,443 SQ. FT.
TOTAL REQUIRED PARKING:	
OFFICE (1/250 SF)	35 STALLS
WAREHOUSE (1/EMPLOYEE)	<u>61 STALLS</u>
TOTAL:	96 STALLS
TOTAL PROVIDED PARKING:	
STANDARD	94 STALLS
HANDICAPPED	<u>6 STALLS</u>
TOTAL:	100 STALLS

Total of 20,609 SF - Palumbo Management Office of 1,340 SF = 19,269 SF Footprint



<u>Δ</u>	11-8-2008	REVISED PLUMBING
<u>Δ</u>	11-4-2008	PRECAST COLUMNS
<u>Δ</u>	10-6-2008	REVISED NOTES
	9-25-2008	REVISED DIT'S
<u>Δ</u>	8-13-2008	ISSUE FOR CONSTRUCTION
	8-13-08	ISSUE FOR CONTRACT BID
	7-8-08	ISSUE FOR SHELL PERMIT
	6-18-08	ISSUE FOR BIDS
	6-1-08	ISSUE FOR STEEL BIDS
	6-11-08	ISSUE FOR PRECAST BIDS

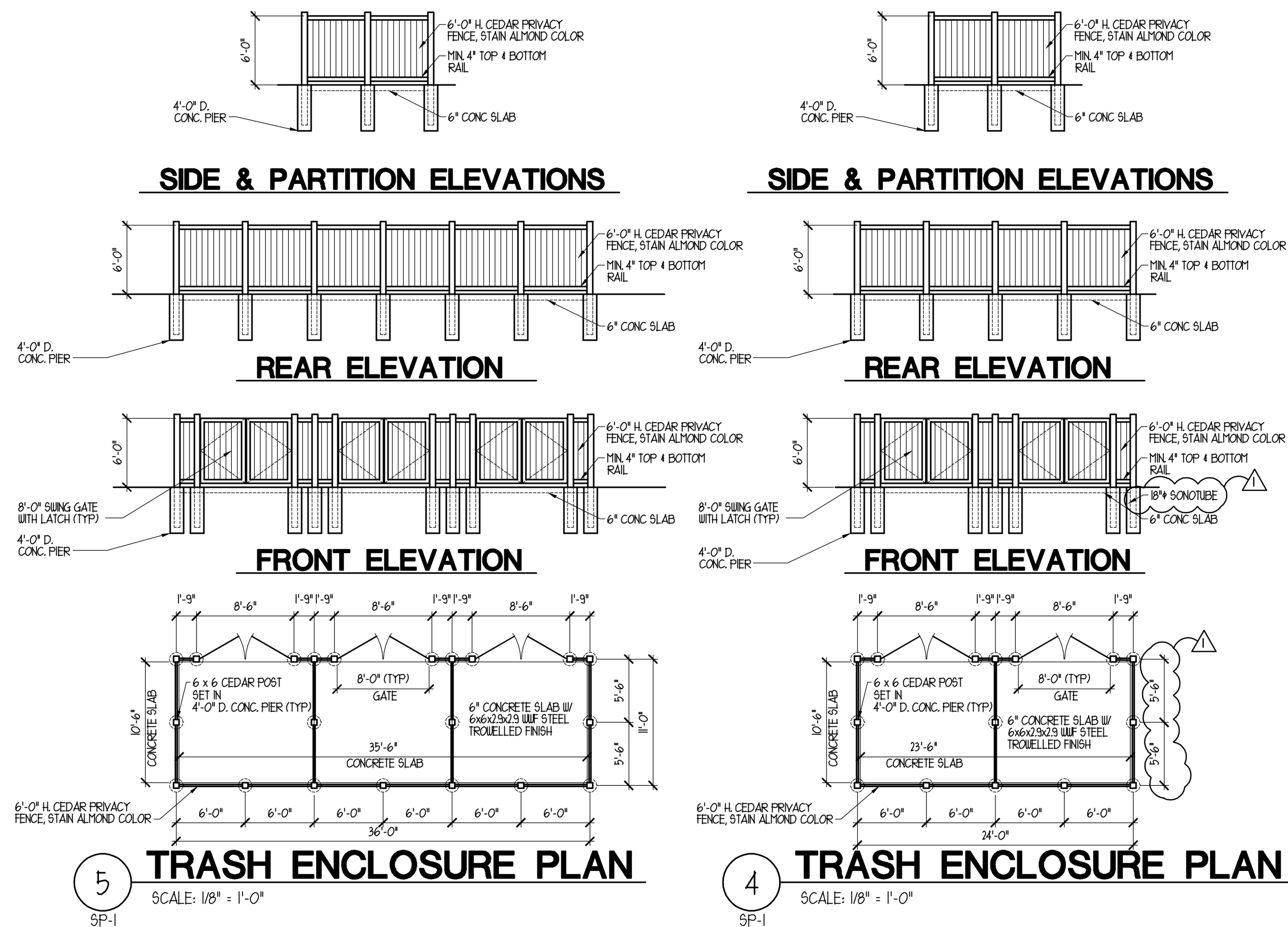
[illegible]

CAPITAL
Realty & Development, LLC
385 Airport Road, Suite 100, Elgin, IL 60123
847-841-7696



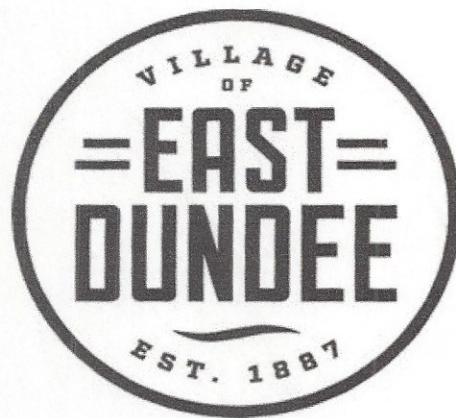
NEW INDUSTRIAL FACILITY
TERRA BUSINESS PARK AT
DUNDEE CROSSING LOT 2
EAST DUNDEE, ILLINOIS
PALUMBO / CAPITAL REALTY
X
X

