



CITY OF URBANA CITY COUNCIL REGULAR MEETING

DATE: Monday, January 09, 2023
TIME: 6:30 PM
PLACE: 400 South Vine Street, Urbana, IL 61801

AGENDA

- A. Call to Order and Roll Call
- B. Approval of Minutes of Previous Meeting
 - 1. 11-28-2022 Minutes
 - 2. 12-05-2022 Public Hearing Minutes
 - 3. 12-12-2022 Minutes
- C. Additions to the Agenda
- D. Presentations and Public Input
 - 1. Annual Audit Presentation (FY 2022) - HRF
 - 2. Housing and Homeless Initiatives Grant Update - CD
- E. Council Input and Communications
- F. Unfinished Business
- G. Reports of Standing Committees
- H. Committee of the Whole (*Council Member James Quisenberry Ward 7*)
 - 1. Consent Agenda
 - a. **Ordinance No. 2022-12-053:** An Ordinance Amending the Urbana Zoning Map (1603 East Washington Street / Plan Case No. 2464-M-22) - CD
 - b. **Ordinance No. 2022-12-054:** An Ordinance Amending Urbana City Code Chapter Three, Section 3-43 (Increasing the Number of Class R&T-1 Liquor Licenses for Best of Africa Food Store LLC, 208 West Griggs Street, Urbana, IL) - Exec
 - 2. Regular Agenda
 - a. **Resolution No. 2022-12-092R:** A Resolution Approving an Amended and Restated Right-of-Way License Agreement with MCDJ, LLC (208 West Griggs Street) - PW

All City meetings are broadcast on Urbana Public Television and live-streamed on the web. Details on how to watch are found on the UPTV webpage located at <https://urbanaininois.us/uptv>

[b.](#) **Ordinance No. 2023-01-001:** An Ordinance Authorizing an Office Lease (Cohen Building - 136 West Main Street) - Exec

I. Reports of Special Committees

J. Reports of Officers

K. New Business

L. Discussion

1. American Rescue Plan Act (ARPA) Continuing Discussion

M. Adjournment

PUBLIC INPUT

The City of Urbana welcomes Public Input during open meetings of the City Council, the City Council's Committee of the Whole, City Boards and Commissions, and other City-sponsored meetings. Our goal is to foster respect for the meeting process, and respect for all people participating as members of the public body, city staff, and the general public. The City is required to conduct all business during public meetings. The presiding officer is responsible for conducting those meetings in an orderly and efficient manner. Public Input will be taken in the following ways:

Email Input

Public comments must be received prior to the closing of the meeting record (at the time of adjournment unless otherwise noted) at the following: citycouncil@urbanaininois.us. The subject line of the email must include the words "PUBLIC INPUT" and the meeting date. Your email will be sent to all City Council members, the Mayor, City Administrator, and City Clerk. Emailed public comments labeled as such will be incorporated into the public meeting record, with personal identifying information redacted. Copies of emails will be posted after the meeting minutes have been approved.

Written Input

Any member of the public may submit their comments addressed to the members of the public body in writing. If a person wishes their written comments to be included in the record of Public Input for the meeting, the writing should so state. Written comments must be received prior to the closing of the meeting record (at the time of adjournment unless otherwise noted).

Verbal Input

Protocol for Public Input is one of respect for the process of addressing the business of the City. Obscene or profane language, or other conduct that threatens to impede the orderly progress of the business conducted at the meeting is unacceptable.

Public comment shall be limited to no more than five (5) minutes per person. The Public Input portion of the meeting shall total no more than two (2) hours, unless otherwise shortened or extended by majority vote of the public body members present. The presiding officer or the city clerk or their designee, shall monitor each speaker's use of time and shall notify the speaker when the allotted time has expired. A person may participate and provide Public Input once during a meeting and may not cede time to another person, or split their time if Public Input is held at two (2) or more different times during a meeting. The presiding officer may give priority to those persons who indicate they wish to speak on an agenda item upon which a vote will be taken.

The presiding officer or public body members shall not enter into a dialogue with citizens. Questions from the public body members shall be for clarification purposes only. Public Input shall not be used as a time for problem solving or reacting to comments made but, rather, for hearing citizens for informational purposes only.

In order to maintain the efficient and orderly conduct and progress of the public meeting, the presiding officer of the meeting shall have the authority to raise a point of order and provide a verbal warning to a speaker who engages in the conduct or behavior proscribed under "Verbal Input". Any member of the public body participating in the meeting may also raise a point of order with the presiding officer and request that they provide a verbal warning to a speaker. If the speaker refuses to cease such conduct or behavior after being warned by the presiding officer, the presiding officer shall have the authority to mute the speaker's microphone and/or video presence at the meeting. The presiding officer will inform the speaker that they may send the remainder of their remarks via e-mail to the public body for inclusion in the

meeting record.

Accommodation

If an accommodation is needed to participate in a City meeting, please contact the City Clerk's Office at least 48 hours in advance so that special arrangements can be made using one of the following methods:

- Phone: 217.384.2366
- Email: CityClerk@urbanillinois.us

MEMORANDUM

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Elizabeth Hannan, HR & Finance Director/CFO
Shaennon Clark, Deputy Finance Director
Kris Francisco, Financial Services Manager

DATE: January 5, 2023

SUBJECT: **FY2022 Annual Audit Presentation**

Introduction: Jamie Wilkey, who is a partner with Lauterbach & Amen, LLP will attend the Monday, January 9 Council Meeting to present the City's annual audit.

Government Finance Officers Association (GFOA) Certificate of Achievement: City staff received a Certificate of Achievement for Excellence in Financial Reporting from the GFOA for the FY2021 Annual Comprehensive Financial Report (ACFR). Staff believes the FY2022 ACFR continues to meet those high standards and will submit it for review.

Fiscal Year 2022 Audit Reports: Audit reports are available at the following links –

City's Annual Comprehensive Financial Report and Communication to Those Charged with Governance

<https://www.urbanailinois.us/acfr>

Fire Pension Audit

<https://www.urbanailinois.us/government/finance/financial-reports/fire-pension-fund-audit-reports>

Police Pension Audit

<https://www.urbanailinois.us/government/finance/financial-reports/police-pension-fund-audit-reports>

Please contact Shaennon Clark, Deputy Finance Director, at saclark@urbanailinois.us with any questions about these reports.

ORDINANCE NO. _____**AN ORDINANCE AMENDING THE URBANA ZONING MAP****(1603 East Washington Street / Plan Case No. 2464-M-22)**

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Illinois Constitution, 1970; and

WHEREAS, Kevin Garcia, Zoning Administrator, on behalf of the City of Urbana, has requested a rezoning from the B-3, General Business zoning district to R-5, Medium High Density Multiple-Family Residential zoning district at 1603 East Washington Street; and

WHEREAS, the Plan Commission held a public hearing on such petition at 7:00 p.m. on December 8, 2022, in Plan Case No. 2464-M-22; and

WHEREAS, in accordance with Urbana Zoning Ordinance Section XI-10, due and proper notice of such public hearing was given by publication in *The News-Gazette*, a newspaper having a general circulation within the City, on a date at least 15 days but no more than 30 days before the time of the public hearing, and by posting a sign containing such notice on the real property identified herein; and

WHEREAS, the Plan Commission voted six (6) ayes and zero (0) nays to forward the case to the Urbana City Council with a recommendation to approve the requested rezoning; and

WHEREAS, the City Council finds that the requested rezoning is consistent with the goals, objectives, and generalized land use designations of the City of Urbana 2005 Comprehensive Plan; and

WHEREAS, the City Council finds that the requested rezoning is consistent with the criteria contained in *La Salle Nat. Bank of Chicago v. Cook County*, 12 Ill. 2d 40, 145 N.E.2d 65 (1957) and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill.2d 370 (1960); and

WHEREAS, after due consideration, the City Council further finds that an amendment to the Urbana Zoning Map as herein provided will protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

The Official Zoning Map of Urbana, Illinois, is herewith and hereby amended to change the zoning classification of the following described property:

The subject property to be rezoned from B-3, General Business to R-5, Medium High Density Multiple-Family Residential, located at 1603 East Washington Street, more particularly described as follows:

Lot 112 in Weller's Scottswood Manor, a Subdivision in the City of Urbana, IL, as per plat recorded in Book "V" of Plats at page 3, situated in Champaign County, Illinois;

Common description: 1603 E. Washington Street, Urbana, Illinois 61802;
Permanent Index Number: 92-21-16-402-001

Section 2.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code. Upon approval of this Ordinance, the City Clerk is directed to record a certified copy with the Champaign County Office of the Recorder of Deeds and transmit one copy of the recorded Ordinance to the petitioner.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, 2022.

AYES:

NAYS:

ABSTENTIONS:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, 2022.

Diane Wolfe Marlin, Mayor

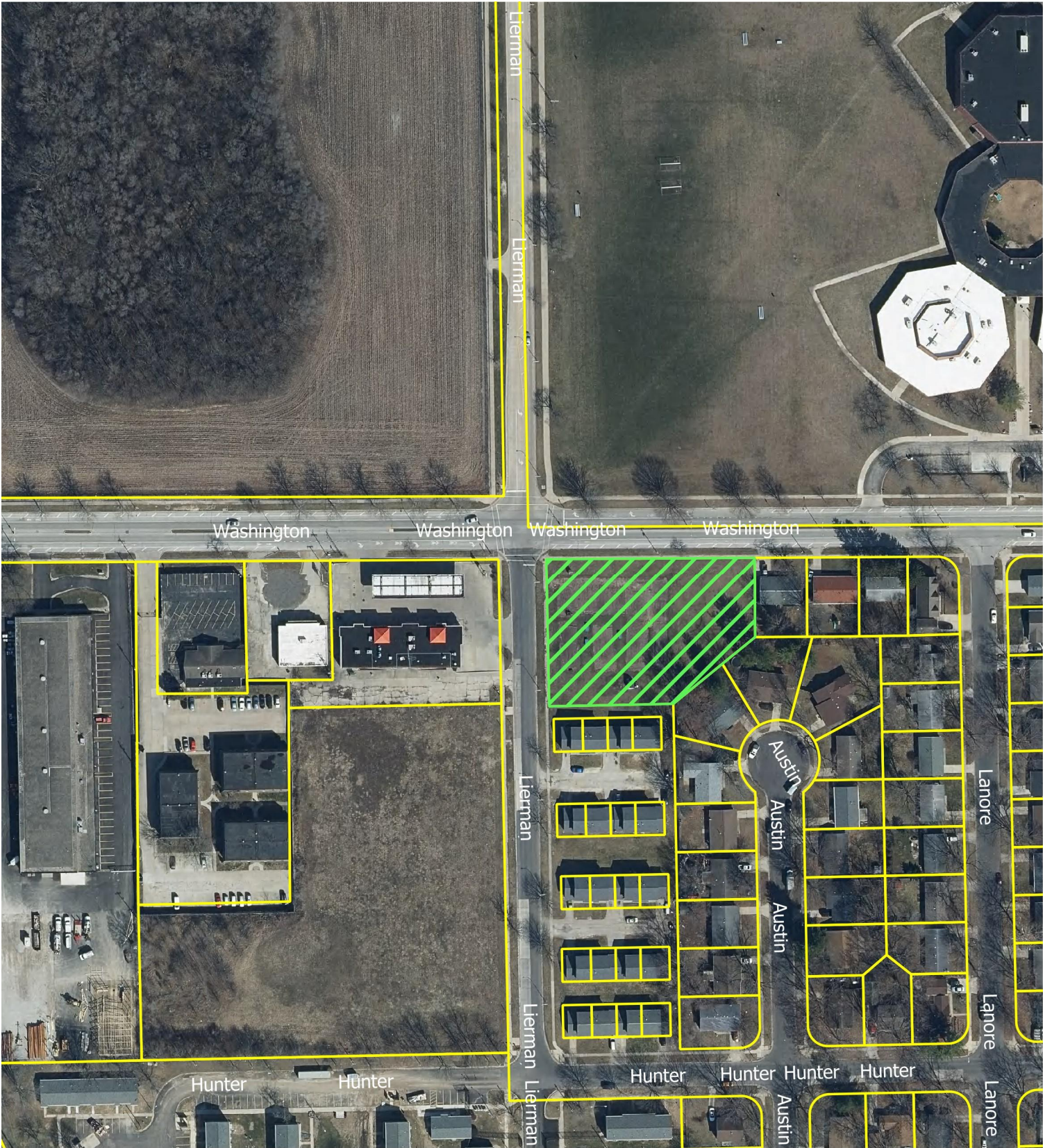
CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the _____ day of _____, 2022, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled “An Ordinance Amending the Urbana Zoning Map (1603 East Washington Street / Plan Case 2464-M-22)” which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, 2022, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____, 2022.

Exhibit A: Location Map

Item a.



Case: 2464-M-22
Subject: Zoning Map Amendment
Location: 1603 East Washington Street
Applicant: City of Urbana

Legend

 SUBJECT PROPERTY

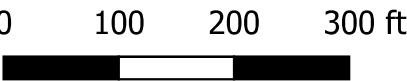
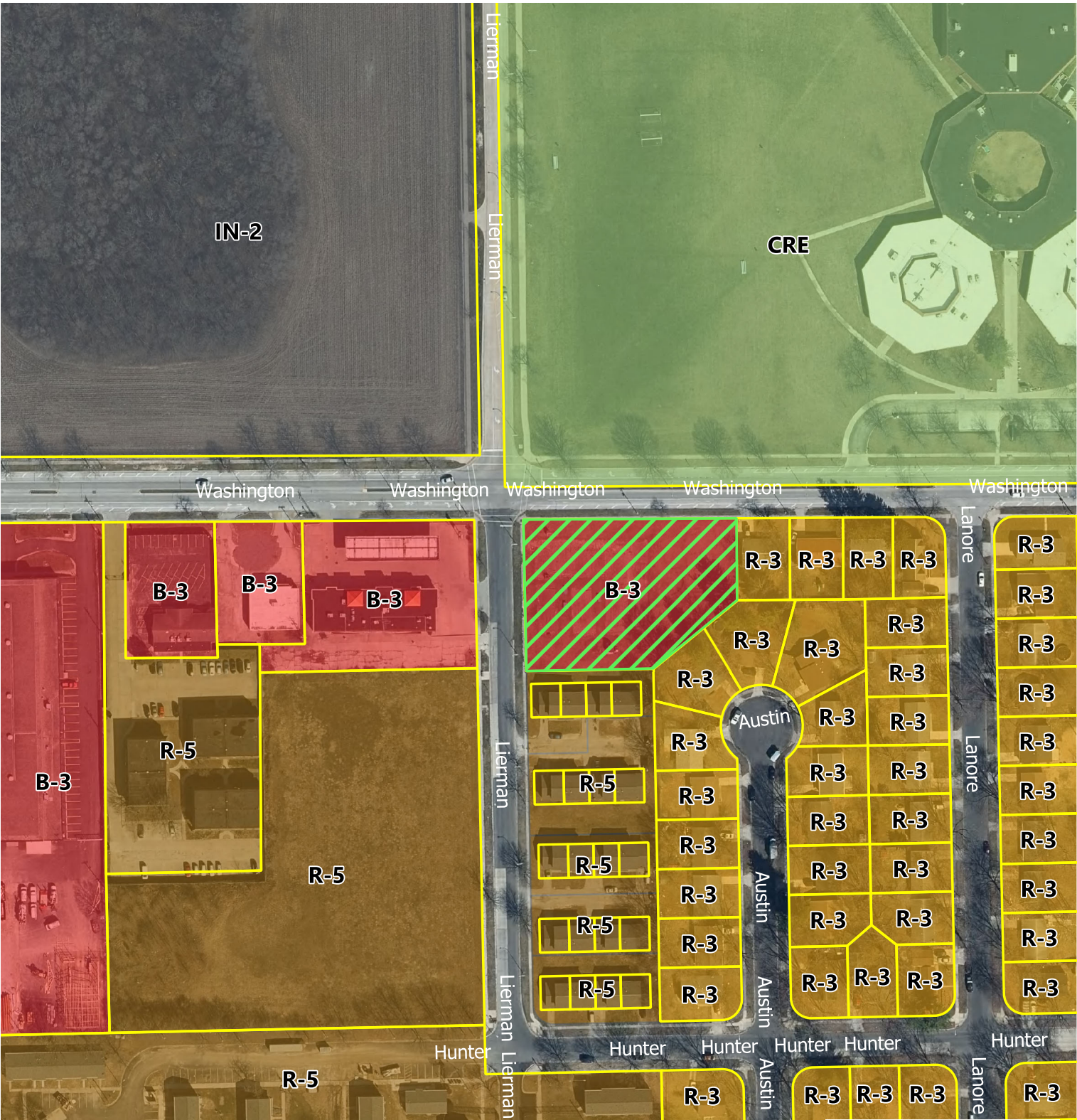


Exhibit B - Zoning Map

Item a.



