

**PUBLIC NOTICE**

**IN ACCORDANCE WITH THE APPLICABLE STATUTES OF THE STATE OF ILLINOIS AND ORDINANCES OF THE VILLAGE OF WHEELING, NOTICE IS HEREBY GIVEN THAT**

**THE SPECIAL MEETING OF THE LIQUOR CONTROL COMMISSION  
WILL BE HELD ON MONDAY, AUGUST 15, 2016 AT 6:30 P.M.  
IN THE BOARD ROOM, WHEELING VILLAGE HALL,  
2 COMMUNITY BOULEVARD, WHEELING ILLINOIS  
CHAIRPERSON DEAN S. ARGIRIS PRESIDING**

**DURING WHICH MEETING IT IS ANTICIPATED THERE WILL BE DISCUSSION AND  
CONSIDERATION OF AND, IF SO DETERMINED, ACTION UPON  
THE MATTERS CONTAINED IN THE FOLLOWING:**

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL FOR ATTENDANCE**
- 4. APPROVAL OF MINUTES** Special Meeting of July 25, 2016
- 5. IN CONSIDERATION OF A REQUEST FOR A CLASS D LIQUOR LICENSE**

Shreenathji Enterprise, Inc.  
DBA Wheeling Liquors  
890 South Milwaukee Avenue  
[contract purchaser of existing business]

- 6. ADJOURNMENT**

***THIS MEETING WILL BE TELEVISED ON WHEELING CABLE CHANNELS 17 & 99.***

***IF YOU WOULD LIKE TO ATTEND A VILLAGE MEETING BUT REQUIRE AN AUXILIARY AID,  
SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CALL 847-499-9085 AT LEAST  
72 HOURS PRIOR TO THE MEETING.***



- D. [Ordinance Declaring a Surplus and Authorizing the Disposal and/or Recycling of Municipal Property Owned by the Village of Wheeling](#)
12. **OLD BUSINESS** NONE
13. **NEW BUSINESS** **All listed items for discussion and possible action**
- A. [Ordinance Authorizing a First Amendment to the Restated Redevelopment Agreement between the Village of Wheeling and WTC LLC for the Development of Land at 351 W. Dundee Road, Wheeling, IL Comprising a Part of the Town Center-II TIF District of the Village of Wheeling, Cook and Lake Counties, Illinois](#)
- B. **PRESENTATION RE:** The Fiscal Year 2015 Audit Process for the Village of Wheeling by Brian LeFevre of Sikich LLP
- C. **PRESENTATION RE:** Report on the Financial Results of Fiscal Year 2015
- D. [Resolution Commemorating the Renaming of South Drive in the Village of Wheeling as Suncheon Drive](#)
- E. [Ordinance Repealing Ordinance No. 4722, and Granting Special Use-Site Plan Approval for a Daycare Center at 581-583 N. Wolf Road](#)
- F. [Motion to Reconsider an Ordinance Authorizing a First Amendment to a Redevelopment Agreement between the Village Of Wheeling and Arbor IV, Inc. Regarding the Arbor Courts Apartments Comprising a Part of the Crossroads \(Central Business District\) TIF District](#)
14. **OFFICIAL COMMUNICATIONS**
15. **APPROVAL OF BILLS** July 28–August 10, 2016
16. **EXECUTIVE SESSION**
17. **ACTION ON EXECUTIVE SESSION ITEMS, IF REQUIRED**
18. **ADJOURNMENT**

***THIS MEETING WILL BE TELEVISED ON WHEELING CABLE CHANNELS 17 & 99.  
IF YOU WOULD LIKE TO ATTEND A VILLAGE MEETING BUT REQUIRE AN AUXILIARY AID, SUCH AS A SIGN  
LANGUAGE INTERPRETER, PLEASE CALL 847-499-9085 AT LEAST 72 HOURS PRIOR TO THE MEETING.***