NO: 08077 DRAWN: GAH
 DATE: 4-29-08 CHECKED: RB
 SHEET NUMBER:
SP-1.0
 scale: AS NOTED date: 9-8-08
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**The Village of East Dundee
Planning and Zoning & Historic Commission**

**Application for Rezoning, Special Use, and
Variance**



Application Updated: September 2023

Table of Contents

Section	Page
1. Application Fee Schedule	Page 3
2. Planning and Zoning & Historic Commission Meeting Schedule	Page 3
3. Staff Contact List	Page 3
4. Other Applications & Forms	Page 4
5. Application Step-by-Step Process	Page 4
6. Official Application	Page 5 - 9
a. General Information	Page 5
i. Applicant Information	
ii. Current Zoning Districts	
iii. Owner Information	
iv. Billing Information	
b. Special Use Findings of Fact	Page 6
c. Summary of Requested Zoning Variances	Page 7
d. Variances Findings of Fact	Page 8 - 9
7. Application Agreement	Page 10
8. Affidavit of Ownership & Control	Page 11
9. Affidavit & Disclosure Agreement	Page 12
10. Trust Agency Development Form	Page 13 - 15

1. APPLICATION FEE SCHEDULE

The Village Board has adopted the following schedule of fees for processing development applications. These fees are intended to cover only the Village's basic processing costs and can be found in Chapter 151 - Building Code or Other Related Fees. In addition, the Village requires an initial deposit until the applicant has paid any outstanding costs for professional consulting services (engineers, planners, attorney) that the Village may employ to assist Village staff on a project-by-project basis and will be discussed at the initial pre-application process.

FEES AND FINES (CHAPTER 37):

- Planning and Zoning & Historic Commission public hearing: \$100
- (HH) Zoning - Fees and deposits for variations, special uses, and map amendments:
- a) All Single-Family Residential Districts (E, R-I, R-2, and R-3 Districts):
 - Non-refundable fee: \$75
 - Deposit: \$150
 - b) All Residential Multiple Family District (R-4 and R-5 Districts):
 - Non-refundable fee: \$100
 - Deposit: \$250
 - c) All Business Districts (B-1, B-2, B-3 and B-4 Districts):
 - Non-refundable fee: \$150
 - Deposit: \$250
 - d) Other Districts: (AG-I, OD, M-I, and M-2) - fees and deposits for variations, special uses, and map amendments (all zoning districts):
 - Non-refundable fee: \$200
 - Deposit: \$1,000

2. PLANNING AND ZONING & HISTORIC COMMISSION ("PZHC") MEETING SCHEDULE

The PZHC petitions/applications deadline, ("Application Deadline") is **35 days prior** to meeting date for petitions/applications requiring public hearings or **15 days prior** when no public hearing is required. **All PZHC meetings are scheduled for the first Thursday of every month, unless otherwise specified.**

3. STAFF CONTACT LIST

Review Agency	Contact Name	Phone	E-Mail
Village of East Dundee Staff			
Village Administrator	Erika Storlie	(224) 293-7120	estorlie@eastdundee.net
Asst. to Village Administrator	Franco Bottalico	(224) 293-7102	fbottalico@eastdundee.net
Building Inspector	Chris Ranieri	(224) 293-7107	cranieri@eastdundee.net
Public Works Director Village	Phil Cotter	(224) 293-1256	pcotter@eastdundee.net
Building Clerk	Gail Hess	(224) 293-7115	ghess@eastdundee.net
Engineer	Joe Heinz	(224) 293-4535	jheinz@glheinzinc.com

4. OTHER APPLICATIONS & FORMS

Necessary documents to accompany your application:

- Planning and Zoning & Historic Commission Requirements (ON WEBSITE)
- Agreement to Pay Costs Incurred and Hold the Village Harmless (PAGE 10)
- Affidavit of Ownership & Control (PAGE 11)
- Affidavit & Disclosure (PAGE 12)
- Trust Agency Development Form (PAGES 13 - 15)
- Site Plan
- Square footage of building/property, if applicable
- PIN & Legal Description (with Common Address, if applicable) provided in a separate word document. This is typically found on a plat of survey. (PAGE 5)
- List of Property Owners within 250 ft. of Property
- Check made Payable to "The Village of East Dundee" per the Fee Schedule
- 1st Class; pre-paid; plain white envelopes addressed to the property owners with 1st class postage. There should be no return address on envelopes.

Project Data Tables *(Required, when applicable. Determined during Building Department Review):*

- Site Area Calculations Table
- Building Area Calculations Table
- Parking Calculations Table
- Subdivision Calculations Table
- Residential Density Calculations Table

5. APPLICATION STEP-BY-STEP PROCESS

- A. Application and fees submitted to the Building Department
- B. Review by Building Department
- C. List of all properties within 250 ft. submitted to the Building Department in a word document format with address labels of property owners listed.
 - i. A good resource is the Kane County GIS Website
(https://gistech.countyofkane.org/gisims/kanemap/kanegis4_agox.html)
- D. Use 1st class; pre-paid; generic plain white envelopes with the labels attached, but without a return address. Village staff will mail out on applicants' behalf.
- E. Notice of public hearing published by staff, mailed out, and sent to Daily Herald no later than 15 days prior to the public hearing.
- F. PZHC conducts the public hearing and motions a recommendation to approve or deny to the Village Board or can ask for more information.
- G. Village Board approves/denies within 45 days of PZHC's recommendation.

Application for Rezoning, Special Use, and/or Variance

Please review the accompanying PZHC Requirements packet for all requirements applicable.
Failure to complete this form properly will delay its consideration.

Note: Attach a Word Doc. that includes the project property PIN, legal description, and common address.

1) Applicant Information

Date: 10/6/23 Project Location: 201 Christina Drive, East Dundee

Applicant Name: Jeff Newing

Applicant Address: 201 Christina Drive, East Dundee, IL 60118

Applicant Phone: [REDACTED]

Applicant Email: [REDACTED]

Applicant Signature: [Signature]

Check each box being requested and provide the project description in the lines provided below:

Rezoning: ☐ Special Use: ☒ Variance: ☐

Requesting to use the space at 201 Christina Drive as a banquet hall for private, contracted events on various nights and weekends.

Up to 4 events per month. Maximum of 150 guests. All food and drink will be catered by licensed caterers.