Legend

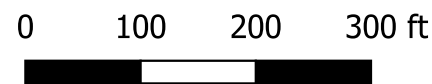
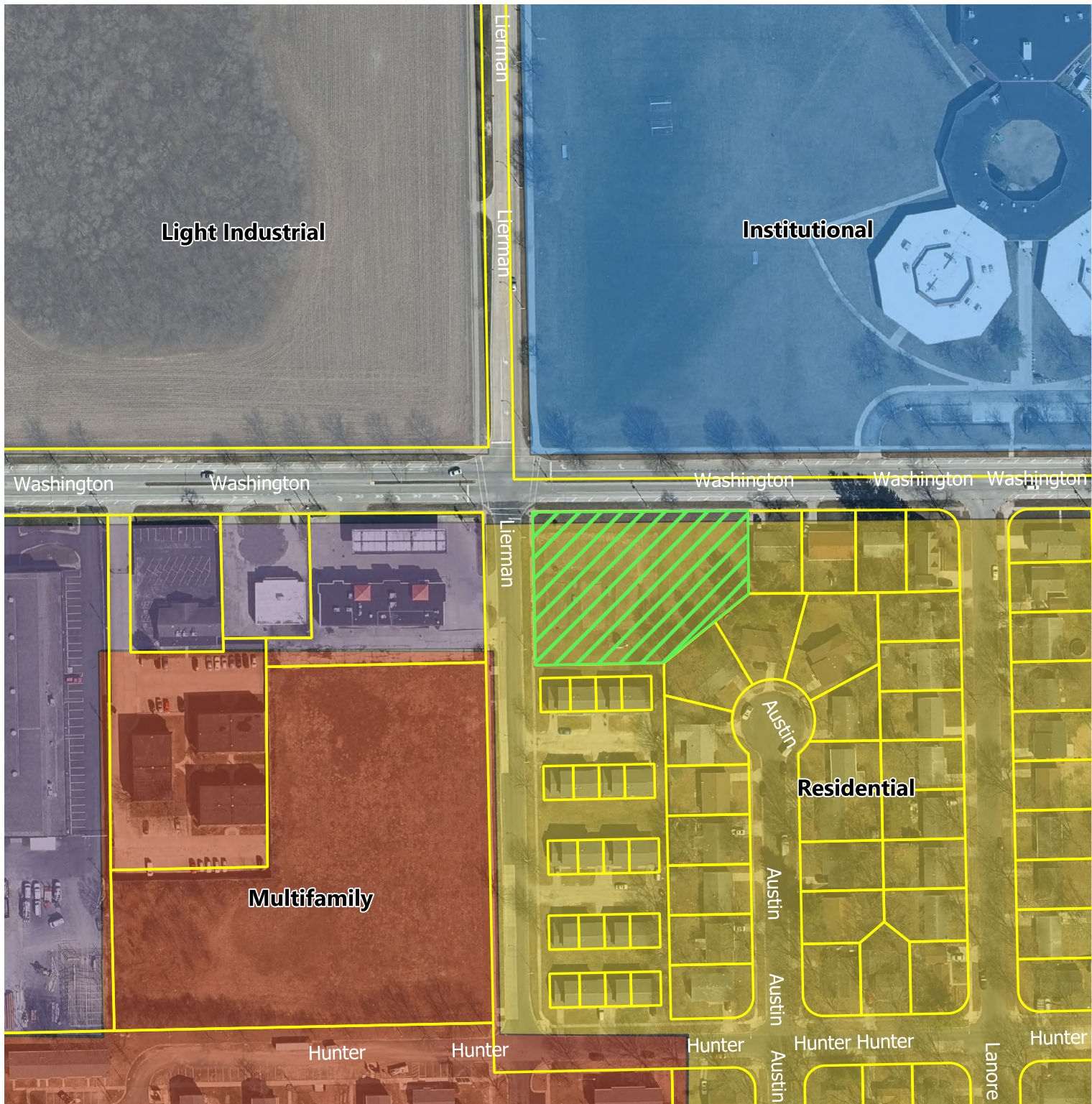
- SUBJECT PROPERTY
- B-3
- CRE
- IN-1
- R-3
- R-5



Case: 2464-M-22
Subject: Zoning Map Amendment
Location: 1603 East Washington Street
Applicant: City of Urbana

Exhibit C - Future Land Use Map

Item a.



Case: 2464-M-22
Subject: Zoning Map Amendment
Location: 1603 East Washington Street
Applicant: City of Urbana

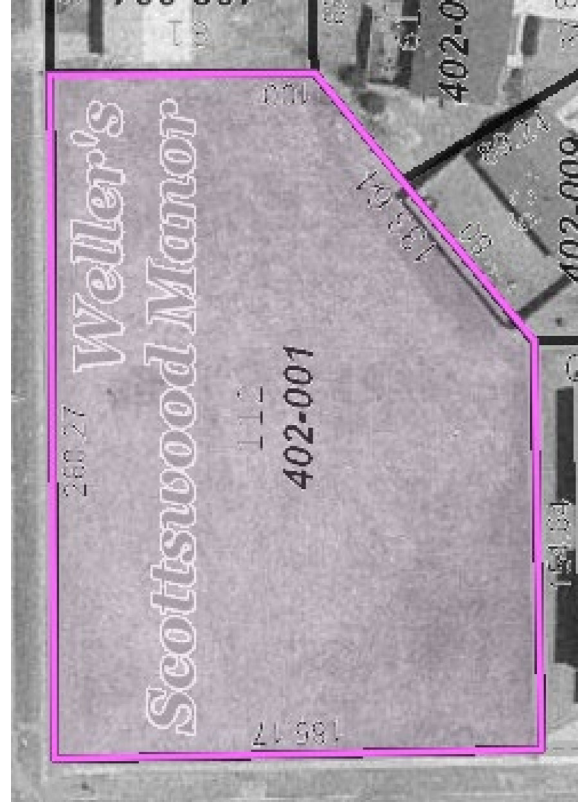
Legend

- SUBJECT PROPERTY
- Community Business
- Institutional
- Light Industrial
- Multifamily
- Residential

Exhibit D: Historic Aerial Site Photography



2011



1973



Item a.

Exhibit E: Preliminary Project Description

Item a.

Exhibit A

Affordable Housing Project

Project Description

Prairie Ridge Apartments include:

- At least 40 units of affordable housing targeting families earning between 30 – 80% of County Median Income
- Emphasis on a low-density design including a two-story apartment building with walk-out units and cottage-style ranch townhome buildings
- Community amenity space such as a playground and small-scale community garden
- A potential partnership between Northpointe Development and the Housing Authority with the Housing Authority serving as the 51% owner of the development
- Increasing the city's tax base through the redevelopment of a community garden and an underutilized city-owned lot

Exhibit F: Intergovernmental Agreement with HACC

Item a.

AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS

This INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS (including any exhibits and attachments hereto, collectively this "Agreement"), is made and entered into as of October __, 2022, but actually executed as of the dates beneath their signatures set forth below by and between the City of Urbana and the Housing Authority of Champaign County (collectively, the "Parties").

WHEREAS, City of Urbana (hereafter, the "City") is a municipal corporation, a body politic, and a home rule unit of government pursuant to Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, the Housing Authority of Champaign County (hereafter, the "Authority") was created by the Illinois State Legislature in 1939 to provide housing for low income individuals and families; and

WHEREAS, the Parties have an interest in the provision of quality affordable housing for very low and low income families as well as the overall economic health, well-being, quality of life, safety, and security within the City of Urbana generally including the Lierman neighborhood; and

WHEREAS, there existed in the City of Urbana a vacant lot on the southeast corner of Lierman and Washington; and

WHEREAS, there existed in the City of Urbana a multi-family residential property commonly referred to as the "Urbana Townhomes" site that consisted of a number of townhome buildings and that the said townhomes buildings were demolished because they presented a threat to the overall economic health, well-being, quality of life, safety, and security of the Lierman neighborhood within the City of Urbana, thereby leaving a vacant real estate parcel (collectively, the "Redevelopment Sites"); and

WHEREAS, Urbana currently owns the Redevelopment Sites; and

WHEREAS, the revitalization of the Redevelopment Sites is dependent in large part on a cooperative arrangement between the City, the Authority, and one or more third persons who wish to and/or intend to undertake any form of renovation of the Redevelopment Sites; and

WHEREAS, the City and the Authority seek to reinstitute and expand a prior intergovernmental agreement that, in part, provided for the redevelopment of the Urbana Townhomes site and now re-enter into an arrangement in order to promote, foster, and facilitate revitalization of the Redevelopment Sites that may include a private Development Partner who will assist the parties in undertaking the redevelopment of the Redevelopment Sites.

NOW, THEREFORE, in exchange for good, valuable, and mutual consideration that each Party acknowledges as having in hand received, and in consideration for the exchange of the covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

SECTION 1 - REDEVELOPMENT PLAN: The City and the Authority shall cooperate and work with one another in order to develop, design, create, and/or adopt a plan for the revitalization (collectively, hereafter, "Redevelopment Plan") of the Redevelopment Sites. The Parties shall contribute such expertise as each may possess in undertaking and creating the Redevelopment Plan. Such Redevelopment Plan is anticipated to consist of new construction on the Redevelopment Sites for the purpose of providing mixed income multi-family rental dwelling units. Nothing herein shall be deemed to prohibit the Parties from retaining the services of or entering into one or more agreements with one or more third persons to prepare and/or assist in the preparation of the Redevelopment Plan or any portion thereof. In the event the Parties elect to retain the services of one or more third persons to prepare or assist in the preparation of the Redevelopment Plan, no such third person shall be hired or otherwise be retained unless and until the Parties agree on the formula for paying for the services of such third person. Any such Redevelopment Plan shall provide that any private or public stormwater sewer system constructed on the Redevelopment Sites shall allow the owner of 1505 and 1507 East Washington Street, Urbana, Illinois to connect its private stormwater sewer system that serves said owner's three apartment buildings to such stormwater sewer system constructed on the Redevelopment Sites unless the City expressly and in writing waives this specific term and condition.

SECTION 2 - DEVELOPMENT AGREEMENT: The Parties jointly selected Northpointe Development to serve as the Development Partner in the Redevelopment Plan to be undertaken at the redevelopment sites. The Parties shall negotiate mutually acceptable terms of agreement with Northpointe for undertaking of the Affordable Housing project.

SECTION 3 - REDEVELOPMENT SITES: The City, in its sole discretion and on terms acceptable to the City, may elect to transfer title to the Redevelopment Sites to another person, whether a governmental entity, not-for-profit entity, for-profit entity, or other private person in order to undertake and complete the Redevelopment Project involving the Redevelopment Sites.

SECTION 4 - REDEVELOPMENT PLAN AND PROJECT FINANCING: The Parties anticipate that the Redevelopment Project will be financed through a variety of sources including but not necessarily limited to financial assistance from local, state, and federal sources, which include the City and the Authority. Such financing sources may include but shall not necessarily be limited to Low Income Housing Tax Credits, HUD financing, private investment, gifts, and such other sources that are known to and/or have yet to be identified by the Parties. Notwithstanding the foregoing,

- A. The City, at its sole election and upon terms and conditions agreeable to it, may -
 - i. provide indirect financial assistance in connection with the Redevelopment Project including, but not necessarily limited to, waivers of fees, permit costs, and other applicable costs; and/or
 - ii. provide and/or facilitate the provision of such other funds as are or may be available to the City for such a project; and/or

iii. facilitate access to and use of funding sources available to the City that may be willing to fund or finance such a project; and/or

iv. subordinate any City lien and/or financing currently in place, including but not necessarily limited to secondary HOME financing and/or demolition liens as may be needed in order to secure additional funding or financing for the Redevelopment Project or portion thereof, provided that the units supported by such financing remain affordable as defined and through the terms stipulated in the HOME loan documents.

B. The Authority, at its sole election and upon terms and conditions agreeable to the Authority, may -

i. provide "gap" financing; and/or

ii. provide long-term project-based subsidies; and/or

iii. provide and/or facilitate the provision of such other funds as are or may be available to the Authority for such a project; and/or

iv. facilitate access to and use of funding sources available to the Authority that may be willing to fund or finance such a project.

Nothing herein shall constitute a representation, warranty, promise, or obligation by or on the part of the either Party to contribute that Party's own funds to the Redevelopment Project. However, notwithstanding the foregoing, the Parties, jointly and separately, shall undertake reasonable good faith efforts to locate sources of funding, which may include but not necessarily be limited to governmental and private sources of funding, to undertake and complete the Redevelopment Project.

SECTION 5 - APPLICABILITY OF CITY CODES: Nothing in this Agreement shall be deemed or construed as constituting a waiver of any City building, building maintenance, fire, life-safety, or other code, ordinance, rule, or regulation that may be applicable to or govern the Redevelopment Project other than the fees as the City may agree, but is not obligated, to waive as provided for in Section 4 of this Agreement. In the event that the Redevelopment Project is undertaken and completed, nothing in this Agreement shall be deemed or construed as constituting a waiver of any City building, building maintenance, fire, life-safety, or other code, ordinance, rule, or regulation that may be applicable to or govern the properties that have, heretofore, been identified as the Redevelopment Sites.

SECTION 6 - ANTICIPATED TIME FOR REDEVELOPMENT: To the extent practicable, the Parties shall make a reasonable good faith effort to complete such redevelopment funding applications as they deem proper in order to complete the Affordable Housing redevelopment project. To the reasonable extent practicable, the Parties shall make a good faith effort, whether jointly or in cooperation with one or more private developers, to undertake and complete the Redevelopment Project on or before December 31, 2024. In the event that the Parties make a reasonably good faith effort to meet the aforesaid deadlines but fail to do so, such failure

shall not be deemed to constitute a breach of or a default on this Agreement and the Parties shall continue to cooperate with each other in an effort to complete the Redevelopment Plan and Redevelopment Project in a reasonably timely manner.

SECTION 7 - DEFAULT AND CURE: In the event that either Party believes that the other Party has acted unreasonably or has defaulted in connection with any term, provision, or covenant contained in this Agreement, that Party shall give written notice to the other Party, which written notice shall identify the Section of this Agreement that the noticing Party believes has been breached. Such notice shall also specify in reasonable detail the means by which the other Party has acted unreasonably and/or breached this Agreement. The Party receiving the notice shall have fourteen (14) days in which to cure the alleged unreasonable conduct or breach, provide a different date by which the Party receiving the notice believes it can correct the unreasonable act or default, or provide in writing to the noticing Party why the recipient of the notice has not acted unreasonably or in breach of this Agreement. If the recipient of the notice believes that it has not acted unreasonably or otherwise in breach of this Agreement, that Party shall specify in detail why it believes it has acted reasonably and/or why it does not believe that it is in breach of this Agreement. In the event that the Parties cannot reach consensus on whether the recipient of the notice has either acted unreasonably or breached this Agreement, then either Party may terminate this Agreement by providing written notice to the other Party that advises that the Agreement shall be deemed terminated on the ninetieth (90th) day of the date of such notice of termination.

SECTION 8 - MISCELLANEOUS:

A. **Indemnity:** Each Party agrees to defend and hold harmless the other Party and its officers, agents, and employees from and for any and all losses, costs, expenses, demands, claims, causes, causes of action, judgments, and liabilities sustained and/or alleged to have been sustained in connection with, as a result of, and/or arising out of the intentional, willful, wanton, or gross negligence of the other Party in connection with the performance or undertaking of any obligation provided for in this Agreement. Nothing herein shall be deemed, interpreted, or construed as constituting and or extending any indemnity, hold harmless, or duty to defend covenant to the intentional, willful, wanton, grossly negligent, or negligent acts of any third person unless one or both Parties to this Agreement otherwise agree in writing to indemnify and/or hold harmless such other third person. This indemnity, hold harmless, and duty to defend provision shall not expire until the statute of limitations, including any tolling period therefor, expires. In the event either Party to this Agreement seeks or elects to invoke the indemnity, hold harmless, and/or duty to defend provision contained herein, such Party shall provide the other Party with written notice of such intent to exercise this Sub-Section and such notice shall provide such information as is necessary to inform or otherwise apprise the recipient of such notice of the basis and reason for seeking to exercise the terms, provisions and covenants contained in this Sub-section.

B. **Notices:** Any and all notices required to be given by this Agreement shall be given in the following means and any such notice shall be deemed effective as hereinafter provided:

- i. **If by First Class U.S. Postal Service:** Any and all notices sent by U.S. Postal Service shall be sent via First Class mail, registered, or certified mail with return

receipt requested. If any notice is placed in a properly addressed and stamped envelope, such notice shall be deemed effective five (5) business days after the date of placement with the U.S. Postal Service.

~~ii. If by facsimile transmission: Any and all notices sent by facsimile transmission shall be deemed effective the day after the date of transmission but only if the sending fax machine provides a written acknowledgement that the transmission was properly sent to the recipient Party's facsimile telephone number and received by the recipient Party's fax machine. If any one of the immediate afore-stated conditions is not met, the notice shall be deemed ineffective.~~

iii. If sent by overnight courier service: Any and all notices sent by overnight courier service shall be deemed effective the date after delivery of such notice but only if the said courier service provides or otherwise makes available tracking of the delivery of such notice, which tracking shall include the date and time when such delivery to the recipient Party was made.

iv. If by personal service: Any and all notices that are personally served on the recipient Party shall be deemed effective the day after delivery is made but only if the person delivering any such notice executes an affidavit that states the date when such personal delivery was made.