**VILLAGE OF WHEELING  
LEGISLATIVE COVER MEMORANDUM**

**AGENDA ITEM NO(S) #11.A**  
(To be inserted by Deputy Clerk)

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEM SUBMITTED:** A Resolution Authorizing the Village President and Village Clerk to Execute a Parking Lease Renewal with Commonwealth Edison Company Allowing the Village to Continue to Lease Property for Metra Commuter Parking

**SUBMITTED BY:** James V. Ferolo-Klein Thorpe and Jenkins

**BASIC DESCRIPTION OF ITEM:** The attached resolution approves a lease extension with Com Ed for land located near Wheeling Road and Town Street that has been used for Metra Commuter parking since 1996. The extension goes through December 31, 2020 and provides the Village with a five year option. The base rent for 2016 is \$11,385.02. The rent is adjustable based on the number of cars parked on an annual basis.

**EXHIBIT(S) ATTACHED:** Ordinance and Board Memorandum

**RECOMMENDATION:** Approval

**SUBMITTED FOR BOARD APPROVAL:** Village Manager

**KTJ**

KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law

20 N. Wacker Drive, Ste 1660  
Chicago, Illinois 60606-2903  
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10  
Orland Park, Illinois 60462-5353  
T 708 349 3888 F 708 349 1506

**CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION**

**MEMORANDUM**

To: Board of Trustees and Village Manager, Village of Wheeling  
From: James V. Ferolo-Klein, Thorpe and Jenkins, Ltd.  
Re: Com Ed Lease Renewal  
Date: August 8, 2016

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**EXECUTIVE SUMMARY**

The attached lease is a renewal of the lease of Com Ed property that is used to supplement Metra commuter parking. The parcel is a 69,900 square foot site located near Wheeling Road and Town Street. The original lease began on January 1, 1996. The term of the new Lease goes through December 31, 2020 with a five year extension option. The base rent for 2016 is \$11,385.02. The rent each year is adjustable based on a formula related to the number of cars parked on the lot on a two year basis. The lease is necessary in order to continue to support Metra parking pursuant to the Village's agreement with Metra.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE A PARKING LEASE RENEWAL WITH COMMONWEALTH EDISON COMPANY ALLOWING THE VILLAGE TO CONTINUE TO LEASE PROPERTY FOR METRA COMMUTER PARKING**

**WHEREAS**, the Village of Wheeling (the "Village") is a home rule unit of government; pursuant to Article VII, Section 6 of the Illinois Constitution; and

**WHEREAS**, since January 1, 1996, the Village has leased a 69,900 square foot parcel from Commonwealth Edison Company located near Wheeling Road and Town Street for purposes of METRA commuter parking; and

**WHEREAS**, the Village of Wheeling desires to renew said Lease for an additional five year period with a five year option.

**NOW, THEREFORE**, be it resolved by the President and Board of Trustees of the Village of Wheeling, Counties of Cook and Lake, State of Illinois, as follows:

**SECTION 1:** That the President and the Board of Trustees hereby approve and direct the execution by the Village President of a Parking Lease in substantial conformity with the Lease attached hereto as EXHIBIT A and made a part hereof.

Trustee \_\_\_\_\_ moved, seconded by Trustee \_\_\_\_\_,

that Resolution No. \_\_\_\_\_ be passed.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Trustee Argiris \_\_\_\_\_ Trustee Papantos \_\_\_\_\_

Trustee Brady \_\_\_\_\_ Trustee Vito \_\_\_\_\_

Trustee Krueger \_\_\_\_\_ Trustee Vogel \_\_\_\_\_

Trustee Lang \_\_\_\_\_

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_

Dean S. Argiris  
Village President

ATTEST:

\_\_\_\_\_  
Elaine Simpson  
Village Clerk

**EXHIBIT A-PARKING LOT LEASE**

**LEASE REPLACEMENT**

TENANT CODE: 102479  
DES PLAINES- WAUKEGAN R/W  
PARCELS: T32-289  
NE 1/4, SEC. 10 TWP 42, RANGE 11 EAST  
OF THE THIRD PRINCIPAL MERIDIAN  
COOK COUNTY, ILLINOIS  
C.E.CO. TAX PARCELS 4018  
C.E.CO. REGION: NORTH  
TAX ID: 03-10-201-029, 03-10-201-032, 03-10-201-034 (69,900 s.f.)