Space is newly remodeled and houses several exotic and classic automobiles. Events will be held

among these classic and exotic cars.

PIN: 03-25-150-002 Project property size in acres/sq. ft.: ± 20,000 square feet

2) Curent Zoning Districts

Indicate what the property is currently zoned as below (choose one):

E R-1 R-2 R-3 R-4 B-1 B-2 B-3 B-4 OD AG-1 M-1 M-2

Current use at the property: Office / Warehouse

Surrounding land use zoning (may be more than one): M-1

Zoning district being requested per PIN: _____

3) Owner Information (If different than the applicant)

Owner Name: Joe Palumbo Owner Signature: [Signature]

Owner Address: 201 Christina Drive, East Dundee, IL 60118

Owner Phone: [REDACTED]

Owner Email: [REDACTED]

4) Billing Information (Include the name and address that all bills should be sent to)

Legal Name: Palumbo Management

Address: 201 Christina Drive, East Dundee, IL 60118

Phone Number: [REDACTED]

B. SPECIAL USE - FINDINGS OF FACT FOR APPLICANT TO ANSWER (157.244 (C)(2))

The questions contained in this part are directly related to the criteria in the Code that the Village must use to evaluate the project. Under the Code, most of the actions taken by the PZHC and Village Board require a "findings of fact" that a particular project meets all the applicable criteria. Accordingly, it's important that as much evidence of compliance as possible be provided with the application. **Please be sure to review the actual requirements in the relevant sections of the Code to assist you in preparing your responses.**

Please answer all questions but be concise and brief in your answers. **If additional pages are needed to complete your answers, please be sure to include the appropriate and complete question number for each response.** You are encouraged to refer to drawings, pictures, or other materials as necessary to add clarity to your answers.

1. Will the Special Use be injurious to the enjoyment of other property in the immediate vicinity for the purposes already permitted, nor will the special use substantially diminish and impair property values within the neighborhood?

This use will not affect the neighboring businesses in the same building. All events will occur during timeslots of the day and week that don't conflict with business hours of others and the shared parking lot use.

2. Will the establishment of the Special Use impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district?

No

3. Have or will adequate utilities, access roads, drainage or necessary facilities be provided for?

Yes

4. Have or will adequate measures be taken to provide ingress and egress to minimize traffic congestion in the public streets?

Yes. Existing automotive parking lot can handle parking needs for events.

5. How is the proposed special use in harmony with the purposes, goals, objectives, policies, and standards of the Village of East Dundee Comprehensive Plan, the Zoning Ordinance, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice, by the Village?

This use is a unique idea of Joe Palumbo to capitalize on his exclusive automobile collection. By contracting private events (corporate functions, promotional events, even weddings), others will have a one-of-a-kind atmosphere to enjoy this collection and have their function in a different kind of venue. Our goal is to fill dayparts that are currently unused on our property with some events that will generate additional revenue and tax dollars.

C. SUMMARY OF REQUESTED ZONING VARIANCES:

Project Location: _____

Applicable Code Section (Title, Chapter, Section)	What does Code require now? (Brief Summary)	Proposed Variation(s) (Brief Summary)

D. VARIANCE - FINDINGS OF FACT FOR APPLICANT TO ANSWER

The questions contained in this part are directly related to the criteria in the Code that the Village must use to evaluate the project. Under the Code, most of the actions taken by the PZHC and Village Board require a "findings of fact" that a particular project meets all the applicable criteria. Accordingly, it's important that as much evidence of compliance as possible be provided with the application. **Please be sure to review the actual requirements in the relevant sections of the Code to assist you in preparing your responses.**

Please answer all questions but be concise and brief in your answers. **If additional pages are needed to complete your answers, please be sure to include the appropriate and complete question number for each response.** You are encouraged to refer to drawings, pictures, or other materials as necessary to add clarity to your answers.

1. What is proposed?

2. What unique circumstances have caused the need for a variance?

3. What specific mitigation measures will be used to ensure that the essential character of the area will not be altered? (Suitability of Present Area)

4. Specifically, how do the particular physical surroundings, shape, or topographical condition of the property result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of regulations are carried out?

5. Specifically, what conditions are present on the property that would not be applicable generally to other property within the same zoning classification? (Suitability of Zoning)

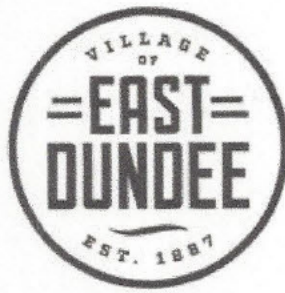
6. Other than financial return, what other purposes is the variance request based on?

7. Has the alleged difficulty been created by any person presently having an interest in the property?

8. Please give an explanation for any questions answered YES .

- B Will the granting of the variation be detrimental to the public welfare?(Check box)
 C Injurious to surround properties? (Check box)
 D Impair an adequate supply of light and air to adjacent property? (Check box)
 E Endanger public health and safety? (Check box)
 F Substantially diminish property values within the neighborhood? (Check box)
 G Conformance to the Land Use Plan? (Check box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
YES	<input type="checkbox"/>	NO	<input type="checkbox"/>



**APPLICATION AGREEMENT
TO PAY COSTS INCURRED AND HOLD THE VILLAGE HARMLESS**

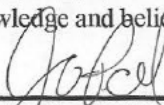
The Undersigned applicant acknowledges that the Village of East Dundee may seek advice and counsel from professional sources outside the employee staff of the Village of East Dundee in consideration of the application submitted by the applicant, including the services as those may be provided by the Village Staff, Village Attorney, Village Engineer, Planner, and Fire Protection District.

The applicant further acknowledges that testimony of all witness at Public Hearings may be recorded before a court reporter and that full transcripts of the proceedings may be prepared and retained by the Village of East Dundee as part of the official record concerning the said applicant and the applicant's costs.

As an express condition in making the said application and the consideration thereof by the Village of East Dundee, the undersigned, both personally and on behalf of the applicant, agrees to hold the Village harmless and agrees to pay forthwith the costs and expenses that may be incurred by the Village of East Dundee for such professional services, including the costs and expenses of recording and transcribing any testimony at Public Hearings in connection with the said application.