C. Record Keeping: The Parties agree to keep and maintain any and all records and documents created in connection with the creation of the Redevelopment Plan and any undertaking of the Redevelopment Project. Such records shall be kept and maintained in accordance with the State Records Act (5 ILCS 160/1 *et seq.*).

D. Severability: If any term or other provision of this Agreement is declared by a court or administrative agency of competent jurisdiction to be invalid, illegal, or incapable of being enforced, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of these transactions contemplated hereby is not affected in any manner materially adverse to either Party. Notwithstanding the immediate foregoing, if in any such proceeding, one Party's performance under this Agreement is declared to be unenforceable by the other Party, then this Agreement shall be deemed to automatically terminate with such termination date to be effective on the date when such declaration, finding, order, or decree is entered.

E. Entirety of Agreement: This Agreement constitutes the entire agreement between the Parties; it supersedes any prior agreement or understanding between them, oral or written, with respect to the matters addressed herein, all of which are hereby canceled.

F. Amendment or Modification: This Agreement may not be amended or modified except by an instrument in writing signed by both Parties.

G. Waiver: Any waiver or release by one Party of the other Party of any term, condition or covenant contained in this Agreement shall be deemed effective only if such waiver is contained in a writing signed by the Party granting such waiver. Any such waiver shall not be deemed, construed, or interpreted as a waiver or release of any other term, condition or covenant contained in this Agreement.

H. Execution in Counterparts: This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

I. Governing Law and Jurisdiction: The laws of the State of Illinois shall apply to any construction, interpretation, enforcement, or action for breach of this Agreement. In the event that any action is filed which seeks to interpret, enforce, or declare breach of this Agreement, any such action shall be filed and maintained in the Sixth Judicial Circuit of the Circuit Court, Champaign County, Illinois.

J. Representations and Warranties of Authority to Execute: The Parties represent and warrant that the person executing this Agreement on the respective Party's behalf is duly authorized to do so.

K. Termination and Expiration of Agreement: This Agreement shall terminate upon the occurrence of any one of the following:

- i. Completion of the Redevelopment Project as substantially provided for in such Redevelopment Plan or any amendment thereto.
- ii. After a reasonable good faith effort has been undertaken by the Parties to undertake the Redevelopment Project in accordance therewith but without success and upon written notice of one Party to the other Party to such effect.
- iii. Upon the Parties' failure, following reasonable good faith efforts, to obtain the necessary participation and financing by one or more third persons to undertake the Redevelopment Project.
- iv. Upon mutual agreement of the Parties which Agreement shall be in writing whether for cause or without cause.
- v. Upon a breach or default of this Agreement where the non-breaching or non-defaulting Party declares in writing that this Agreement shall be terminated as of a date provided in such notice of breach or notice of default.

For the City of Urbana:

By: Liane Wolfe Marlin

Its: Mayor

Attest: Phyllis D. Clark

Date: 10/19/2022

For the Housing Authority of Champaign County:

By: _____

Its: _____

Attest: _____

Date: _____

ORDINANCE NO. 2012-01-006

**AN ORDINANCE AUTHORIZING THE PURCHASE OF CERTAIN REAL ESTATE
(1603 East Washington Street)**

WHEREAS, Urbana City Code Section 2-118, Subsection (d), provides that the City may purchase real estate for any corporate purposes found and declared by the City Council, and that the City Council may authorize the purchase thereof under any terms and any conditions by ordinance duly passed; and

WHEREAS, the City Council desires to purchase the real estate commonly known as 1603 East Washington Street to support the City of Urbana's affordable housing projects that benefit households below 80 percent of median family income; and

WHEREAS, the City Council expressly finds and declares that said real estate is needed for governmental purposes of the City of Urbana.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

The purchase of the real estate commonly known as 1603 East Washington Street in Urbana, Illinois, and legally described below, for a sum not to exceed \$35,000 plus closing costs, is hereby approved:

Lot 112 in Weller's Scottswood Manor, a Subdivision in the City of Urbana, Illinois, as per plat recorded in Book "V" of Plats at page 3, situated in Champaign County, Illinois.

Permanent Parcel Number 92-21-16-402-001

Section 2.

The Mayor, or her designee, be and hereby is authorized to perform all acts necessary on behalf of the City of Urbana to effectuate the purchase of the real estate.

PASSED by the City Council this 23rd day of January, 2012.

AYES: Bowersox, Jakobsson, Lewis, Marlin, Roberts, Smyth, Stevenson,
Prussing

NAYS:

ABSTAIN:


Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 23rd day of January, 2012.

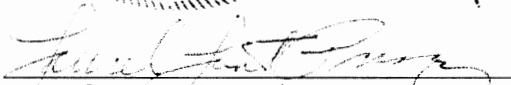

Laurel Lunt Prussing, Mayor

Exhibit H: Application for Zoning Map Amendment

Item a.



Application for Zoning Map Amendment

PLAN COMMISSION

The application fee must accompany the application when submitted for processing. Please refer to the City's website at <http://www.urbanailinois.us/fees> for the current fee associated with this application. **The Applicant is also responsible for paying the cost of legal publication fees.** Estimated costs for these fees usually run between \$75.00 and \$225.00. The applicant will be billed separately by the News-Gazette.

DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY

Date Request Filed 11-14-2022 Plan Case No. 2464-M-22
Fee Paid - Check No. NO FEE Amount ----- Date -----

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

1. APPLICANT CONTACT INFORMATION

Name of Applicant(s): **Kevin Garcia (Zoning Administrator, City of Urbana)** Phone: **(217) 328-8269**

Address (*street/city/state/zip code*): **400 South Vine Street**

Email Address: **kjgarcia@urbanailinois.us**

Property interest of Applicant(s) (*Owner, Contract Buyer, etc.*): **Owner's Representative**

2. OWNER INFORMATION

Name of Owner(s): **City of Urbana**

Phone: **(217) 384-2439**

Address (*street/city/state/zip code*): **400 South Vine Street**

Email Address:

Is this property owned by a Land Trust? ☐ Yes ☒ No

If yes, please attach a list of all individuals holding an interest in said Trust.

3. PROPERTY INFORMATION

Address/Location of Subject Site: **1603 East Washington Street**

PIN # of Location: **92-21-16-402-001**

Lot Size: **.99 acres/43,218 square feet**

Current Zoning Designation: **B-3, General Business**

Proposed Zoning Designation: **R-5, Medium High Density Multiple Family Residential**

Current Land Use (*vacant, residence, grocery, factory, etc.*): **Vacant**

Proposed Land Use: **Dwelling, Multifamily**

Present Comprehensive Plan Designation: **Residential**

How does this request conform to the Comprehensive Plan? It is in line with the future land use designation.

Legal Description *(If additional space is needed, please submit on separate sheet of paper):*

Lot 112 in Weller's Scottswood Manor, a Subdivision in the City of Urbana, IL, as per plat recorded in Book "V" of Plats at page 3, situated in Champaign County, Illinois; Common description: 1603 E. Washington Street, Urbana, Illinois 61802; Permanent Index Number: 92-21-16-402-001

4. CONSULTANT INFORMATION

Name of Architect(s): Precedent

Phone: 920-602-5519

Address *(street/city/state/zip code)*: 195 N Main St, Fond Du Lac, WI 54935

Email Address:

Name of Engineers(s):

Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Surveyor(s):

Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Professional Site Planner(s):

Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Attorney(s):

Phone:

Address *(street/city/state/zip code)*:

Email Address:

5. REASONS FOR MAP AMENDMENT:

What error in the existing Zoning Map would be corrected by the Proposed Amendment?

The Comprehensive Plan designates the parcel as a "Residential" future land use. In 2012, the property was donated to Urbana after the property was foreclosed on. The City's longterm goal is to use the site for affordable housing, pending a suitable development proposal and financing. While the current zoning would allow "Dwelling, Multifamily" use with a special use permit, rezoning to R-5, Medium High Density Residential would better align with the Comprehensive Plan and the City's longterm goals for the lot.

What changed or changing conditions warrant the approval of this Map Amendment?

Since acquiring the lot, the City has intended to use it for affordable housing. As an interim use, the City leased the property to the Lierman Neighborhood Action Committee (LNAC) for use as the Lierman Neighborhood Community Garden, starting in 2012. In 2022, LNAC dissolved, and the garden is no longer being maintained. The City recently received a proposal from Northpointe Development to develop the lot, as well as 1001 and 1003 South Lierman Avenue, with two-story affordable housing. Northpointe is applying for federal tax credits, and in October of 2022, the City Council approved an agreement between Urbana and the Housing Authority of Champaign County (HACC) to collaborate to redevelop the site.

Explain why the subject property is suitable for the proposed zoning.

The proposed R-5, Medium High Density Multiple Family Residential Zoning is aligned with the "Residential" future land use designation from the 2005 Comprehensive Plan. Nearby properties to the South and Southwest are also zoned R-5. The surrounding area contains a mixture of single-family, multi-family, commercial, office, and recreational uses.

What other circumstances justify the zoning map amendment

The 2005 Comprehensive Plan and the City of Urbana and Urbana HOME Consortium 2020-2024 Consolidated Plan call for increasing local affordable housing opportunities. The rezoning would facilitate the construction of affordable housing units targeting families making between 30-80% of the Area Median Income. The site is suitable for affordable housing; it is on a bus route, and is close to elementary and pre-k schools, the County sports complex, the Park District's forthcoming wellness center, and a variety of businesses along Washington Street.

Time schedule for development *(if applicable)*

If the application is successful, Northpointe will receive federal tax credits to finance the development of the parcel in February or March of 2023. After financing is secured, the developer will conduct community outreach in coordination with the City and HACC to determine the ultimate site layout. The City anticipates that construction would begin in Fall of 2023.

Additional exhibits submitted by the petitioner.

Exhibit A: Affordable Housing Project Description and Site Plan Concept Drawing

Exhibit B: Resolution 2022-10-081R A Resolution Authorizing the Execution of an Intergovernmental Agreement With the Housing Authority of Champaign County Regarding Redevelopment of the Lierman Ave and Washington Ave Site

NOTE: If additional space is needed to accurately answer any question, please attach extra pages to the application.

By submitting this application, you are granting permission for City staff to post on the property a temporary yard sign announcing the public hearing to be held for your request.

CERTIFICATION BY THE APPLICANT

I certify all the information contained in this application form or any attachment(s), document(s) or plan(s) submitted herewith are true to the best of my knowledge and belief, and that I am either the property owner or authorized to make this application on the owner's behalf.



Applicant's Signature

11-14-2022

Date

PLEASE RETURN THIS FORM ONCE COMPLETED TO:

City of Urbana
Community Development Department Services
Planning Division
400 South Vine Street, Urbana, IL 61801
Phone: (217) 384-2440
Fax: (217) 384-2367

MINUTES OF A REGULAR MEETING**URBANA PLAN COMMISSION****DRAFT****DATE:** December 8, 2022**TIME:** 7:00 P.M.**PLACE:** Council Chambers, City Building, 400 South Vine Street, Urbana, Illinois

PLAN COMMISSION**MEMBERS ATTENDING:** Dustin Allred, Andrew Fell, Lew Hopkins, Debarah McFarland, Karen Simms, Chenxi Yu**MEMBERS EXCUSED:** Will Andresen**STAFF PRESENT:** UPTV Camera Operator; Sheila Dodd, Interim Community Development Services Director, Kevin Garcia, Principal Planner/Zoning Administrator; Marcus Ricci, Planner II; Nick Olsen, Planner I**PUBLIC PRESENT:** Kenny Mosley, Paul and JoAnn Wagenbreth

1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

Chair Allred called the meeting to order at 7:03 p.m. Roll call was taken, and there was a quorum of the members present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

NOTE: Ms. Simms arrived at 7:04 p.m.

The minutes of the October 20, 2022 regular meeting were presented for approval. Mr. Fell moved that the Plan Commission approve the minutes as written. Ms. Yu seconded the motion. The minutes were approved by unanimous voice vote.

4. COMMUNICATIONS

Mr. Olsen stated that staff did not receive any written communications. However, staff hosted a neighborhood meeting on December 1, 2022, and twelve residents attended. A summary of the meeting is included in the written staff report for Plan Case No. 2464-M-22.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

Plan Case No. 2464-M-22 – A request by the City of Urbana to rezone 1603 East Washington Street from B-3, General Business to R-5, Medium High Density Multiple Family Residential.

Chair Allred opened the public hearing for Plan Case No. 2464-M-22. Nick Olsen, Planner I, presented the case to the Plan Commission. He began by explaining the purpose for the proposed rezoning and talked about the public outreach staff had done to inform the surrounding neighbors and business owners. He described the subject property and gave a brief history of the site. He noted the future land use designation of “residential” for the proposed site in the 2005 Comprehensive Plan.

He talked about a proposal that the City received from Northpointe Development to develop the site with mixed-income family housing. He explained that the proposal would require additional approval of the City Council due to the City’s financial interest in the property. He presented a potential timeline for the development process.

He reviewed how the proposed rezoning relates to the eight La Salle National Bank criteria. He read the options of the Plan Commission for this case and presented staff’s recommendation for approval.

Chair Allred asked if the Plan Commission members had any questions for City staff.

Mr. Fell asked why this case was before them now. Mr. Olsen responded saying that the subject property is currently vacant, and the City has received a development proposal for the lot. While staff is not certain that the development will happen, rezoning the lot now will make development go faster when/if it does get approved.

Mr. Fell wondered if City staff put out a Request for Proposal (RFP). Sheila Dodd, Interim Community Development Services Director, replied no. Because there was more than one developer that came forward on their own and because of the rapidly approaching tax credit deadline, the City did not send out an RFP. Mr. Fell asked if the property is rezoned, does City staff intend to send out a RFP so any developer has an opportunity to respond. Ms. Dodd stated that she would check with the City’s Finance Department.

Ms. Yu stated that properties nearby are zoned R-3, Single and Two-Family Residential, and R-5, Medium High Density Multiple Family Residential. She wondered if there was any concerns from the neighbors about the subject property being rezoned to R-5 instead of R-3. Mr. Olsen stated that

there was a question about why the City wanted to rezone the property to R-5 rather than to R-4, Medium Density Multiple Family Residential, brought up at the neighborhood meeting. He explained that City staff decided to rezone the subject property to R-5 because that is what the properties immediately south and the nearby parcel at 1001 South Lierman Avenue are zoned.

Ms. Yu asked why the current zoning of B-3, General Business, does not work for the potential development. Mr. Olsen replied that a multiple family residential dwelling unit would require a special use permit in the B-3 zoning district, which is basically the same process as a rezoning. Taking into consideration the future land use designation for the proposed site, the zoning of the surrounding properties, and the long standing failure of the lot being able to attract a business use, the City decided that a rezoning would be more in line with the long term goals for the parcel. Ms. Yu said it sounds like the potential development could be constructed with or without the proposed zoning, but that by rezoning it makes it easier.

Mr. Fell asked if City Council could impose requirements above those in the Zoning Ordinance or Building Code. Kevin Garcia, Principal Planner/Zoning Administrator, replied yes they could make a project more restrictive.

Chair Allred asked if the developer would be entering into an agreement with the City. Mr. Garcia said that he believed that would be part of the process. Ms. Dodd confirmed. Chair Allred stated that City Council could impose other things as part of the agreement.

With there being no further questions for City staff, Chair Allred opened the hearing for public input.

Kenny Mosley approached the Plan Commission to speak. He stated that he owns a property adjacent to the parcel. He asked who the developer would be and what the plans for the development would look like. He expressed concern about history repeating itself by developing affordable housing there. In the 1980s and 1990s, when there was more affordable housing in the area, it brought the area down; meaning that the crime rate was higher which required more City resources such as the police. Mr. Garcia stated that without knowing if either of the potential developers will get funding, City staff cannot say who the developer will be. When a developer is selected, the City will hold more public meetings for residents to voice concerns and ask questions.

JoAnn Wagenbreth approached the Plan Commission to speak. She stated that she has the same concerns as Mr. Mosley. She mentioned that someone tried breaking into their home on two occasions. She also mentioned that crime was so bad at the old food mart, which was just down the street, that the Urbana Police told the owner that he would need to hire his own security. She said that it seemed to her that most of the crime was being committed by unsupervised teenagers.

With there being no further public input, Chair Allred declared the public input portion closed and opened the hearing for Plan Commission discussion and/or motion(s).

Ms. Yu asked who owns the larger R-5 parcel. Mr. Garcia replied that the City owns it.

Chair Allred asked if it is correct to say that when the City acquired the proposed property, the City always planned for it to be used as affordable housing. Mr. Garcia said yes. He noted that the original purchase agreement states in the first paragraph that the City would use the lot for

affordable housing. This was the whole reason for the City to purchase the lot in 2012. In addition, the lease agreement with the Lierman Neighborhood Action Committee to use the property for community garden space states that the City would be using the lot for affordable housing in the future. Chair Allred said that because it is a rezoning request, then the Plan Commission should look at all the possible uses allowed in the R-5 zoning district, but keep in mind that it is the City's intention to use the land for affordable housing. Mr. Garcia said that was correct.

Ms. Simms asked if there were multiple affordable housing models. Therefore, the zoning does not turn the proposed site into one conceptualization of affordable housing. Is it correct that once zoned, City staff would use a community process to look at what the variables would be? Mr. Garcia said yes.

Mr. Hopkins said that the City not only intends to use this parcel for affordable housing, we are committed in the funding source for the purchase to use the parcel for affordable housing, correct? Ms. Dodd said that was correct. Mr. Hopkins stated that the parcel then has to be used for affordable housing unless something related to zoning changes.

Mr. Hopkins asked if the City has a definition of "affordable housing" that can include or not include mixed-income housing. Ms. Dodd answered saying that typically "affordable housing" means that an individual does not pay more than 30% of their gross income on rent and utilities, so it is based on each individual's income as to what their rent would be. The City will partner with and work with the developer to determine what the need is and the best way to utilize the property, so it may be mixed-income or it may be all affordable units with vouchers attached to them. At this point, City staff does not know what it will be. She assured everyone at the meeting that once a final plan is prepared, City staff will reach out to the public to get their input before it is brought to City Council for a decision.

Mr. Hopkins felt that the Plan Commission should send this case to the City Council with a recommendation for approval. He stated that his reasoning is given the constraints of what can be done with the property, he believes that R-5 is a better zoning than B-3. The City does not want business on this property, and we are going to have housing. Other properties immediately adjacent to the south and across the street to the south are zoned R-5. However, imbedded in the Plan Commission's discussion and the public input received about the apparent concentration of affordable housing in a particular neighborhood is the message that the City needs to think about the nature of the potential affordable housing development and to commit the other City resources to the neighborhood in terms of crime, Urbana Park District, etc.

Mr. Hopkins moved that the Plan Commission forward Plan Case No. 2464-M-22 to the City Council with a recommendation for approval. Ms. Simms seconded the motion.

Mr. Fell stated that he was mildly uncomfortable of the seemingly non-transparent way that the proposed map amendment has come before them. He trusts that the City administration will handle it appropriately, but not opening the proposed development up to any developer through an RFP does not sit well with him.

Chair Allred agreed with Mr. Hopkins. The Future Land Use in the 2005 Comprehensive Plan supports rezoning the proposed parcel to residential, and R-5 seems to make sense in terms of the surrounding context.

Ms. Yu felt that this case was technically straight forward, but emotionally she echoed some of the concerns of the neighbors who spoke. It is a lot of information for the neighbors to process, and she reminded the neighbors that rezoning the property is the first step of making a better community. There will be future steps where the neighborhood can be involved and provide feedback.

Ms. Simms agreed with Ms. Yu's comment. There will be many conversations held regarding design, structures, etc. This will be a long process and neighbors will need to stay involved in the journey.

Roll call on the motion was as follows:

Mr. Fell	-	Yes	Mr. Hopkins	-	Yes
Ms. McFarland	-	Yes	Ms. Simms	-	Yes
Ms. Yu	-	Yes	Mr. Allred	-	Yes

The motion passed by unanimous vote. Mr. Garcia stated that this case would be forward to the Committee of the Whole on Monday, December 19, 2022.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

There was none.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 7:43 p.m.

Respectfully submitted,



Kevin Garcia, Secretary
Urbana Plan Commission



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Sheila Dodd, Interim Community Development Services Director
Nick Olsen, Planner I

DATE: December 15, 2022

SUBJECT: Plan Case No. 2464-M-22: A request by the City of Urbana to rezone 1603 East Washington Street from B-3, General Business to R-5, Medium High Density Multiple-Family Residential.

Introduction

The Urbana Zoning Administrator, on behalf of the City of Urbana, requests a rezoning of 1603 East Washington Street from B-3, General Business to R-5, Medium High Density Multiple-Family Residential to allow an affordable housing development at the location.

The B-3 district would allow a “Dwelling, Multifamily” use by special use permit, whereas the R-5 district would allow it by right. Because the 2005 Comprehensive Plan designates the location as having a “Residential” Future Land Use, the City is pursuing a rezoning instead of a special use permit to better align with the long-term vision for the site.

Because the development would be on City-owned land and would receive City funding, the final layout and amenities would require approval by City Council separate from the rezoning process.

At its December 8, 2022, meeting, the Plan Commission voted unanimously to forward the case to City Council with a recommendation to APPROVE the request as submitted (six ayes, zero nays); staff agree with this recommendation, finding that the request aligns with the Comprehensive Plan and satisfies the rezoning criteria, as discussed below.

Background

The City acquired the vacant lot at 1603 East Washington Street in 2012, for the purpose of redeveloping it for affordable housing once a developer and funding could be secured. The City made its intentions clear by stating the following in the ordinance authorizing the purchase of the lot:

...the City Council desires to purchase the real estate commonly known as 1603 East Washington Street to support the City of Urbana's affordable housing projects that benefit households below 80 percent of median family income...¹

¹ Exhibit G: An Ordinance Authorizing the Purchase of Certain Real Estate (Ord. No. 2012-01-006)

As an interim use, the City leased the property to the Lierman Neighborhood Action Committee (LNAC) for a community garden until June 2022, when LNAC dissolved. Since that time, the land has been vacant and the garden is no longer being maintained.

In September 2022, the City received a proposal from Northpointe Development to develop the site and the nearby parcel at 1001 South Lierman Avenue with approximately 40 units¹ of two-story, 100 percent affordable, mixed-income² family housing (Exhibit E). On October 10, 2022, City Council approved an intergovernmental agreement with the Housing Authority of Champaign County (HACC) to explore financing for the proposed development (Exhibit F).

Multi-family dwellings, such as apartments and townhomes, would require either a special use permit in the B-3 district, or a rezoning to a district that allows that use by right. Because the 2005 Comprehensive Plan designates the Future Land Use as residential, and adjacent lots to the south and southwest are zoned R-5, the City is pursuing a rezoning to R-5.

The development would be financed in part through Low-Income Housing Tax Credits (LIHTC), which would be awarded in late winter or early spring of 2023. If successfully awarded tax credits, the developer would then seek input from the neighborhood to help them come up with final plans for the site, which would be subject to City Council approval.

Regardless of whether or not the current redevelopment proposal moves forward, rezoning the parcel is an important step to take to implement the City's long-term plan for the site: to build affordable housing.

Description of the Site and Surrounding Properties

The property is 43,218 square feet (.99 acres) and is located at the southeast corner of Washington Street and Lierman Avenue. The property is currently vacant and was most recently the site of a community garden. Apartment buildings, businesses, single-family residences, offices, and recreational facilities are located nearby. The adjacent properties are zoned R-5, Medium High Density Multiple-Family Residential to the south; B-3, General Business to the west; R-3, Single and Two-Family Residential to the east; and CRE, Conservation-Recreation-Education to the north.

The following chart identifies the current zoning, and existing and future land use of the site and surrounding properties (see Exhibits A, B, and C).

¹ The preliminary proposal is for approximately 40 units on the two lots *combined*, not for 40 units on each lot.

² As proposed, the development would contain units exclusively for households earning below the Area Median Income (AMI), but would have units reserved for families at various income levels below the median.

Direction	Zoning	Existing Land Use	Future Land Use
Site	B-3, General Business	Vacant	Residential
North	CRE, Conservation-Recreation-Education	Municipal or Government Building	Institutional
East	R-3, Single and Two-Family Residential	Dwelling, Single-Family	Residential
South	R-5, Medium High Density Multiple-Family Residential	Dwelling, Multifamily	Residential
West	B-3, General Business	Gas Station	Community Business

Discussion

The requested rezoning to R-5 would allow a range of residential uses, as well as limited agriculture, recreation, and public uses. The affordable housing proposal for the site would be classified as “Dwelling, Multiple Family.” A multifamily use would be allowed only by special use permit in the B-3 district, which is primarily intended to provide areas for a wide range of business uses.

There has not been a business use at the site since its designation as a B-3 property in the 1970’s. Between 2012 and 2022, it served as a community garden, which would still be permitted in the R-5 district. Before this, the property was primarily vacant (Exhibit D).

In the Comprehensive Plan, the Future Land Use designation for the property is “Residential,” which it shares with the area to the south and to the east. The requested rezoning would allow a property that is currently vacant, and which has historically failed to attract business uses, to better accommodate residential uses.

The City has already received a proposal for an affordable family housing development on the site, which would help to meet an area of need in the local housing market, as indicated by the City of Urbana and Urbana HOME Consortium PY 2020-2024 Draft Consolidated Plan.

The developer’s willingness to incorporate amenities into the site plan could also allow for continuity with its recent use as a community garden, as well as bringing added benefit to the community with playground space or other amenities.

Public Input

On December 1, 2022, planning staff hosted a neighborhood meeting at Foursquare Church, located at 2101 East Washington Street. Staff mailed invitations to over 200 surrounding property owners and advertised the meeting via social media, *The News-Gazette*, and by placing a sign on the property. Twelve members of the public attended the meeting. Nick Olsen, Planner I, and Sheila Dodd, Community Development Services Director, gave an introduction, went over general case details, and then opened the floor for discussion.

Most of the evening's discussion centered on details of the proposed affordable housing development, rather than on the rezoning of the property. Staff took detailed notes of the discussion and will share them with the developer so they can be considered in their design should their proposal move forward. Only comments related to the rezoning case are discussed below.

At the meeting, two people asked why the R-5 designation was being considered instead of R-4, Medium Density Multiple-Family Residential, and expressed concerns about the proposed density being too high. Staff explained that R-5 fit better with the surrounding zoning, and that the R-5 district will provide more flexibility during the design process. Staff also emphasized that since the City owns the property, City Council will have a say in the site layout and building design.

Another person asked whether the R-5 district would support purely recreational uses separate from housing, if the community and Council decide to go in that direction. Staff stated that R-5 would allow park uses. Staff added that because the land was acquired by the City with the use of federal funds, potential uses are limited.

Aside from the neighborhood meeting, staff have received no written comments from the public about the case.

Rezoning Criteria

In the case of *La Salle National Bank v. County of Cook*, the Illinois Supreme Court developed a list of factors that are paramount in evaluating the legal validity of a zoning classification for a particular property. In addition to the six La Salle Criteria, the court developed two more factors in the case of *Sinclair Pipe Line Co. v. Village of Richton Park*. Together, all eight factors are discussed below to compare the current zoning to the proposed zoning.

1. *The existing land uses and zoning of the nearby property.*

The proposed rezoning to R-5, Medium High Density Multiple-Family, is compatible with the existing land uses and zoning of the immediate area (see Exhibits A and B). Lots immediately to the south and southwest along Lierman Avenue are all zoned R-5. The rezoning would align with the residential zoning of properties on the same blocks of Lierman Avenue and Washington Street. The surrounding area contains a variety of residential uses, as well as business, office, and recreational uses.

2. *The extent to which property values are diminished by the restrictions of the ordinance.*

The property has historically failed to attract business uses in line with the current B-3 zoning. Prior to its recent use as a community garden, it was primarily vacant, and is now vacant again. The City has received a proposal to develop the site with multifamily housing. If the property is not rezoned to accommodate the proposal, it may remain vacant longer.

3. *The extent to which the ordinance promotes the health, safety, morals, or general welfare of the public.*

The proposed rezoning would likely positively affect the health, safety, morals, or general welfare of the public, as it would facilitate the development of housing affordable to families earning below the AMI, for which there is a local shortage. In addition, the likely inclusion of other amenities such as a playground or garden would provide added benefits to the public.

4. *The relative gain to the public as compared to the hardship imposed on the individual property owner.*

Both the public and the property owner (the City of Urbana) would benefit from the proposed rezoning. The City would benefit by seeing a currently vacant property rezoned to allow for future residential development, which is needed. The public would benefit from the proposed affordable housing use and other potential amenities.

5. *The suitability of the subject property for the zoned purposes.*

The property is suitable for R-5 zoning and its associated uses, as there are other properties with the same zoning in the immediate area. The 2005 Comprehensive Plan designates the site with a "Residential" Future Land Use, whereas it has historically failed to attract uses in line with its current B-3 zoning. As a site for affordable housing, the location has the benefit of being on a bus route, and is close to elementary and pre-k schools, the County sports complex, the Park District's forthcoming wellness center, and a variety of businesses along Washington Street.

6. *The length of time the property has been vacant as zoned, considered in the context of land development, in the area, in the vicinity of the subject property.*

The property has been zoned B-3 for over 40 years and has been vacant for the majority of that time. From 2012 to June 2022, the property was the site of a community garden (a use that would still be permitted in the R-5 district) and is now vacant again. Based on the site's history, a business use in the near future seems unlikely, whereas the City has received a proposal for multifamily residential use.

7. *The community's need for more of the proposed use.*

The City of Urbana and Urbana HOME Consortium PY 2020-2024 Draft Consolidated Plan and the recent ARP Allocation Plan both find that there is a shortage of units affordable to families earning below the AMI in Champaign County. The proposed multifamily use would consist entirely of affordable units, targeting a range of income levels below the area median.

8. *The care with which the community has planned its land use development.*

In the Comprehensive Plan, the property is identified as part of the "Residential" Future Land Use designation, with which the proposed rezoning would better align than the current B-3, General Business zoning designation.

Plan Commission

On December 8, 2022, the Plan Commission discussed the rezoning request.

Two members of the public spoke at the meeting, expressing concerns about potential negative effects of future development on the surrounding area.

Chenxi Yu asked staff if B-3 zoning would allow an affordable housing development. Staff responded that a multifamily development would be allowed by special use permit in the B-3 district, but that a rezoning would be more in line with the surrounding area, the Comprehensive Plan, and long-term goals for the lot.

Andrew Fell asked if there had been a request for proposals (RFP) to develop the lot, and if there would be one if the current proposal falls through. Staff responded that there had not, as that is not typical for affordable housing developments, but staff would reach out to the finance department for more information.

Commissioner Fell also asked if City Council would be able to apply conditions to any development in addition to typical zoning and building code requirements. Staff responded that any future developer would enter a development agreement with the City, which could contain conditions in addition to typical development regulations.

In Commission members' discussion of the case, Karen Simms stated that there are many possibilities for the design of affordable housing, and that it will be important to incorporate community concerns if any development moves forward. Lewis Hopkins and Commissioner Yu agreed that continued community engagement would be important. Commissioner Hopkins and Dustin Allred made statements acknowledging that the request complies with the 2005 Comprehensive Plan and the purchasing agreement of the lot, and would fit with the surrounding area. Commissioner Fell stated he supported the rezoning request, but felt there should have been an RFP to develop the lot.

With no further discussion, Plan Commission voted unanimously with six ayes and zero nays to forward the request to City Council with a recommendation for approval.

Summary of Staff Findings

1. The City of Urbana requests a rezoning of 1603 East Washington Street from B-3, General Business to R-5, Medium High Density Multiple-Family Residential.
2. The proposed rezoning to the R-5, Medium High Density Multiple-Family Residential zoning district would be compatible with the "Residential" Future Land Use designation by the Urbana Comprehensive Plan.
3. The proposed rezoning would be compatible with the surrounding zoning districts and land uses.
4. The proposed rezoning would allow for residential use of a property that has historically failed to attract business uses.
5. The property has been vacant since June 2022, when the non-profit managing a community garden on the site dissolved. Prior to use as a community garden starting in 2012, the property was primarily vacant throughout its history.
6. The public would likely see a positive gain from the rezoning, as it would facilitate a proposal the City has received for an affordable housing development. Potential amenities on the site would bring added public benefit.
7. The proposed affordable housing use would meet a need documented in the most recent City of Urbana and Urbana HOME Consortium Consolidated Plan.

Options

The City Council has the following options:

1. Approve the Ordinance.
2. Deny the Ordinance. If denied, the Council shall state the reasons for denial.

Staff Recommendation

At the December 8, 2022 meeting, the Plan Commission voted unanimously with six ayes and zero nays to forward the Zoning Map Amendment to City Council with a recommendation for approval.

Staff concurs with the Plan Commission recommendation and further recommends placement of the Ordinance on the consent agenda.

Attachments: Exhibit A: Location Map
Exhibit B: Zoning Map
Exhibit C: Future Land Use Map
Exhibit D: Historic Aerial Site Photography
Exhibit E: Preliminary Project Description
Exhibit F: Intergovernmental Agreement with HACC
Exhibit G: Ordinance Authorizing the Purchase 1603 East Washington Street
Exhibit H: Application for Zoning Map Amendment
Exhibit I: Plan Commission Meeting Draft Minutes – December 8, 2022



MEMORANDUM

TO: City Council
FROM: Diane Wolfe Marlin, Mayor and Local Liquor Control Commissioner
Kate Levy, Deputy Local Liquor Control Commissioner
DATE: December 15, 2022
RE: **Increasing the number of Class R&T-1 liquor licenses for Best of Africa Food Store LLC**

Best of Africa Food Store LLC currently holds a Class P (Package Liquor) Liquor License for the grocery store Best of Africa Food Store located at 208 West Griggs Street in Urbana.

The LLC is now applying for an additional license, an R&T-1 (Restaurant & Tavern; all alcohol) Liquor License for their newly opened restaurant Mama's African Kitchen also located at 208 West Griggs Street in Urbana.