The owner hereby authorizes and consents to this request for variation, special use, and/or re-zoning and further authorizes, agrees, and consents to allow the temporary installation and display by the Village of East Dundee of Public Notice signage upon the subject property.

The applicant, having read this application and fully understanding the purpose thereof, declares that the proceeding statement made are true and that the information provided herein is complete to the best of the applicant's knowledge and belief.



Individually and for the Applicant
201 Christina Drive, East Dundee, IL 60118

10/9/23

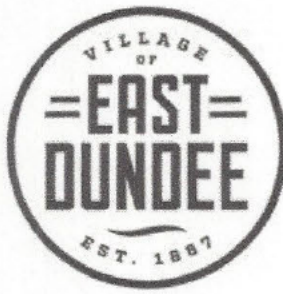
Address

FEES AND FINES (CHAPTER 37):

- Planning and Zoning & Historic Commission public hearing: \$100

(HH) Zoning - Fees and deposits for variations, special uses, and map amendments:

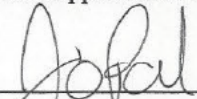
- a) All Single-Family Residential Districts (E, R-1, R-2, and R-3 Districts):
 - Non-refundable fee: \$75
 - Deposit: \$150
- b) All Residential Multiple Family District (R-4 and R-5 Districts):
 - Non-refundable fee: \$100
 - Deposit: \$250
- c) All Business Districts (B-1, B-2, B-3 and B-4 Districts):
 - Non-refundable fee: \$150
 - Deposit: \$250
- d) Other Districts: (AG-1, OD, M-1, and M-2) - fees and deposits for variations, special uses, and map amendments (all zoning districts):
 - Non-refundable fee: \$200
 - Deposit: \$1,000



PZHC File # _____

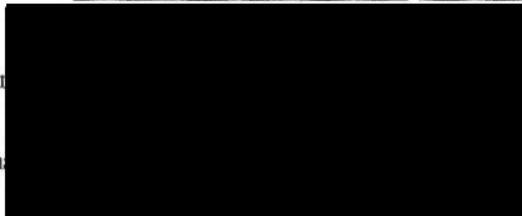
Affidavit of Property Ownership & Control

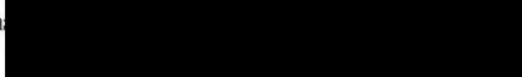
I (We), Pal 201 LLC do hereby certify or affirm that I am the legal property owner(s), contract purchasers, or beneficiary(s) of the title holding trust for the aforesaid described property and hereby make application of such.

Signature: 

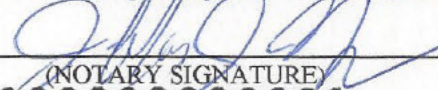
Owner: Joe Palumbo, as manager

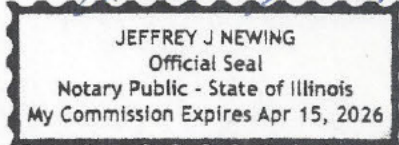
Address: 201 Christina Drive
East Dundee IL

Phone: 

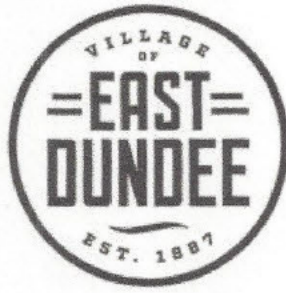
Email: 

SUBSCRIBED AND SWORN TO before me this
9th day of October, 2023


(NOTARY SIGNATURE)



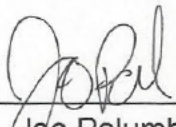
(NOTARY STAMP)



Affidavit & Disclosure Agreement

To cover the Village expenses relating to applications for site plans, Subdivisions, Annexations, Zoning Amendments, Special Uses, Variations and the like:

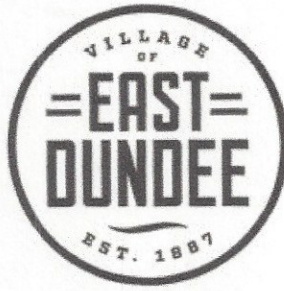
Applications shall deposit the sum required based on the type and extent of the applicants project. Any bills received by the village and any costs incurred by the Village related to the project will be expensed against the deposit already made. Any remaining deposit funds will be returned to the applicant once the process is complete.

Signature: 

Print Name: Joe Palumbo

Project Address: 201 Christina Drive

Em 



TRUST AGENCY DEVELOPMENT FORM

TITLE XV; CHAPTER 160: PROPERTY DEVELOPMENT COSTS FINDINGS:

- A. Certain costs are necessarily incurred by the village in processing building permits, petitions for annexation, disconnections, rezoning, variances, planned unit developments, subdivisions, site plans and other land use matters (the development petition), including, but not limited to, staff costs and fees of planning consultants, engineers, attorneys, building officials, environmental consultants, and other consultants, as well as out of pocket costs of the village such as mailing, photocopying, telephone, publication, recording and other out of pocket costs (collectively "development costs"); and
- B. The village board has determined that development costs should be borne by the person filing a development petition ("petitioner") rather than the taxpayers of the village. It shall be at the Village Administrators discretion to institute the Trust & Agency Agreement.

TRUST AND AGENCY ACCOUNT:

The village shall establish a trust and agency account (also known as an escrow account): a) for the purpose of accounting for development costs and reimbursement for such costs with subaccounts for each separate petitioner; and b) for the purpose of accounting for other deposits being held in trust from time to time. Such trust and agency account shall be subject to audit as in the case of all other accounts and funds of the village but shall not be part of the budget process of the village.

DEPOSIT REQUIREMENTS:

- A. **Initial Deposit:** Whenever the village is asked to consider a development petition, the village administrator, or the designee of the administrator, shall, prior to the time when the village incurs any significant expense for staff or consultants establish the amount of the petitioner's initial deposit in the trust and agency account of the village (the "initial deposit"). Before any expenses for consultant and out of pocket costs are incurred by the village, the petitioner shall pay to the village treasurer the amount of such initial deposit.
- B. **Second and Subsequent Deposits:** Prior to the time when the accrued fees and costs equal (90%) of the amount of said initial deposit, the village administrator, or the designee of the administrator, shall establish the amount, if any, of a second deposit to the trust and agency account (the "second deposit"). Likewise, prior to the time when the accrued fees and costs equal the amount of said second deposit (and any subsequent deposits), the village administrator, or the designee of the administrator, shall establish the amount of subsequent deposits (the "subsequent deposits") to the trust and agency account.
- C. **Failure To Make Deposits:** In the event that the petitioner fails to promptly make the required payments of the initial deposit, the second deposit or any subsequent deposit, the village may advise all consultants to the village to cease performing any services and incurring any costs relative to the development petition, and the village may postpone or cancel any scheduled hearings, meetings or considerations of the pending development petition.
- D. **Waiving Fees:** The Village Administrator shall have the right to waive staff cost or other costs if by doing so benefits the village.

INVOICES:

Copies of all invoices submitted to the village by its consultants shall be provided to the petitioner. Any questions as to such invoices must be raised by the petitioner within fourteen (14) days after transmittal of the invoices to the petitioner, and in the absence of such questions within such time, the invoices shall be conclusively deemed acceptable to the petitioner.

REFUNDS:

Whenever it appears that there will not be further development costs incurred relative to a petitioner, the balance in such petitioner's trust and agency account will be refunded to the petitioner.

COPY OF PROVISIONS TO PETITIONER:

At the time that the amount of initial deposit is established, the petitioner shall be provided with a copy of this chapter and shall deliver to the village the following statement signed by the petitioner:

The undersigned, having filed or expecting to file, a development petition with the Village of East Dundee, certify that I have received a copy of Village of East Dundee's Code TITLE XV; Chapter 160 and have read and understand the same and agree to make the deposits as provided in said Code Chapter, including the initial deposit of \$ 1,000.00 .

1044 10/9/23
Check # _____ Dated _____

Special Use "Banquet Hall"

Type of Project: _____

Magnum Opus

Project Name: _____

201 Christina Drive, East Dundee

Project Address: _____

03-25-150-002

PIN(s): _____

Joe Palumbo

Owners Name: _____ Pho _____

201 Christina Drive, East Dundee

Owners Address: _____

Owners Email: _____

Owners Signature: _____

Jeff Newing

Petitioners Name: _____ Pho _____

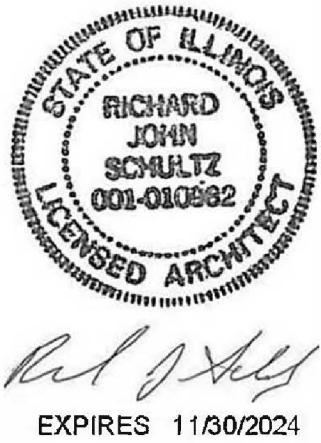
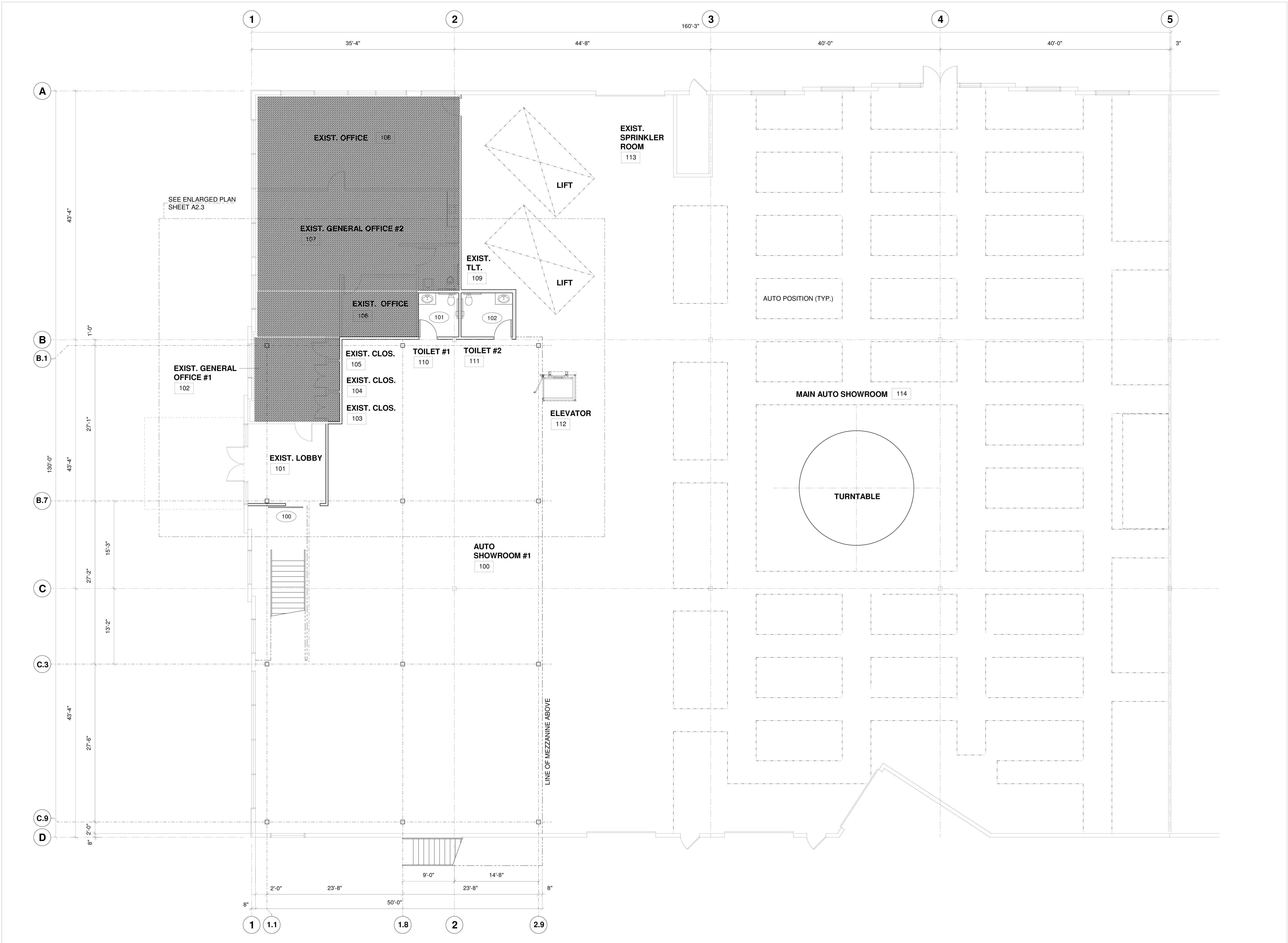
201 Christina Drive, East Dundee