The 2 licenses will be for separate defined spaces at the 208 West Griggs Street address, and usage parameters of each licensed area shall not overlap with the other.

ORDINANCE NO. _____

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER THREE, SECTION
3-43

(Increasing the number of Class R&T-1 liquor licenses for Best of Africa Food Store LLC, 208 W Griggs St, Urbana, IL)

WHEREAS, the City Council heretofore has adopted Urbana City Code Section 3-43 to establish limits on the number of liquor licenses issued in the City in this Class R&T-1 designation; and

WHEREAS, the City Council finds that the best interests of the City are served by increasing the number of Class R&T-1 liquor licenses for **Best of Africa Food Store LLC, 208 W Griggs St, Urbana, IL**; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1.

Urbana City Code Chapter 3, "Alcoholic Liquors," Article III, "Retail License," Section 3-43, "Limitations on number issued," subsection 3-43(a), is hereby amended and as amended shall read as follows:

Sec. 3-43. - Limitations on number issued.

(a) The maximum number of liquor licenses authorized for the license classifications set forth below is as follows:

Classification	Number authorized
A	7
BYOB-R	0
CA	1
CS	0
FM	0
GC	1
GH	9
H	2
MB-1	0
MB-2	2
N	1
P	27
PB	0

R&T-1	14 15
R&T-2	11
TH	0
URO	0

Section 2.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

Phyllis Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Diane Wolfe Marlin, Mayor



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Carol Mitten, City Administrator

DATE: January 5, 2023

SUBJECT: Resolution No. 2022-12-092R: A Resolution Approving an Amended and Restated Right-of-Way License Agreement with MCDJ, LLC (208 West Griggs Street)

Several typographical errors were identified in the attached License Agreement at the Committee of the Whole meeting on January 3, 2023. These have been corrected by hand as shown on page 5 of the attached Agreement and will be initialed by the parties. The corrections have been made to Section 8.F. and Section 9.A.(3) and (A.(5).

Attachment: License Agreement

Mail recorded document to:

Public Works Director
City of Urbana
706 Glover Avenue
Urbana, Illinois 61802

City of Urbana – Champaign County

AMENDED AND RESTATED LICENSE AGREEMENT

MCDJ, LLC
208 West Griggs Street
Urbana, Illinois 61801-2608

AMENDED AND RESTATED LICENSE AGREEMENT

MCDJ, LLC, an Illinois limited liability company ("Company"), and the City of Urbana, an Illinois municipal corporation ("City"), each a "party" and together the "parties," mutually agree to amend and restate the license agreement authorized by Ordinance No. 2016-12-115, dated December 21, 2016, and the amended license agreement authorized by Ordinance No. 2018-05-035, dated May 23, 2018. This amended and restated license agreement is effective on the last date signed by a party hereto and is to read in its entirety as follows:

1. **Grant of license.** The City hereby grants and the Company hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, operate, repair, and remove a facility ("Facility") consisting of parking, entryways, patios, awnings, and an outdoor serving area, including chairs and tables (comprising approximately 7,160 square feet total), located within public right-of-way or public property on the south, east, and north sides of 208 Griggs Street, Urbana, Illinois ("Licensed Property"), as shown in Exhibit A-2.
 - A. The license gives the Company permission to use the Licensed Property for the limited purposes and term stated in this agreement. The license is not a warranty of title and does not convey any right, title, or interest in the Licensed Property.
 - B. The license is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements in and about the Licensed Property.
 - C. The Company shall fully and faithfully perform and comply with all terms, conditions, and covenants contained in this agreement. If the Company fails to perform or comply with any term, condition, or covenant in this agreement, the City may revoke the license after giving the Company a period in which to cure such failure as set forth in this agreement.
 - D. The Company shall not transfer or assign the license.
 - E. The license is nonexclusive and at all times subordinate to the City's and the public's use of the Licensed Property for purposes normally associated with a public right-of-way and/ or public facilities. Accordingly, if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to the Licensed Property, the Company shall, at its sole cost, relocate or remove all or any portion of the Facility not more than 90 days after the City's Public Works Director ("Director") directs such relocation or removal in writing.

- F. The Company shall use its best efforts to maintain contractors on any work project involving the Facility and to work toward its timely completion, barring inclement weather or other situations beyond the Company's control.
 - G. A continuous pedestrian access route, according to the Public Right-of-Way Accessibility Guidelines, shall be maintained along the north side of the Griggs Street right-of-way.
 - H. The license includes the rental lease to the Company of sixteen (16) existing parking spaces located along the north side of 208 Griggs Street and within City Parking Lot #25. These sixteen (16) parking spaces are reserved 24 hours per day, 7 days per week for the Company's use. The Company will be responsible for properly signing the reserved parking spaces and any enforcement required in the event of an unauthorized vehicle in one of the reserved parking spaces. The City will not ticket or tow an unauthorized vehicle in one of the reserved parking spaces.
2. **Term; termination.** This agreement is binding upon the parties hereto for a term of 20 years commencing as of its effective date, unless sooner terminated in accordance with this agreement. The parties may terminate this agreement at any time by mutual written consent. Either party may terminate this agreement for cause by giving written notice to the other party at least 45 days prior to the proposed termination. Such party shall specify the reason or reasons for such termination in the written notice and shall specifically state that such termination will become effective on a date at least 45 days after the date thereof if the other party does not completely cure the reason or reasons for such notice of termination.
 3. **Fee.** On the effective date of this agreement and on each anniversary of such date thereafter, the Company shall pay to the City, in advance and without demand, an annual fee of \$7,781.30 as compensation for the license granted under this agreement, minus credits and prorations for amounts paid under the previous version of this agreement. The Company shall pay to the City the annual fee and all other charges required to be paid under this agreement by cash, valid check, or money order at City of Urbana Accounting, 400 S. Vine Street, Urbana, Illinois 61801. The City may adjust the amount set for compensation on January 1 of each year beginning January 1, 2023, in accordance with the Consumer Price Index (CPI-U) published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.
 4. **Insurance.** On the effective date of this agreement and on each anniversary of such date thereafter, the Company shall submit to the City, in advance and without demand, a copy of Certificate of Insurance, listing the City of Urbana as additionally insured, for the license granted under this agreement. The Company shall submit a copy of Certificate of Insurance to City of Urbana Accounting, 400 S. Vine Street, Urbana, Illinois 61801.

5. **Installation.** The Company warrants that installation of the Facility will be done and completed in a good and competent manner, in accordance with all requirements of law, and at no expense to the City.
6. **Plan submission.** Upon completion of construction of the Facility, or each segment thereof, the Company shall provide as-built plans to the City in an electronic format compatible with the City's Geographic Information System.
7. **Maintenance.** The Company shall maintain the Facility in good and safe condition and in a manner that complies with all applicable laws. In the outdoor area on the east side of the building, the Company shall, at its sole expense, provide for regular landscaping, including without limitation mowing, watering, weeding, edging, trimming, pruning, fertilizing, mulching, and removing and replacing dead or dying plants, as needed to maintain high aesthetic standards.
8. **Repair.** After doing any work, the Company at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way and/ or property disturbed by the Company, including without limitation all sidewalks, parkways, or pavements, to their original condition or better in accordance with the specifications of the City.
 - A. If any such sidewalk, parkway, or pavement becomes uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Company, the Company, as soon as climatic conditions reasonably permit, shall promptly, and no more than 15 days from receipt of notice from the City to do so, cause such sidewalk, parkway, or pavement to be repaired or restored. The Company shall complete such restoration no more 10 days after the date of commencement of such restoration work. If the Company fails to commence and complete the restoration work in the manner and within the times prescribed in this section, the City may perform such work, and the Company shall pay any costs and expenses the City incurs upon written demand by the City.
 - B. If such right-of-way or improvement cannot be so repaired, replaced, or restored, the Company shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect, engineer, or contractor mutually agreed upon by the parties.
 - C. Within a reasonable time after completion of any excavations in lawns or grassy parkways, the Company shall backfill, tamp, and restore with seed or mulch all disturbed areas to at least as good a condition as existing immediately preceding the excavation.
 - D. At the Director's discretion, the Company shall repair or replace any shrubs, bushes, or trees existing within the Licensed Property that are disturbed by reason of the construction, maintenance, or repair of the Facility.

E. The Company shall promptly repair and restore at its own expense all damage it causes to any other utility, including but not limited to storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or facilities from any other utility company. Initial

F. The provisions in this section ⁸~~7~~ will survive the termination of this agreement.

9. **Removal.**

A. The City may remove and dispose of the Facility, or any portion thereof, upon occurrence of any of the following:

- (1) an emergency that presents imminent peril to person or property;
- (2) the Company's non-compliance with any term, provision, or covenant that is not cured within the time provided for in this agreement following notice of such non-compliance tendered to the Company;
- (3) the Director or other responsible City official, in good faith, deems the procedure in section ⁸~~7~~ impracticable under the circumstances present; Initial
- (4) termination of this agreement for any reason;
- (5) the Company's abandonment of the Facility's in accordance with the provisions in section ¹⁰~~9~~ of this agreement; or Initial
- (6) expiration of this agreement in the absence of any renewal thereof.

B. The Company shall bear all costs and expenses incurred in the removal and disposal of the Facility and the restoration of the Licensed Property.

C. If the Company fails in any way to make timely payment to the City for such costs and expenses, the Company shall pay, in addition to any amount so owed, the City's reasonable attorneys' fees and court costs incurred in the collection of such amount. This provision will survive the termination of this agreement.

10. **Lapse and termination.** The license granted in this agreement is limited to the construction, maintenance, operation, repair, and removal of the Facility. Any additional use other than that specifically named in this agreement, without the further express written consent of the City, is a violation of this agreement. Upon cessation of such use, as determined by the Director, this agreement immediately and automatically will lapse and terminate. If the Director believes the Company is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Company in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice will state that the Company has 30 days to reassert its rights under this agreement and demonstrate that it has not in fact abandoned the license granted by this agreement. If the Company demonstrates

within the 30-day period that it has not abandoned the Facility, this agreement will remain in force and effect according to its terms. If the Company does not demonstrate within the 30-day period that it has not abandoned the Facility, this agreement will be deemed lapsed, terminated, and no longer in effect.

11. **Indemnification.** The Company shall indemnify and defend the City, its officers, employees, and agents against all claims, losses, liability, or damage of whatsoever nature, including without limitation reasonable attorney's fees and costs, arising from or in any way related to the Company's construction, maintenance, operation, repair, or removal of the Facility, except to the extent caused by the gross negligence or willful misconduct of the City, its officers, employees, or agents. This section will survive the termination of this agreement.
12. **Entire agreement; amendment.** This agreement, together with its attachment, constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be amended except by a writing signed by both parties.
13. **Notices.** The parties shall give all notices required or permitted by this agreement in writing. All notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier service (e.g., FedEx or UPS). A notice delivered by email will be deemed given when the recipient acknowledges having received the email by an email sent to the sender's email address, as stated in this section, or by a notice delivered by another method in accordance with this section. An automatic "read receipt" will not constitute acknowledgment of an email for purposes of this section. Each party's address is stated below and may be changed to such other address as the party may hereafter designate by notice.

MCDJ, LLC

City of Urbana

MCDJ, LLC
 Attention: Michael D. Hosier, Manager
 1300 S. Neil Street
 Champaign, Illinois 61820-6528

Public Works Director
 City of Urbana
 706 Glover Avenue
 Urbana, Illinois 61802-4427

14. **Non-waiver.** Either party's failure to enforce any provision of this agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any provision of this agreement is valid only if in writing and signed by the parties.
15. **Compliance with governmental requirements.**
 - A. **Right-of-way/ Utility permit.**

- (1) Except in an emergency as provided in this agreement, the Company shall obtain a right-of-way/ utility permit from the City before constructing, installing, extending, removing, or otherwise changing the Facility. The permit will indicate the time, manner, and place of the work to be

performed. Along with each application for a permit, the Company shall provide prints, plans, and maps showing the proposed location and design of the Facility to be constructed, along with the appropriate surety bond, Insurance Certificate, and permit fees required by the Urbana City Code. The Company shall comply with all conditions of any permits issued to it.


- (2) In an emergency that the Company believes poses a threat of immediate harm to the public or to any of the Company's facilities, the Company may access the public way to mitigate the threatened harm without the benefit of a permit. In this case, the Company shall advise the City of the emergency at the earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter and in the manner as stated in this agreement.

B. **Applicable law.** The Company shall comply with all applicable laws, ordinances, regulations, and requirements of federal, state, county, and local regulatory authorities, including without limitation the applicable provisions of the Urbana City Code regarding rights-of-way and their uses, all of which as may be amended from time to time.

16. **No presumption.** Each party hereto acknowledges that this agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this agreement strictly construed against the other party as drafter of this agreement.
17. **Due authorization.** Each party represents to the other that the person or persons signing this agreement on behalf of the party is authorized and empowered to enter into this agreement by and on behalf of such party and that this agreement is a legal, valid, and binding obligation of such party, enforceable against the other in accordance with its terms.
18. **Recording.** The City will record this agreement in the Office of the Champaign County Recorder of Deeds at the expense of the Company.
19. **Counterparts.** The parties may sign this agreement in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures delivered by email in Adobe Portable Document Format (PDF) or by facsimile will be deemed original signatures for all purposes.

The parties are signing this agreement on the dates indicated below their signatures.

MCDJ, LLC

By: 
Michael D. Hosier
Manager

By: 
Constance R. Hosier
Manager

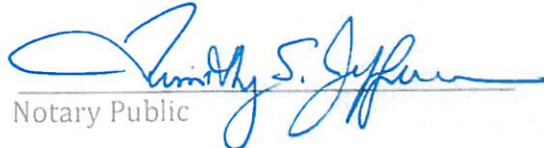
By: 
David Peshkin
Manager

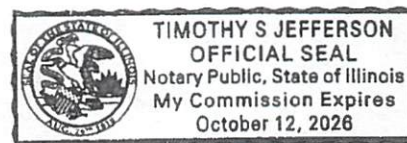
By: 
Janet Peshkin
Manager

STATE OF ILLINOIS)
) ss.
COUNTY OF CHAMPAIGN)

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Michael D. Hosier, Constance R. Hosier, David Peshkin, and Janet Peshkin, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument in their capacities as the duly authorized Managers of MCDJ, LLC as their free and voluntary act, and the free and voluntary act of MCDJ, LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 17th day of November 2022.


Notary Public



City of Urbana, Illinois

By: _____
Diane Wolfe Marlin
Mayor
Date: _____, 2022

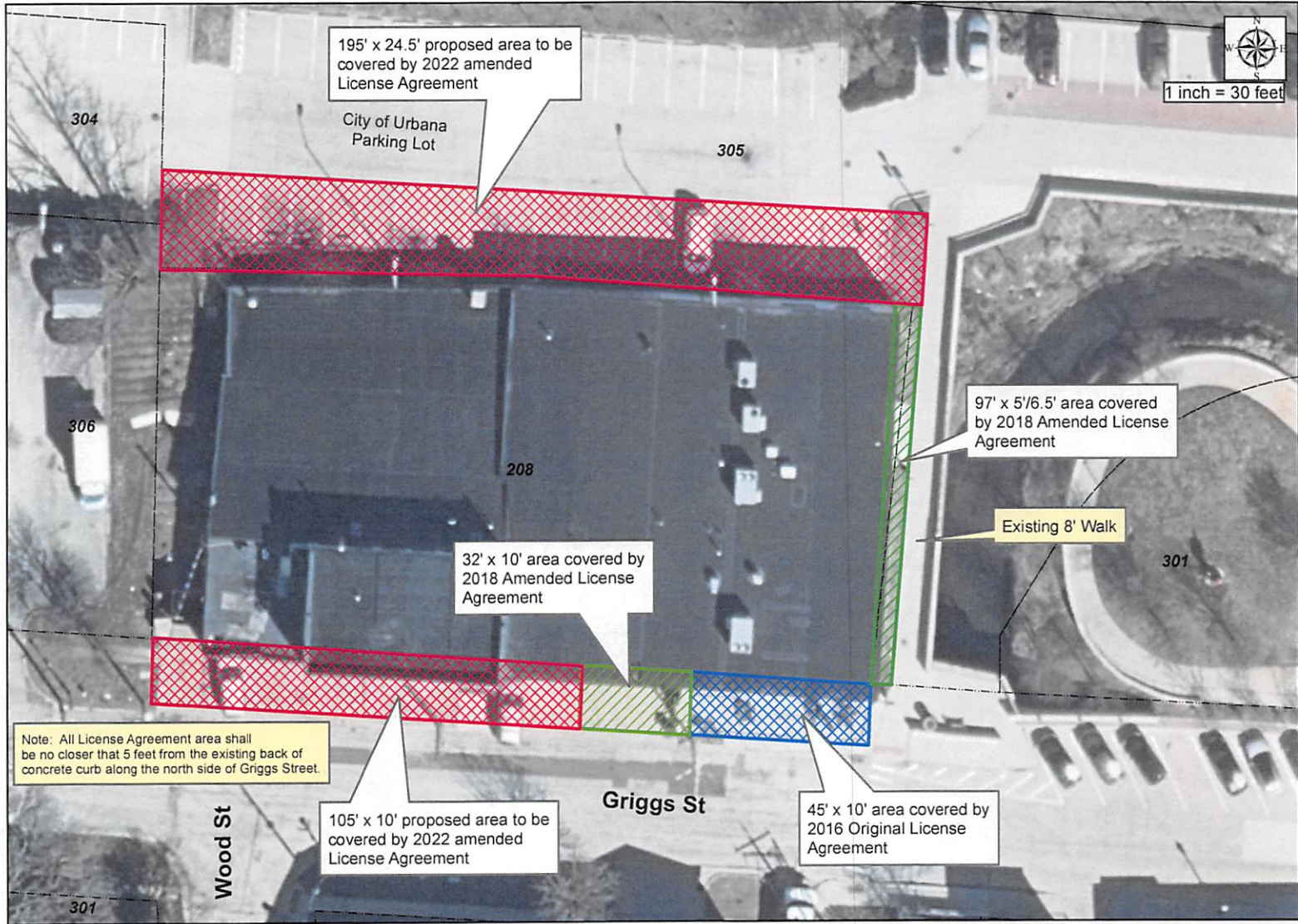
Attest:

Phyllis D. Clark
City Clerk

Attachment: Exhibit A-2 Licensed Property (1 page)

Amended and Restated License Agreement

Page 9 of 9



208 Griggs Street
Exhibit A-2





MEMORANDUM

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Carol Mitten, City Administrator

DATE: December 28, 2022

SUBJECT: An Ordinance Approving an Office Lease (Cohen Building – 136 W. Main Street)

Introduction

On November 21, 2022, City Council approved Ordinance No. 2022-11-045, which included funding to increase staffing in the Human Resources Division. In addition, the budget amendment provided funding for leased space outside the City Building, inasmuch as the City Building cannot accommodate the additional staffing for Human Resources. Suitable office space was identified at 136 West Main Street, which is known as the Cohen Building.