Petitioners Address: _____

Petitioners Email: _____

Petitioners Signature: _____

Received By: _____ Date: _____



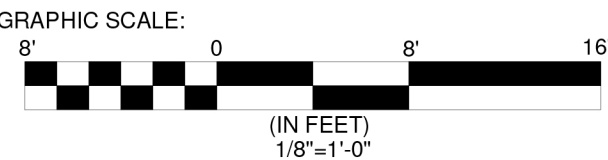
OWNER/TENANT

ARCHITECT:



CONSULTANT:

GENERAL CONTRACTOR:



KEY PLAN

REV	DATE	DESCRIPTION
01-27-23	ISSUED FOR PERMIT	
01-16-23	PROGRESS SET	

PROJECT NAME: REMODELING FOR:
PALUMBO
Magnum Opus
201 CHRISTINA DRIVE
EAST DUNDEE, ILLINOIS

SHEET TITLE:

GROUND FLOOR PLAN

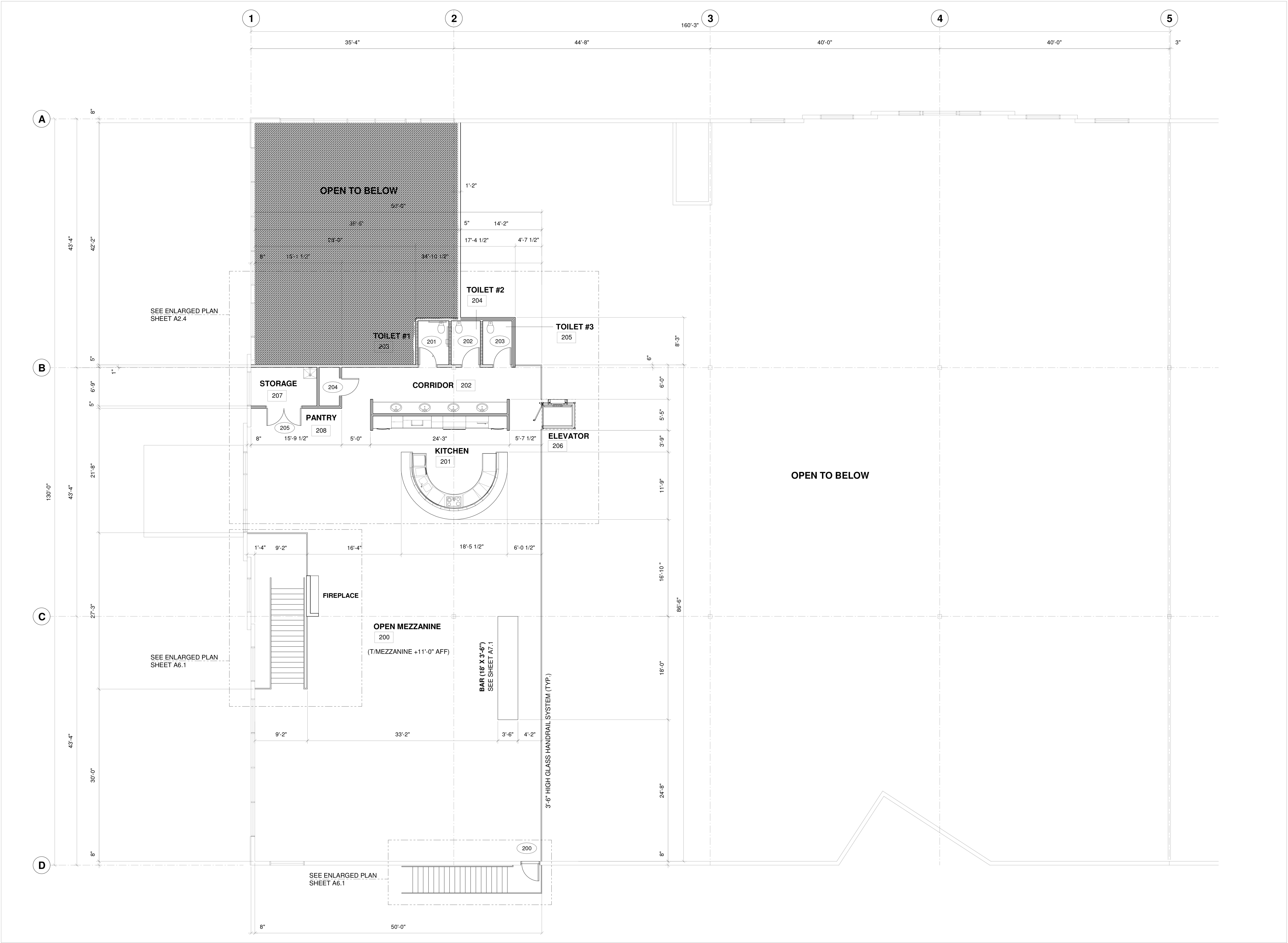
PROJECT NO: 22218

DATE: 01-27-23

SHEET NUMBER:

A2.1





EXPIRES 11/30/2024

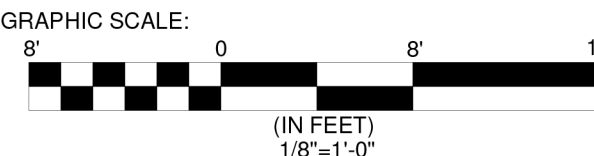
OWNER/TENANT

ARCHITECT:



CONSULTANT:

GENERAL CONTRACTOR:



KEY PLAN

REV	DATE	DESCRIPTION
01-27-23	ISSUED FOR PERMIT	
01-16-23	PROGRESS SET	

PROJECT NAME: REMODELING FOR:
PALUMBO
Magnum Opus
201 CHRISTINA DRIVE
EAST DUNDEE, ILLINOIS

SHEET TITLE:
MEZZANINE FLOOR PLAN

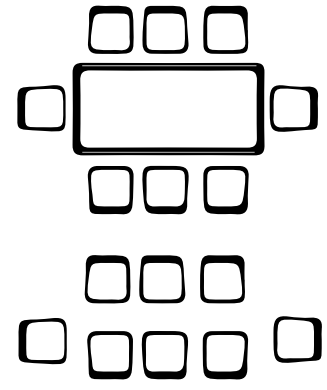
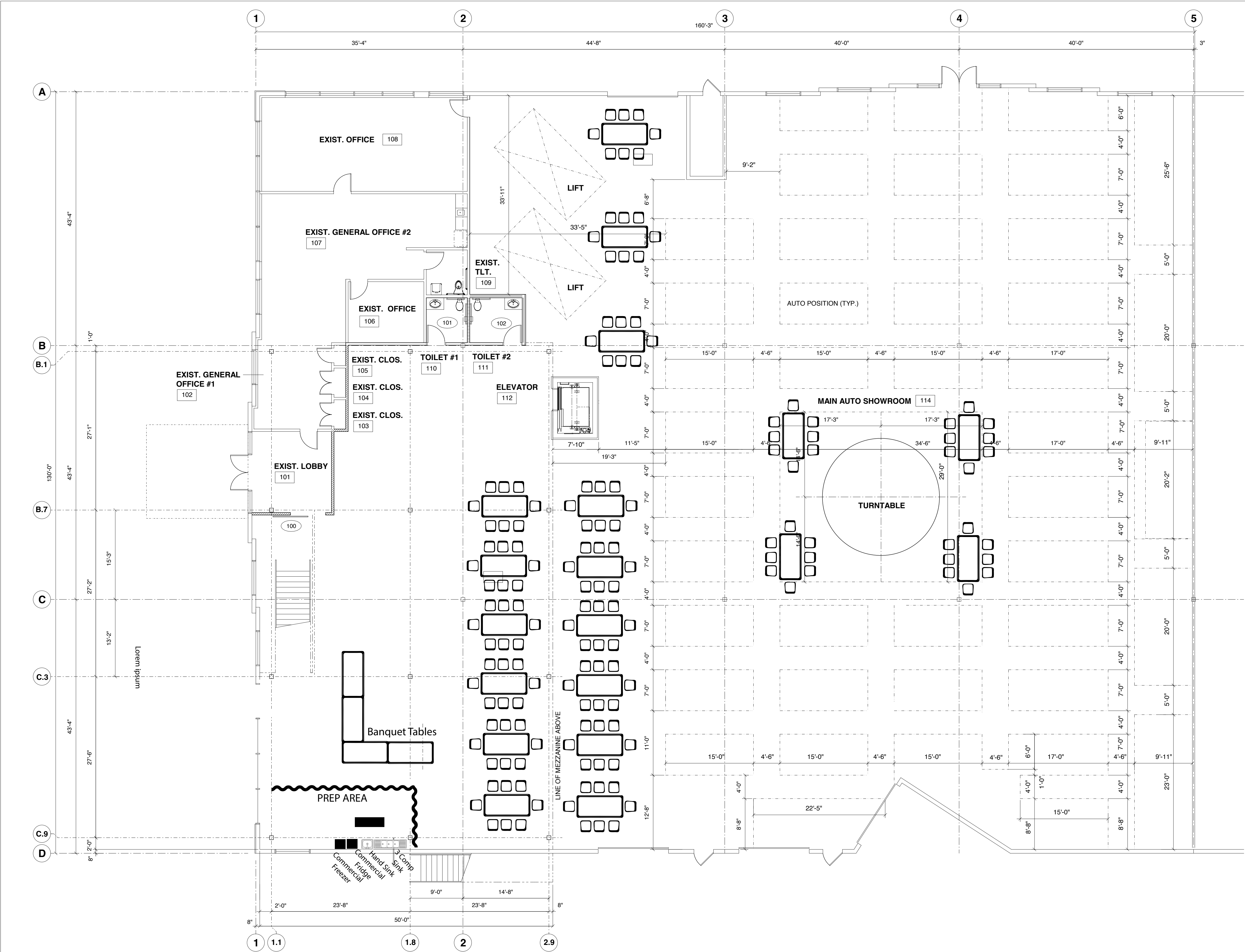
PROJECT NO: 22218

DATE: XX-XX-XX

SHEET NUMBER:

A2.2



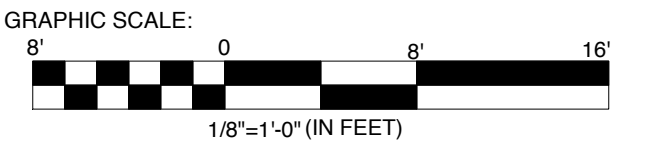


OWNER/TENANT

ARCHITECT:

CONSULTANT:

GENERAL CONTRACTOR:



KEY PLAN

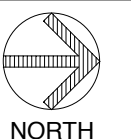
REV	DATE	DESCRIPTION
01-27-23	ISSUED FOR PERMIT	
01-16-23	PROGRESS SET	

PROJECT NAME: REMODELING FOR: PALUMBO GT CAVE 201 CHRISTINA DRIVE EAST DUNDEE, ILLINOIS
SHEET TITLE: GROUND FLOOR PLAN

PROJECT NO: 22218

DATE: 01-27-23

SHEET NUMBER: A2.1



East Dundee and Countryside Fire Protection District

401 Dundee Ave,
East Dundee IL 60118



www.edfire.com
fireprevention@edfire.com

201 Christina Dr. East Dundee, IL 60118 (GT Man Cave)

To: Planning and Zoning & Historic Commission (PZHC)
From: Marc Quattrocchi / Fire Marshal East Dundee Fire District
CC: Chris Ranieri, Village of East Dundee Building Inspector
Franco Bottalico, Assistant to the Village Administrator / Deputy Village Clerk
Date: November 30, 2023
Re: 201 Christina Dr. East Dundee, IL 60118 (GT Man Cave)

PZHC:

The East Dundee Fire District would like to notify the committee that we have been working with Palumbo Management since December of 2022 regarding the remodel of Palumbo Management's office space located at 201 Christina Dr. into what is known today as GT Man Cave. GT Man Cave is a 17,000 sq ft auto museum with a combined first-floor corporate office space and 2nd floor Assembly style mezzanine, which overlooks the auto museum portion. The Fire District would like to inform the committee that Palumbo Management has gone above and beyond to follow and adhere to all Fire and Life Safety Codes, including local Fire District Ordinances for this space.