Overview of Lease Terms

The City and the owner of the Cohen Building, Dan Maloney, have negotiated the lease terms reflected in the draft lease that is attached to the draft Ordinance. The lease is for the entire second floor of the Cohen Building.

The lease is for an initial term of seven years, with an option to renew for three additional years at market rent. The timing reflected by the term coincides with the planned expansion of the City Building.

The initial rent for the office space would be \$81,000 per year or approximately \$17.33 per square foot (4,657 square feet). The rent reflects a so-called “modified gross” basis, whereby the landlord would pay for all utilities (water, sewer, electricity, gas), trash removal, real estate taxes, and building insurance. The City would pay for cleaning and maintenance items under \$1,000. There would be a 3% annual escalator on the rent, and the City would pay for “general utilities expenses” (defined as utilities plus trash removal) attributable to the second floor that are over \$6,000.

The City would pay for the fit-up of the space (essentially, paint and carpeting).

Recommendation

Staff recommends that the Committee of the Whole approve the proposed amendment and forward it on to the full Council with a recommendation for approval by inclusion on the Consent Agenda.

Attachment: Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AN OFFICE LEASE

(Cohen Building --- 136 West Main Street)

WHEREAS, the City of Urbana, an Illinois municipal corporation (the “City”), is a home rule unit of local government pursuant to Article 7, Section 6 of the Illinois Constitution of 1970 and 65 ILCS 5/1-1-10; and

WHEREAS, the City Council approved a Budget Amendment on November 21, 2022 (Ordinance No. 2022-11-045) that, among other things, provided funding to increase the number of employees in the Human Resources Division and relocate that Division out of the City Building into leased space to accommodate the expanded staff; and

WHEREAS, after searching for suitable office space within walking distance of the City Building, the second floor of the Cohen Building at 136 West Main Street was identified; and

WHEREAS, the City and the owner of the Cohen Building have negotiated lease terms acceptable to both parties as reflected in the attached Lease; and

WHEREAS, the City Council, after due consideration, finds that approval of the lease terms is in the best interests of the residents of the City and is desirable for the welfare of the City’s government and affairs.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

That the Lease, including the terms thereof as set forth in the form of such Lease as presented to and now before the meeting of the Corporate Authorities at which this Ordinance is adopted, be and the same is hereby authorized and approved.

Section 2.

That the Mayor of the City of Urbana, Illinois, shall be and is hereby authorized to execute and deliver such Lease (with leave for minor modifications that do not materially change the terms) and any related documents granted in Section 1, and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Lease and related documents as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

That this Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this _____ day of January, 2023.

AYES:

NAYS:

ABSTENTIONS:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this _____ day of January, 2023.

Diane Wolfe Marlin, Mayor

LEASE

THIS LEASE ("Lease") is made and executed this ____ day of _____, 2023, by and between D & E ENTERPRISES, LLC – 136 MAIN STREET SERIES, a series of an Illinois limited liability company ("Landlord") and CITY OF URBANA ("Tenant").

WITNESSETH:

In consideration of the rents herein stipulated and the mutual covenants herein contained, and intending to be legally bound hereby, Landlord hereby leases to Tenant and Tenant leases from Landlord the premises within that certain portion of the second floor of the building located at 136 W. Main Street, Urbana, Illinois, depicted on the site plan attached as Exhibit A hereto and incorporated herein by reference ("Premises"), upon all terms and conditions herein set forth.

1. **BASIC LEASE PROVISIONS** - The following basic lease provisions embody the agreement of the parties hereto, subject to further terms and conditions hereinafter set forth elsewhere in this Lease.

- A. Original Term: Seven (7) years after the Rent Commencement Date
- Renewal Term: One (1) renewal period of three (3) years
- B. Possession Date: January 15, 2023
- C. Rent Commencement Date: March 1, 2023
- D. Rent:

Lease Year	Annual Base Rent Less Utilities	General Utilities Expenses	Total Escalated Rent	Monthly Escalated Rent
1	\$ 75,000	\$ 6,000	\$ 81,000	\$ 6,750
2	\$ 77,250	\$ 6,000	\$ 83,250	\$ 6,938
3	\$ 79,568	\$ 6,000	\$ 85,568	\$ 7,131
4	\$ 81,955	\$ 6,000	\$ 87,955	\$ 7,330
5	\$ 84,413	\$ 6,000	\$ 90,413	\$ 7,534
6	\$ 86,946	\$ 6,000	\$ 92,946	\$ 7,745
7	\$ 89,554	\$ 6,000	\$ 95,554	\$ 7,963

Renewal Term: 8-10 Market rent pursuant to Section 3D of this Lease

- E. Security Deposit: None
- F. Tenant's Use: General office use

G. Tenant's Notice Address: City of Urbana
400 S. Vine Street
Urbana, IL 61801
Attention: City Administrator

H. Street Address of Premises: 136 W. Main Street, 2nd Floor
Urbana, IL 61801

I. Lease Exhibits
Incorporated Herein: A - Premises

2. **PREMISES** - Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises within the building located at 136 W. Main Street, Illinois ("Property"); together with the right to the nonexclusive use in common with others entitled to use some or all common areas and footways within the Property as may be designated by Landlord from time to time as more fully set forth in and subject to the terms and conditions of this Lease.

3. **TERM AND RENT COMMENCEMENT** -

A. **Term** - The term of this Lease shall be for the period set forth in Section 1A, as may be extended or renewed ("Term").

B. **Definition of Lease Year** - A "Lease Year", as herein referred to, shall consist of:

- (1) Each full twelve (12) month period commencing on the Rent Commencement Date if the Rent Commencement Date is the first day of a month; or
- (2) If the Rent Commencement Date is a day other than the first day of a month, the first Lease Year only shall consist of the remainder of that month and the first full twelve (12) months thereafter. Subsequent Lease Years shall consist of the next immediately succeeding periods of twelve (12) months each following the last day of the first Lease Year.

C. **Rent Commencement** - The terms and conditions of this Lease shall be effective upon signing, but for purposes of determining the commencement of rental payments, it is acknowledged and agreed that the Rent Commencement Date shall be as set forth in Section 1C.

D. **Lease Renewal Options** - In the event Tenant shall have faithfully performed all covenants of this Lease, Landlord hereby grants Tenant the right and option to renew this Lease for one (1) additional period of three (3) years ("Renewal Term") immediately following the initial Term. In the event Tenant desires to renew and extend this Lease, it shall give Landlord written notice, at least six (6) months prior to the expiration of the then existing Term, of its intent to renew and extend; provided, however, that the following terms and conditions shall be applicable to any Term, as extended herein.

- (1) The provisions of this Lease during the Renewal Term shall be the same as provided in this Lease, except for the amount of Rent payable, which Rent during the Renewal Term shall be as set forth in Section 3D(2) below.

- (2) The amount of Rent applicable during the first Lease Year of the Renewal Term shall be Fair Market Rent (FMR) determined as follows: the parties shall meet and confer in an attempt to agree on FMR; in the event that the parties are unable to agree on FMR, then the FMR shall be determined by the parties using the “Three Appraiser Method”. The “Three Appraiser Method” shall operate as follows: FMR shall be based upon the current fair market rent for comparable space in comparable buildings within five (5) miles of the Premises; each party shall select and pay for an appraiser to conduct an appraisal according to the foregoing; if the appraisals are within ten percent (10%) of each other, FMR shall be the average of the two appraisals; if the appraisals are more than ten percent (10%) apart, a third appraiser shall be engaged to select between either the FMR of Landlord’s appraiser or the FMR of Tenant’s appraiser. The parties shall share equally in the cost of the third appraiser.

4. **RENT-**

- A. Rent - Subject to the terms and conditions of this Lease, Tenant shall pay to Landlord Rent, payable without prior notice or demand and without any deduction or set off whatsoever, in monthly installments, during the Term, commencing on the Rent Commencement Date, in the amount set forth in Section 1D (“Rent”). In the event that Tenant shall elect to pay the total amount for a given Lease Year on the first day of such Lease Year, the amount of Rent due for that Lease Year shall be discounted by two percent (2%).
- B. Payments - All payments required hereunder shall be payable in advance on the first (1st) day of each month; provided, however, if Tenant’s lease term commences or terminates on any day other than the first or last day, respectively, of any calendar month, Tenant’s first and/or last monthly installment of Rent shall be apportioned on a per diem basis.
- C. Late Payment Charge - In the event monthly Rent or any other payments due under this Lease, by the fifth (5th) of the month, late payment charges in the amount of five percent (5%) of the outstanding delinquent balance shall be charged to cover the extra expense involved in handling delinquent accounts. Any late payment charge assessed pursuant to this Section 4C shall be due and payable on demand.
- D. Place of Payment - The aforesaid rental payments and any other sums due to Landlord pursuant to this Lease shall be made payable to Landlord and delivered to Landlord at 1008 W. Williams Street, Champaign, IL 61821, or to such other person and/or at such other place or manner as may be designated by a notice, in writing, from Landlord to the Tenant.
- E. Waiver of Demand for Payment of Rent - TENANT EXPRESSLY WAIVES DEMAND FOR PAYMENT OF RENT OR OTHER SUMS DUE TO LANDLORD.
- F. Landlord’s Furniture - In addition to the Rent, Tenant shall pay One Hundred 00/100 Dollars (\$100.00) for the initial Lease Year with annual increase of three (3%) thereafter during the Term (as may be extended) for Tenant’s use of the following Landlord’s furniture located within the Premises (“Landlord’s Furniture”): (i) large conference table in suite B8; (ii) Larger conference table in suite B12; (iii) 16 wooden chairs; (iv) oak table in suite B2; and (v) 2 bookshelves outside of suite B13. Tenant, at Tenant’s sole

cost and expense, shall maintain, repair and replace Landlord's Furniture during the Term (as may be extended). Tenant shall surrender and deliver up Landlord's Furniture to Landlord at the end of the Term (as may be extended) in as good clean order, condition and repair as of the Possession Date, normal wear and tear excepted. In no event shall Landlord have any obligations to maintain, repair and/or replace Landlord's Furniture.

5. **POSSESSION DATE AND CONDITION OF PREMISES -**

- A. Possession Date - The term "Possession Date", whenever used herein, means the date set forth in Section 1B.
- B. Condition of Premises - Tenant accepts the Premises and Landlord's Furniture in "AS-IS, WHERE-IS WITH ALL FAULTS" condition as of the Possession Date.

6. **NOTICES** - Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by U.S. certified or registered mail, postage prepaid, return receipt requested or via nationally recognized overnight courier addressed to Tenant, at the address set forth in Section 1G, or by posting such notice on the Premises, and to Landlord at address set forth in Section 4D above or other such address as a party may provide in writing to the other. Notices and demands shall be deemed to have been given (i) upon the date of the executed return receipt if sent by certified or registered mail, provided that if delivery cannot be made or if any party shall refuse delivery, notices shall be deemed given when mailed; (ii) upon delivery if personally delivered; (iii) on the next business day immediately following the day sent via nationally recognized overnight courier; or (iv) upon posting if posted to the Premises for Tenant notices. With respect to Landlord, no notice, request or demand shall be effective unless and until given to the Landlord, and all copies, at the addresses provided hereinabove. Tenant acknowledges and agrees Tenant shall provide Landlord Tenant's current address, phone number and email at all times during this Lease.

7. **REAL ESTATE TAXES, UTILITIES, INSURANCE and MAINTENANCE -**

- A. Real Estate Taxes - Except as provided in this Lease, Landlord shall pay (prior to delinquency) the real estate taxes and insurance for all buildings, structures and improvements for the Premises. Tenant shall pay the Rent and all other charges and expenses as set forth herein and in connection with the Premises.
- B. Utilities - On and after the Possession Date, Landlord shall pay for all water, sewer, trash removal, gas and electric attributable to the Premises up to Six Thousand and 00/100 Dollars (\$6,000.00) per calendar year ("General Utilities Expenses"). Tenant shall pay for all other utilities and services supplied to the Premises for use by Tenant in the operation of its business, together with any taxes thereon. Tenant agrees that in the event of its vacation of the Premises for any reason whatsoever during the Lease Term (as may be extended), it will at all times maintain that amount of heat necessary to insure against the freezing of waterlines. Landlord, in collaboration with Tenant, shall make a reasonable determination the General Utilities Expenses that exceed Six Thousand and 00/100 Dollars (\$6,000.00). Tenant shall pay such additional amounts within ten (10) days of Landlord and Tenant documenting such additional amounts as provided by Landlord.

- C. Insurance - Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all its personal property, Landlord's Furniture and trade fixtures, located in the Premises. Landlord shall not be responsible for Landlord's Furniture, Tenant's personal property or fixtures located in the Premises. Further, commencing on the Possession Date and at all times thereafter, Tenant shall carry, pay for and maintain general public liability insurance against the following claims:
- (a) For bodily injury or death occurring upon, in or about the Premises or about all of the real estate leased hereunder, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000) with respect to any one person and One Million Dollars (\$1,000,000) with respect to more than one person.
 - (b) For property damage upon, in or about the Premises or about all of the real estate leased hereunder, such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000).
 - (c) For bodily injury or death and property damage of not less than One Million Dollars (\$1,000,000) in a combined single limit policy in lieu of Sections 7C(a) and 7C(b).
 - (d) Such other insurance, in such amounts and against such risks, as is commonly obtained in the case of property similar in use to the Premises and located in Illinois or as Landlord may reasonably require.
 - (e) The aforementioned policies shall be with an insurance company authorized to do business in the State in which the Premises are situated with an A.M. Best rating of "A-VIII" or better and shall also contain a provision that they cannot be cancelled or amended except upon ten (10) days prior notice to Landlord. In addition, Tenant shall submit to Landlord, on or before the Possession Date and annually thereafter, the appropriate certificates of insurance evidencing such policies, and the insurance coverage so evidenced will be maintained during the duration of this Lease.
 - (f) Under said policy or policies of insurance, Tenant shall be the "named insured" and Landlord and the holder of any mortgage on the Premises, if any, shall be named as "additional insureds". Tenant agrees to cause the insurance companies issuing the aforesaid policies of insurance to forward to Landlord policies, memorandum policies or certificates of insurance, to Landlord within ten (10) days of (i) the issuance or renewal of said policies and (ii) Landlord's written request for replacement policies, memorandum policies or certificates of insurance necessitated by a change in the "additional insureds".
- D. Repairs and Maintenance -
- (1) Landlord's Maintenance - Landlord agrees to maintain and to make all necessary repairs to the foundation, roof, exterior walls, structural columns and structural beams in good order and repair (except for loss by fire or other casualty entitling

termination of this Lease or due to Tenant's negligence, act and/or omission). Tenant shall give Landlord prompt written notice of any defects, necessary repairs or maintenance of which Tenant has knowledge in connection with the Premises. Provided Tenant is not in default under this Lease, Landlord agrees Landlord, at Landlord's cost, will or will cause the outside windows to the Premises be cleaned once per Lease Year.

- (2) Tenant's Maintenance - Tenant, at its expense, shall keep the Premises clean and sanitary and in good condition and repair. Tenant shall fully comply with all health and police regulations in force and shall conform with the rules and regulations of fire underwriters or their fire protection engineer. Notwithstanding anything contained in this Lease to the contrary, Tenant, at its expense (up to and including \$1,000.00 per repair, maintenance or replacement), shall maintain and make all repairs, replacements and alterations to the Premises and to all appurtenances thereto and to all equipment located therein or which serve the Premises which are required (or which may be deemed by Landlord to be required) to maintain the Premises and such equipment and appurtenances in good repair and condition or which may be required by any laws, ordinances, regulations or requirements of any public authorities having jurisdiction. (If more than one service call is required to effectuate a given repair, the aggregate amount of the service calls, labor, and materials shall be considered the cost of the "repair".) The property that Tenant is required to maintain, repair and replace shall be the Premises and every part thereof (except those items which Landlord is obligated to maintain pursuant to Section 7D(1) above), including but not limited to (i) all walls, floors, and ceilings, (ii) the drop ceiling tiles and below; (iii) the floor coverings and above; (iv) from the painted surface of the walls into the floor area within the Premises; (v) all interior water, telephone, gas, electricity and sewage conduits, cable, wires and lines, and all lighting, plumbing and electrical fixtures, equipment and meters located inside the Premises, (vi) any HVAC unit which services the Premises (that being two (2) rooftop HVAC units), and (vii) all glass, windows, doors, window sashes and frames, door frames and office front. In the event Tenant fails or refuses to so maintain and make all such repairs, replacements and alterations to the Premises, Landlord may, but shall be under no obligation to, maintain, and make any repairs, replacements and alterations to the Premises for Tenant's account, and one hundred fifteen percent (115%) of the cost thereof shall be additional rent due and payable by Tenant to Landlord on Landlord's demand. Upon completion of any work by or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord may require (including without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work.

8. ALTERATIONS AND IMPROVEMENTS -

- A. No Alterations - Tenant will not alter, paint or decorate the exterior of the Premises and will not make any structural alteration to the interior of the Premises. Tenant, at its own expense, may from time to time during the Term of this Lease (as may be extended), make nonstructural changes, alterations, additions and improvements to the interior of the Premises upon first obtaining Landlord's approval in writing. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought. This work is to be performed in a good and workmanlike manner, and in accordance with all

municipal, state and federal requirements applicable thereto. Provided, however, that upon the termination of this Lease, unless Landlord has otherwise consented in writing: all leasehold improvements (as distinguished from trade fixtures and apparatus) installed in the Premises at any time, whether by or on behalf of Tenant or by or on behalf of Landlord, shall not be removable from the Premises at any time, unless such removal is consented to in advance, in writing, by Landlord; and at the expiration of this Lease (either on the termination date or upon such earlier termination as provided in this Lease), all such leasehold improvements shall be deemed to be part of the Premises, shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in Landlord without payment of any nature to Tenant.

- B. Liens - Tenant agrees that it will make full and prompt payment of all sums necessary to pay for the cost of repairs, alterations, improvements, changes or other work done by Tenant to the Premises and further agrees to indemnify and hold harmless Landlord from and against any and all such costs and liabilities incurred by Tenant, and against any and all mechanic's, materialman's or laborer's liens arising out of or from such work or the cost thereof which may be asserted, claimed or charged against the Premises. In the event any notice or claim of lien shall be asserted of record against the interest of Landlord in the Premises on account of or growing out of any improvement or work done by or for Tenant, or any person claiming by, through or under Tenant, or for improvements or work the cost of which is the responsibility of Tenant, Tenant agrees to have such notice or claim of lien cancelled and discharged of record as a claim against the interest of Landlord in the Premises (either by payment and satisfaction or by removal by transfer to bond or deposit as permitted by law) within ten (10) days after notice to Tenant by Landlord, and in the event Tenant shall fail to do so Tenant shall be considered in default under this Lease.
- C. No Roof Penetrations - Notwithstanding anything in this Lease to the contrary, in no event and for no purpose shall Tenant make or cause to be made any roof penetrations in the building of which the Premises is a part. If roof penetrations are required for Tenant's permitted use of the Premises, such penetrations shall be made only by Landlord's contractor upon Landlord's prior written approval, but at Tenant's sole cost and expense. In the event a roof penetration is required by the Tenant's obligation to maintain the rooftop HVAC units that serve the Premises, the limitations of Section 7D(2) shall apply.
9. SIGNS - Tenant shall have the right to place a sign on the exterior and/or interior of the Premises, at Tenant's sole expense, provided that Tenant has first submitted to Landlord a written report on the size and shape and design of said sign, its place and manner of attachment to the building and any other relevant details and Tenant has obtained Landlord's written approval for such sign. Landlord's approval of such sign shall be in Landlord's reasonable discretion. All signs shall be constructed and installed only by companies approved by Landlord. The expense of obtaining permits, if required, and compliance with any inspection requirement, state or municipal statute, ordinance or regulation shall be borne solely by Tenant. Landlord reserves the right to remove any and all improper signs installed, and Tenant shall reimburse Landlord upon demand for the costs for such work and any damage done by such work. Upon the expiration of this Lease, Tenant, at Tenant's expense, shall remove said sign and repair the Premises at its expense.

10. **TENANT'S INDEMNIFICATION -**

- A. Good Repair and Condition - Tenant shall keep the Premises and all parts thereof, and all fixtures, machinery and apparatus in good repair and in such condition that no damage will occur to any person by reason thereof.
- B. Tenant's Indemnification - Tenant shall and will save Landlord harmless from any and all claims and demands of every kind and nature, in favor of any person, whether by way of damage or otherwise, arising from the failure on the part of Tenant to perform and observe any covenant or condition hereof Tenant shall and will save Landlord harmless from all loss, cost, injury, damages or death that may occur to, be claimed by, or with respect to any persons, corporations, property or chattels on or about the Premises or to the Premises itself, resulting from any act done or omission by or through Tenant or caused by or resulting from Tenant use, non-use, possession of, condition of or conduct of its business on the Premises. If, however, Landlord is sued, a claim made or judgment rendered against Landlord arising out of Tenant's use or occupancy of the Premises, Tenant shall immediately pay said claim or judgment and/or forthwith reimburse Landlord therefor, including all cost and expense incurred by Landlord, including attorneys' fees.
- C. Damages from Certain Causes - To the extent not expressly prohibited by law, Landlord shall not be liable to Tenant or Tenant's employees, contractors, agents, invitees or customers, for any injury to person or damage to property sustained by Tenant or any such party or any other person claiming through Tenant resulting from any accident or occurrence in the Premises or any other portion of the building caused by the Premises or any other portion of the building becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or by broken glass, or by the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Premises (except where due to Landlord's grossly negligent or willful failure to make repairs required to be made pursuant to other provisions of this Lease, after the expiration of a reasonable time after written notice to Landlord of the need for such repairs), nor shall Landlord be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the building or of any other persons whomsoever, including, but not limited to riot, strike, insurrection, war, court order, requisition, order of any governmental body or authority, acts of God, fire or theft.

11. **ASSIGNMENT AND SUBLEASING -**

- A. Limitations - Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, nor grant concessions, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. If Landlord consents to any such assignment or subletting, Tenant shall remain liable for the performance of all the terms, covenants and obligations under this Lease.
- B. Effect of Violation - Any purported assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license of this Lease, the leasehold estate hereby created, or

the Premises or any portion thereof, either voluntarily or involuntarily, whether by operation of law or otherwise, or any other action by Tenant in violation of the restrictions set forth in this Section 11, shall be null and void and a default of this Lease, and Landlord shall have the option to terminate this Lease upon fifteen (15) days' written notice to Tenant.

12. **CONDITIONS OF USE AND OCCUPANCY -**

a. Tenant agrees that during the Lease Term (as may be extended) it shall:

- A. Use the Premises solely for Tenant's use as set forth in Section 1F of this Lease, and for no other purpose whatsoever without the written consent of Landlord.
- B. Use the Premises only for the purpose herein stated and shall not abandon the Premises or leave said Premises vacant, or abandon or cease business operations at the Premises.
- C. Use and keep the Premises in a careful, safe and proper manner.
- D. Not commit or suffer waste thereon.
- E. Fully comply with and obey all laws, ordinances, rules, regulations and requirements of all regularly constituted authorities, and recommendations or requirements of Landlord's insurers, in any way affecting the Premises or the use thereof or this Lease.
- F. Not use or occupy the Premises for any unlawful purpose.
- G. Not use or occupy the Premises, or permit the same to be used or occupied, for any purpose or business deemed extra hazardous on account of fire or otherwise.
- H. Keep the Premises in such repair and condition as may be required by the Board of Health, or other municipal, state or federal authorities, free of all cost to Landlord.
- I. Permit Landlord and its agents to enter upon the Premises at all reasonable times to examine the condition thereof.
- J. Continuously, actively and diligently operate or cause the permitted business to be operated in good faith and in an efficient, businesslike and respectable manner.
- K. Keep all exterior and interior office front surfaces clean and will maintain the rest of the Premises and all corridors and common areas immediately adjoining the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests.
- L. Not permit accumulations of any refuse but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Premises shielded from the view of the public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or company, as is designated in writing by Landlord.
- M. Replace promptly with glass of like kind and quality any plate glass or window glass of the Premises which may become cracked or broken due to Tenant's negligence or intentional act.

- N. Not solicit business, distribute handbills or other advertising matter or hold demonstrations in the common areas.
 - O. Not permit loudspeakers, televisions, phonographs, radios or other similar devices to be used in the Premises in a manner so as to be heard or seen outside of the Premises, without the prior written consent of Landlord.
 - P. Not suffer, allow or permit any vibration, noise, odor or flashing or bright light to emanate from the Premises or from any machine or other installation located therein, or otherwise suffer, allow or permit any vibration, noise, odor or flashing or bright light to constitute a nuisance to or interference with the safety, comfort or convenience of Landlord.
- b. Landlord agrees that during the Lease Term (as may be extended) it shall:
- A. Clean and maintain common areas and footways as reasonably determined by Landlord, including keeping the elevator in operating condition. Keep all common areas, footways, and the elevator free of obstructions, insects, rodents, vermin, and other pests.
 - B. Remove accumulations of snow and ice from sidewalk adjacent to the building in which the Premises is located.
 - C. Remove all furniture from Premises prior to the Possession Date that is not included in Section 4F, excepting any suites still occupied per Section 39.
 - D. Timely pay all water, sewer, trash removal, gas, and electricity charges.
 - E. Maintain all necessary and reasonable property and casualty insurance on the Building and Premises, as reasonably determined by Landlord.
 - F. Provide 24-hour, 7-days per week reasonable access to the main electric breakers and the main water shut-off to Tenant's personnel, in order for Tenant to discharge its maintenance and repair duties under the Lease.
 - G. Perform all maintenance requires per Section 7D(1).
In the event that any maintenance or repair (which is the responsibility of the Landlord but for which the Landlord or Landlord's agent is unavailable after reasonable notice to address) that imperils the safety or occupancy of the Premises, Tenant may, but shall not be obligated to, make any emergency repairs that are otherwise the responsibility of Landlord. Landlord shall be responsible to reimburse Tenant one hundred fifteen percent (115%) of the cost thereof. Upon completion of any such work, Tenant shall provide Landlord with such documents as Landlord may require (including without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work.
 - H. Not permit any unlawful use of the building in which the Premises is located, and otherwise comply with all laws, regulations, and ordinances.

- I. Not permit loudspeakers, televisions, speakers, amplifiers, radios or other similar devices to be used in the building in which the Premises is located in a manner so as to be heard within the Premises.
- J. Not suffer, allow or permit any vibration, noise, odor, or flashing or bright light to emanate from or within the building in which the Premises is located or from any machine or other installation therein, or otherwise suffer, allow or permit any vibration, noise, odor, or flashing or bright light to constitute a nuisance to or interference with the safety, comfort or convenience of Tenant.

13. **DESTRUCTION OR DAMAGE BY FIRE AND OTHER CASUALTY -**

- A. Casualty - In the event the Premises are damaged by fire, explosion or any other casualty to an extent which is less than fifty percent (50%) of the cost of replacement of the Premises, the damage, except as provided in Section 13B below, shall be repaired by Landlord within a reasonable time at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's trade fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (1) Landlord is not required to repair as hereinabove provided, or (2) the Premises shall be damaged to the extent of fifty percent (50%) or more of the cost of replacement, or (3) the building of which the Premises are a part is damaged to the extent of fifty percent (50%) or more of the cost of replacement, Landlord may elect either to repair or rebuild the Premises or the building or buildings, or terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Premises untenantable, in whole or in part, and the damage shall not have been due to the default or neglect of Tenant, a proportionate abatement of the Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, said proportion to be computed on the basis of the relation which the square footage of the Premises rendered untenantable bears to the square footage of the Premises.
- B. Tenant's Property - The provisions of this Section 13 with respect to repair by Landlord shall be limited to such repair as is necessary to place the Premises in the same condition as when possession was delivered by Landlord. Promptly following such damage or destruction, Tenant shall, at Tenant's expense, perform any other work required to place the Premises in the condition it existed prior to the destruction or damage, and Tenant shall restore, repair or replace its stock in trade fixtures, furniture, furnishings, floor coverings and equipment.
- C. Tenant's Notice to Rebuild - In the event Landlord's work is not commenced within one hundred eighty (180) days after the date of any damage or destruction, unless the commencement is delayed because of unavailability of labor due to strikes or lockouts, unavailability of materials, Tenant's failure to approve plans and specifications, or for any reason whatsoever, Tenant may, at its option, terminate this Lease after a written notice to Landlord, giving Landlord ten (10) days to start rebuilding, which termination shall be effective if said rebuilding does not commence. If Tenant terminates this Lease as herein provided the Lease shall be null and void and neither party shall have any rights or obligations pursuant to this Lease.

- D. Casualty Within Last Six (6) Months - In the event the destruction or damage occurs within the last six (6) months of the Lease Term (as may be extended), Landlord shall not be obligated to repair and/or restore unless Tenant agrees, in writing, to continue as Tenant of Landlord for a period of five (5) years after the completion of the repair and/or restoration, at a rental to be mutually agreed upon. If Tenant shall not agree then Landlord may, at its option, terminate this Lease by a written notice to Tenant.
14. **WAIVER OF RIGHT OF RECOVERY** - Landlord and Tenant hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises suffered by or caused by any of the perils covered by fire and extended coverage insurance policies, notwithstanding the fact that such peril shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. Provided, however, that in the event it becomes impossible for either party to obtain insurance because of this provision, then this Section only shall be void upon submission in writing of evidence of such impossibility.
15. **EMINENT DOMAIN** -
- A. Taking - In the event all the Premises are taken for any public or quasi-public use, under any statute or by right of eminent domain, or if any part of the Premises are taken and the part not taken is insufficient for the reasonably successful operation of Tenant's business, then in either of such events, this Lease shall terminate on the date when possession is required for the public use, and all rents, taxes and other charges shall be prorated and paid to such date. In the event only part of the Premises is so taken and the part not so taken shall be sufficient for the reasonably successful operation of Tenant's business, this Lease shall remain unaffected except:
- (1) Tenant shall be entitled to a pro rata reduction in the Rent to be paid hereunder based on a fraction, the numerator of which shall be the total square feet of the Premises so taken, and the denominator of which shall be the total square feet of the Premises originally leased hereunder.
 - (2) Tenant shall promptly, after such taking, and at Tenant's own cost and expense, restore that part of the interior Premises and exterior Tenant improvements not so taken to as near its former condition as the circumstances will permit.
 - (3) Landlord shall, within a reasonable time after such taking, restore that part of the roof and structural parts of the building not so taken to as near its former condition as the circumstances will permit.
- B. Compensation - All compensation awarded for any taking of the Premises or any interest in either shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Tenant's trade fixtures, or loss of Tenant's business good will, so long as such reimbursement to Tenant shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord. Tenant shall not have (and hereby waives) any claim against Landlord or the condemning authority for the value of any unexpired Term (as may be extended) of this Lease.