Palumbo Management has installed, inspected, and passed.

- An upgraded NFPA13-compliant sprinkler system with adequate coverage for all portions of the suite.
- An approved-sized elevator that will adequately fit a Fire District stretcher with an NFPA-compliant Smoke Detection and Fire Alarm recall system.
- An adequately sized interior set of stairs capable of handling Emergency Medical Services and Fire operations in the event of elevator malfunction.
- A newly installed exterior Fire Escape on the East Side of the 2nd floor provides emergency egress for all patrons on the 2nd floor.
- A Tox Alert Carbon Monoxide (CO₂), Carbon Dioxide (CO), and Nitrogen Dioxide (NIO) Monitoring System.
 - In the event of higher-level detection, activate an exhaust fan to include the opening of newly installed louvers to assist in ventilation. This gas detector upon dangerous reading levels, sends an alert to the fire alarm panel to dispatch the Fire District.

East Dundee and Countryside Fire Protection District

401 Dundee Ave,
East Dundee IL 60118



www.edfire.com
fireprevention@edfire.com

- The Fire District has calculated the Occupancy Load for this newly renovated space at **350 persons**. This is to include a 200-person maximum in the Mezzanine area with a separate posted occupancy sign.

The Fire District's opinion is that Palumbo Management has taken all steps and precautionary measures necessary to host a safe environment for any private event that is planned. The Fire District gives Palumbo Management its full support for their planned use of this space.

Sincerely,

A handwritten signature in black ink, appearing to read "MQ", is written over a light gray rectangular background.

Marc Quattrocchi, Fire Marshal

State of Illinois }
Counties of Cook and Kane } SS
Village of East Dundee }

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Planning, Zoning, and Historic Commission of the Village of East Dundee will hold a public hearing on January 18, 2024, at 6:00 P.M. at the East Dundee Police Station 2nd Floor Meeting Room, 115 E. 3rd Street, East Dundee, Illinois, to consider the following request:

A request for a special use to allow for a banquet hall, as described in Section 157.065(A)(1)(d)(2) of the Zoning Ordinance, per Ordinance Number 23-24, located at 201 Christina Drive, East Dundee, IL, 60118 in the M-1 Limited Manufacturing District.

PIN: 03-25-150-002

Legal Description: LOT 2 OF TERRA BUSINESS PARK SUBDIVISION BEING A SUBDIVISION OF PART OF SECTION 24 AND SECTION 25, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 26, 2007 AS DOCUMENT NUMBER 2007K124883, IN KANE COUNTY, ILLINOIS.

All interested persons will be given an opportunity to be heard. Any questions regarding this public hearing process may be directed to Franco Bottalico, 120 Barrington Avenue, East Dundee, Illinois, 60118 via email at FBottalico@eastdundee.net, or by phone at (224) 293-7102. Published in Daily Herald December 22, 2023 (4609759)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

**Fox Valley
Daily Herald**

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **Fox Valley DAILY HERALD**. That said **Fox Valley DAILY HERALD** is a secular newspaper, published in Elgin, Kane County, State of Illinois, and has been in general circulation daily throughout Kane County, continuously for more than 50 weeks prior to the first Publication of the attached notice, and a newspaper as defined by 715 ILCS 5/5.

I further certify that the **Fox Valley DAILY HERALD** is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 715, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published 12/22/2023

in said **Fox Valley DAILY HERALD**. This notice was also placed on a statewide public notice website as required by 5 ILCS 5/2.1.

BY

Danula Baltz

Designee of the Publisher of the Daily Herald

Control # 4609759



State of Illinois }
Counties of Cook and Kane } SS
Village of East Dundee }

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Planning, Zoning, and Historic Commission of the Village of East Dundee will hold a public hearing on January 18, 2024, at 6:00 P.M. at the East Dundee Police Station 2nd Floor Meeting Room, 115 E. 3rd Street, East Dundee, Illinois, to consider the following request:

A request for a special use to allow for a banquet hall, as described in Section 157.065(A)(1)(d)(2) of the Zoning Ordinance, per Ordinance Number 23-24, located at 201 Christina Drive, East Dundee, IL, 60118 in the M-1 Limited Manufacturing District.

PIN: 03-25-150-002

Legal Description: LOT 2 OF TERRA BUSINESS PARK SUBDIVISION BEING A SUBDIVISION OF PART OF SECTION 24 AND SECTION 25, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 26, 2007 AS DOCUMENT NUMBER 2007K124883, IN KANE COUNTY, ILLINOIS.

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CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

**Northwest Suburbs
Daily Herald**

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **Northwest Suburbs DAILY HERALD**. That said **Northwest Suburbs DAILY HERALD** is a secular newspaper, published in Arlington Heights, Cook County, State of Illinois, and has been in general circulation daily throughout Cook County, continuously for more than 50 weeks prior to the first Publication of the attached notice, and a newspaper as defined by 715 ILCS 5/5.

I further certify that the **Northwest Suburbs DAILY HERALD** is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 715, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published 12/22/2023 in said **Northwest Suburbs DAILY HERALD**. This notice was also placed on a statewide public notice website as required by 5 ILCS 5/2.1.

BY



Designee of the Publisher of the Daily Herald

Control # 4609759



Memorandum



To: Village Board of Trustees
From: Jeff Lynam, Village President
Subject: Appointments to the Police Commission and the Arts Council
Date: January 22, 2024

Action Requested:

The Village President requests Village Board Advice and Consent to Appointments to the Police Commission and the Arts Council.

Summary:

Village President Lynam submits for advice and consent the following regular appointments:

Police Commission:

Name	Term Expiration
Jeff Baran	January 22, 2027

Arts Council:

Name	Term Expiration
Liz Konn	January 22, 2027
Jordan Johnson	January 22, 2027