16. **SURRENDER** - Tenant will surrender and deliver up the Premises at the end of the Lease Term (as may be extended) in as good clean order, condition and repair as of the date of execution hereof, reasonable use and natural wear and tear excepted.
17. **HOLDING OVER** - Should the Tenant, with or without the express or implied consent of Landlord, continue to hold and occupy the Premises after the expiration of the Term of the Lease (as may be extended), such holding over beyond the Term (as may be extended) shall operate and be construed as creating a tenancy from month to month and not for any other term whatsoever at a monthly rental of two hundred percent (200%) of the Rent plus any and all other sums due Landlord, but the same may be terminated by Landlord by giving Tenant ten (10) days written notice thereof, and at any time thereafter Landlord may re-enter and take possession of the Premises, any rule in law or equity to the contrary notwithstanding.
18. **PERFORMANCE OF TENANT'S COVENANTS** - Landlord may perform any obligation of Tenant which Tenant has failed to perform after Landlord has sent a written notice to Tenant informing it of its specific failure. Tenant shall then reimburse Landlord on demand for any expenditures thus rightfully incurred.
19. **LACHES** - No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms hereof shall impair any such right or power or be construed to be a waiver thereof. It is further agreed that a waiver by either of the parties hereto of any of the covenants and agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenants or agreements herein contained.
20. **SUBORDINATION OF LEASE** -
- A. **Lease Subordinate to Mortgage Attornment** - This Lease and Tenant's rights hereunder are and will remain subject and subordinate to each and every mortgage (and all voluntary and involuntary advances thereon) that may now or hereafter encumber the Premises, and to all increases, renewals, recastings, modifications, consolidations, participations, replacements and extensions thereof (collectively referred to as the "Mortgage", which as used herein also includes a trust indenture and a deed of trust). If the holder of a Mortgage becomes the owner of the Property by reason of foreclosure or acceptance of a deed in lieu of foreclosure, at such holder's election Tenant will be bound to such holder or its designee under all terms and conditions of this Lease, and Tenant will be deemed to have attorned to and recognized such holder or its designee as Landlord's successor-in-interest for the remainder of the Term (as may be extended).
- B. **Automatic Effect** - The foregoing is self-operative and no further instrument of subordination and/or attornment will be necessary unless required by Landlord or the holder of a Mortgage, in which case Tenant, within ten (10) days after written request, will execute and deliver without charge any documents acceptable to Landlord or such holder in order to confirm the subordination and/or attornment set forth above. As used in this Section 20, whenever the context allows, the words "holder of a Mortgage" (or words of similar import) also include a purchaser of Property at a foreclosure sale.
21. **TENANT ESTOPPEL CERTIFICATE** -
- A. **Estoppel Certificate** - Tenant agrees to at any time and from time to time, within ten (10) days after Landlord's written request, to execute, acknowledge and deliver without

charge to Landlord a written instrument, certifying the Rent Commencement Date, that Tenant has accepted possession of the Premises and is open for business, that this Lease is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified and stating the modifications), the dates to which Rent and other charges have been paid in advance, if any, and stating whether or not to the best knowledge of the signer of such certificate, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the authorized signer should have knowledge; and certifying such other matters as may be reasonably requested by Landlord ("Tenant's Estoppel Certificates").

- B. Attorney-in-Fact - If Tenant fails to deliver Tenant's Estoppel Certificate within ten (10) days, Tenant does hereby irrevocably appoint Landlord as attorney-in-fact of Tenant, coupled with an interest, in Tenant's name, place and stead to sign and deliver Tenant's Estoppel Certificate as if the same had been signed and delivered by Tenant.
22. **RIGHT OF ACCESS** - Landlord or Landlord's agents shall have the right to enter the Premises at all reasonable times for the purpose of inspection, to enforce or carry out any provisions of this Lease or as otherwise reasonably determined by Landlord. Within six (6) months prior to the termination of this Lease, Landlord or Landlord's agents shall have the right to enter the Premises at all reasonable times for the purpose of exhibiting the same to others and to place upon the Premises "for sale" or "for rent" notices or signs.
23. **DEFAULT BY TENANT** - This Lease is made upon the condition that Tenant shall punctually and faithfully observe and perform all of the covenants, conditions and agreements as set forth in this Lease. The following shall each be deemed to be an event of default of this Lease:
- A. The failure of Tenant to pay the Rent, late payment charges, or any other charges payable by Tenant to Landlord under this Lease, if such failure continues for five (5) days after written notice thereof by Landlord to Tenant.
 - B. The failure of Tenant to observe or perform any of the terms, covenants or conditions of this Lease where such failure continues beyond the period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of ten (10) days after written notice thereof from Landlord to Tenant (unless such failure is of a character that rectification thereof reasonably requires longer than said ten (10) day period and Tenant shall have commenced to cure said failure within ten (10) days and completes the same with due diligence).
 - C. If Tenant shall vacate or abandon the Premises. For purposes of this Section 23C, thirty (30) successive days' non-occupation and/or termination of utilities for three (3) days or more without notice to Landlord shall be deemed abandonment.
 - D. The commencement of levy, execution or attachment proceedings against Tenant or a substantial portion of Tenant's assets; the commencement of levy, execution, attachment or other process of law upon, on or against the estate created in Tenant hereby; the application for or the appointment of a liquidator, receiver, custodian, sequester, conservator, trustee or other similar judicial officer (and such appointment continues for a period of thirty (30) days); the insolvency of Tenant in the bankruptcy or equity sense; or any assignment by Tenant for the benefit of creditors.

- E. The commencement of a case by or against Tenant or any guarantor, under any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal. The determination by Tenant to request relief under any insolvency proceeding, including any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal, terminates the estate created in Tenant hereby and the Premises shall not become an asset in any such proceedings.
24. **LANDLORD'S REMEDIES** - Landlord may treat any event of default as a breach of this Lease. Landlord's failure to insist upon strict performance of any covenant, term or condition of this Lease or to exercise any rights or remedies reserved herein shall not be deemed a waiver or relinquishment for the future of such performance, right or remedy. In addition to any and all other rights or remedies of Landlord in this Lease or as provided by law or equity, Landlord shall have, at Landlord's option, the following rights and remedies if there shall occur any event of default:
- A. To terminate this Lease by written notice to Tenant. No reentry or taking possession of the Premises by Landlord, as hereinafter provided, shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant (all other demands and notices of forfeiture or other similar notices being hereby expressly waived by Tenant). Upon the service of such notice of termination, the Term of this Lease (as may be extended) shall automatically terminate. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach in the manner herein provided.
- B. To require that upon any termination of this Lease, whether by lapse of time, by the exercise of any option by Landlord to terminate the same, or in any other manner whatsoever, or upon any termination of Tenant's right to possession without termination of this Lease, Tenant shall immediately surrender possession of the Premises to Landlord and immediately vacate the same, and remove all effects therefrom, except such as may not be removed under other provisions of this Lease. If Tenant fails to surrender possession and vacate as aforesaid, Landlord may forthwith re-enter the Premises, with or without process of law, and repossess itself thereof as in its former estate and expel and remove Tenant and any other persons and property therefrom, using such force as may be necessary, without being deemed guilty of trespass, eviction, conversion or forcible entry and without thereby waiving Landlord's rights to rent or any other rights given Landlord under this Lease or at law or in equity. If Tenant shall not remove all effects from the Premises as hereinabove provided, Landlord may, at its option, remove any or all of said effects in any manner it shall choose and store the same without liability for loss thereof, and Tenant shall pay Landlord, on demand, any and all expenses incurred in such removal including but not limited to storage on said effects for any length of time during which the same shall be in Landlord's possession or in storage.
- C. To make such alterations and repairs as Landlord shall determine may be necessary to relet the Premises, and to relet the same or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and upon such terms and conditions as Landlord in its sole discretion may deem advisable. Upon each reletting, all rent received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting (including brokerage fees and attorneys' fees and costs of such alterations and repairs); and third, to the payment of all rent and other charges due and unpaid hereunder. In no event shall

Tenant be entitled to receive any surplus of any sums received by Landlord on a reletting in excess of the rent and other charges payable hereunder. If such rent and other charges received from such reletting during any month are less than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord, such deficiency to be calculated and payable monthly.

- D. Landlord shall have the election in place and instead of holding Tenant liable for Rent and other charges on a monthly basis during the remainder of the Term (as may be extended), to accelerate the entire balance of the Rent and other charges multiplied by the number of months which would have constituted the balance of the Term (as may be extended), which amount shall be deemed due and payable as if, by the terms and provisions of this Lease, such amount was on that date payable in advance, and to take such action as is necessary to recover the entire remaining unpaid Rent and other charges.
 - E. To bring suit for the collection of Rent or any other charges payable by Tenant to Landlord under this Lease (including without limitation, reasonable attorneys' fees) without entering into possession of the Premises or cancelling this Lease. Commencement of any action by Landlord pursuant to this Section shall not be construed as an election to terminate this Lease and shall not absolve or discharge Tenant from any of its obligations or liabilities for the remainder of the Term of this Lease (as may be extended).
 - F. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, to enjoin any such breach or threatened breach; and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedies under this Lease, now or hereafter existing at law or in equity or by statute.
25. **DEFAULT BY LANDLORD** - This Lease is made upon the condition that Landlord shall punctually and faithfully observe and perform all of the covenants, conditions and agreements as set forth in this Lease. The following shall each be deemed to be an event of default of this Lease:
- A. The failure of Landlord to pay the amounts due, late payment charges, or any other charges payable by Landlord under this Lease, when and as the same shall become due and payable, and such failure continues for a period of ten (10) days after written notice thereof by Tenant to Landlord.
 - B. The failure of Landlord to observe or perform any of the terms, covenants or conditions of this Lease where such failure continues beyond the period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of thirty (30) days after written notice thereof from Tenant to Landlord (unless such failure is of a character that rectification thereof reasonably requires longer than said thirty (30) day period and Landlord shall have commenced to cure said failure within thirty (30) days and completes the same with due diligence).
 - C. The filing, execution or occurrence of: a petition in bankruptcy by or against Landlord; a petition or answer by or against Landlord seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Code; adjudication of Landlord as bankrupt or insolvent, or Landlord being in fact insolvent or bankrupt; assignment by or against

Landlord for the benefit of creditors; a petition or other proceeding by or against Landlord for, or the appointment of, a trustee, receiver, guardian, conservator or liquidator of Landlord with respect to all or substantially all of Landlord's property; or, a petition or other proceeding by or against Landlord for the dissolution or liquidation of Landlord, or the taking of possession of the property of Landlord by any governmental authority in connection with dissolution or liquidation.

26. **TENANT REMEDIES** - Tenant may treat any event of default as set forth under Section 25 as a breach of this Lease. Tenant's failure to insist upon strict performance of any covenant, term or condition of this Lease or to exercise any rights or remedies reserved herein shall not be deemed a waiver or relinquishment for the future of such performance, right or remedy. Tenant shall have, at Tenant's option, the following rights and remedies if there shall occur any event of default:
- A. To terminate this Lease by written notice to Landlord. Upon the service of such notice of termination, the Term of this Lease (as may be extended) shall terminate ninety (90) days thereafter.
 - B. To take such steps as may be necessary to cure such breach by Landlord. In the event that Tenant expends funds on behalf of or for the benefit of Landlord to cure any breach by Landlord as allowed herein, Tenant may recover one hundred fifteen percent (115%) of such actual expenditures from Landlord.
27. **SALE OF PROPERTY BY LANDLORD** - In the event of the sale of the Premises, it shall be sold subject to this Lease, but the original Landlord shall then be released of all obligations under this Lease and the new owner shall be responsible, as the new Landlord, under the terms and conditions of this Lease. It is the intent that this Lease shall run with the land and not be personal to the landowners.
28. **CORRECTION OF DEFAULT BY MORTGAGE LENDER** - It is understood and agreed that the mortgage lender which finances the construction of the building initially, or any further lender loaning money on the within real estate during the Lease Term (as may be extended), shall have the right to correct any default on the part of Landlord within thirty (30) days after receipt of written notice from the Tenant, specifying said default. Tenant shall not be entitled to terminate the Lease without giving the appropriate notice to the mortgage lender.
29. **FORCE MAJEURE** - In the event that there is a strike, riot, shortage of material, restrictive governmental regulation, acts of God, or other similar cause beyond the control of Landlord preventing Landlord from performing under this Lease, it shall not constitute a breach or other violation of this Lease for so long as Landlord is disabled by such act from performing hereunder.
30. **ACCORD AND SATISFACTION** - No acceptance by Landlord of an amount less than the monthly rent and other payments stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such rent or other payments then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be effective to constitute an accord and satisfaction. Landlord may accept any check for payment by Tenant without prejudice to Landlord's right to recover the remainder of any rent or other payment then in arrears and Landlord may pursue any other right or remedy provided in this Lease. No acceptance by Landlord of any payment of rent or other sum by Tenant shall be deemed a waiver of any of the obligations of Tenant under this Lease.

31. **FAILURE OF UTILITIES** - In the event there is a failure of a utility company to provide water, heat, gas, electricity or other natural power, there shall be no liability on the part of Landlord or reduction of Rent or such other amounts due under this Lease therefor.
32. **QUIET ENJOYMENT** - Upon payment by Tenant of the rents and other sums herein reserved and provided to be paid by Tenant and upon the observance and performance by Tenant of all of the covenants, agreements, terms and conditions of this Lease on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term (as may be extended) hereby demised without hindrance or interruption by Landlord or by any person lawfully claiming or holding by, through or under Landlord, subject nevertheless, to the terms, provisions and conditions of this Lease.
33. **LIMITATION ON LANDLORD'S LIABILITY** - Notwithstanding anything to the contrary contained herein, any liability incurred by Landlord to Tenant shall not be of a personal nature and Tenant's sole means of recovery shall be against the real estate owned by Landlord at the location herein leased, it being the specific intention to not encumber other assets of Landlord in this regard.
34. **EXPENSE ENFORCEMENT** - Tenant agrees to pay all reasonable expenses and attorneys' fees including pretrial, trial, and appellate proceedings incurred by Landlord in enforcing any obligations or any remedies hereunder including collection of Rent, other sums due Landlord, recovery by Landlord of the Premises, or in any litigation in which Landlord shall become involved by reason of any act or negligence of Tenant.
35. **SEVERABILITY** - If any term or provision of this Lease is held invalid or unenforceable, such holding shall not affect the remainder of this Lease and the same shall remain in full force and effect unless such holding substantially deprives Tenant of the use of the Premises or Landlord of the rents herein reserved, in which event this Lease shall forthwith terminate as if by expiration of the Term hereof.
36. **CAPTIONS** - The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.
37. **BINDING EFFECT** - This Lease and all of the covenants and provisions thereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.
38. **GOVERNING LAW, VENUE AND STRICT CONSTRUCTION** - This Lease shall be construed under the laws of the State of Illinois and shall not be construed against either Landlord or Tenant. The parties covenant and agree that any dispute or controversy hereunder properly belongs within the jurisdiction of the state or federal courts of Illinois, and consent and agree that Champaign County, Illinois is a convenient and proper venue.
39. **ADJACENT SUITES** - Notwithstanding anything contained in this Lease to the contrary, Tenant acknowledges and agrees there are currently tenants located within suites B5, B6, B7, B8 and B11 ("Adjacent Suites"), which such tenants' leases expire March 31, 2023 ("Adjacent Suites Leases"). Landlord will continue to manage said tenants within the Adjacent Suites through the expiration of the Adjacent Suites Leases and the Rent due by Tenant during the overlapping period from the Rent Commencement Date until the expiration or earlier termination of the Adjacent Suites Leases shall be credited to Tenant by Landlord by such amount received by Landlord from said tenants. If any tenant of the Adjacent Suites surrenders the applicable suite

prior to March 31, 2023, Landlord will notify Tenant and Tenant shall have the right to commence using such applicable suite.

40. **HAZARDOUS MATERIAL** -

- A. **No Hazardous Material** - Tenant shall not cause or permit any hazardous material, as defined below, to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by Landlord, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the Premises or elsewhere, or (2) the condition, use, or enjoyment of the Premises or any other real or personal property. If Tenant breaches either of these covenants, in addition to being a default under this Lease, Tenant shall be liable to Landlord for all damages resulting therefrom, and Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, penalties, fines, costs, liabilities or losses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of the Premises, any personal injury (including wrongful death) or property damage (real or personal), and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees which arise during or after the Lease Term (as may be extended) as a result of such breach or as a result of any contamination caused or permitted by Tenant. Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any hazardous material to the Premises by Tenant, its agents, invitees, contractors or employees; provided that Landlord's approval of such action shall first be obtained. The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.
- B. **Definition of Hazardous Material** - As used herein, the term "hazardous material" shall mean the following: (1) "Hazardous Substances", as defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 43 U.S.C. 9601, et seq.; (2) "Hazardous Wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; (3) any other wastes, pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable Federal, state or local law, regulations, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials, all as amended or hereafter amended; (4) more than seven (7) gallons of crude oil or distillate thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (5) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. 2011, et seq., as amended or hereafter amended; and (6) the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite or actinolite, or asbestos in any other form, in any condition.

41. **EXECUTION DATE** - The execution date of this Lease to be inserted on Page 1 hereof shall be the date of execution by both parties if they have each executed this Lease on the same date; otherwise, the execution date shall be the date of execution by the party last executing this Lease.

42. **ENTIRE AGREEMENT** - This Lease contains the entire agreement between the parties hereto and may not be modified in any manner except by an instrument in writing executed by said parties, or their respective successors in interest.
43. **COUNTERPARTS AND COPIES** - This Lease may be executed in one or more counterpart signature pages (including facsimile or electronic [including, without limitation, “pdf”, “tif”, “jpg”, DocuSign or AdobeSign] or other counterpart signature pages), each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, Landlord and Tenant, by their duly authorized representatives, have executed this Lease on the date first above written.

LANDLORD:

D & E ENTERPRISES, LLC – 136 MAIN
STREET SERIES, a series of an Illinois limited
liability company

By: _____
Daniel Maloney, Manager

TENANT:

CITY OF URBANA

By: _____
Diane Wolfe Marlin
Mayor of Urbana

Exhibit A

[Premises Depiction]



**Yellow-filled area is common-use area, not exclusive for city.
 Blue-filled area is neither common-use nor for use by city.**