**PARKING LEASE**

THIS PARKING LEASE (the "Lease") is made as of \_\_\_\_\_, 2016 by and between COMMONWEALTH EDISON COMPANY, an Illinois corporation ("Landlord") and The Village of Wheeling ("Tenant") whose address is 77 W Hintz Road, Wheeling, Illinois. 60090.

**RECITALS**

Landlord and Tenant are parties to a certain Parking Lease dated January 1, 1996, which lease was supplemented by supplement dated April 22, 2002, (as so supplemented, the "Original Lease") which covers the Leased Premises (as defined below). The term of the Original Lease expired on December 31, 2015. To the extent that there is a gap in time between the expiration of the Original Lease and the Commencement Date hereof, Tenant shall continue to occupy the Leased Premises as a holdover tenant from January 1, 2016 until the Commencement Date hereof. The parties desire to enter into a new Parking Lease covering such Leased Premises on the terms and conditions contained in this Lease.

Landlord, for and in consideration of the payment of Rent (as hereinafter defined) by Tenant, and of the covenants, conditions and agreements of Tenant hereinafter set forth, does hereby lease and demise to Tenant (without warranty of title), and Tenant does hereby lease from Landlord, an approximately 69,900 square foot area portion of Landlord's property located near Wheeling Road and Town Street in Wheeling, Illinois and more particularly depicted on the drawing attached hereto and made a part hereof as Exhibit A (the "Leased Premises"), for the purposes specified in Section 2 below.

1. **TERM.** The term of this Lease (the "Term") shall commence upon the expiration date of the Original Lease (the "Commencement Date") and shall terminate on December 31, 2020, unless sooner terminated as provided herein.

In the event that Tenant intends to make any Alterations to the Leased Premises following the Commencement Date of the Lease, Tenant shall deliver the plans and specifications, and all other items required to be delivered by Tenant for the initial Alterations, if any, pursuant to Section 10 hereof, to Landlord upon the execution of this Lease, for Landlord's approval as provided in Section 10. Within thirty (30) days from the completion of the initial Alterations, Tenant shall deliver "as-built" plans and specifications of the initial Alterations to Landlord. In the event that the "as-built" plans and specifications are not in compliance with the plans and specifications delivered to Landlord upon execution of the Lease, Landlord may terminate this Lease after receipt of the "as-built" plans and

specifications, and the parties shall have no further liability under this Lease, except that Tenant shall restore the Leased Premises to the condition that existed prior to the initial Alterations.

2. **OPTION TO RENEW.** Provided no event has occurred which with or without the passage of time and/or notice constitutes a Default under this Lease, Tenant shall have the right to extend the Term for one (1) five (5) year period (being referred to herein as the “**Renewal Term**”). Tenant shall provide written notification to Landlord at least one hundred eighty (180) days prior to the end of the Term of its desire to extend the Term for the Renewal Term (“**Renewal Notice**”), which Renewal Notice shall include payment to Landlord in the amount of Landlord’s then current “Review Fee.” If Tenant does not provide Landlord with the Renewal Notice and payment of the then current “Review Fee” within one hundred eighty (180) days prior to the end of the Term the Term of the Lease shall cease and terminate at the end of the stated Term, or the then current Renewal Term.

Subject to the provisions set forth above, in the event that the Lease is renewed, the Renewal Term will be upon the same terms, covenants and conditions contained in the Lease, except that: (i) Landlord may make any changes to the terms and conditions of the Lease, including without limitation, changes to any indemnity, environmental, restrictions, rent, and insurance provisions contained in the Lease as Landlord deems appropriate in its sole and absolute judgment; and (ii) any reference in the Lease to the Term will be deemed to include the Renewal Term. In addition, Tenant will be deemed to have accepted the Leased Premises in “as-is” condition as of the commencement of the Renewal Term, it being understood that Landlord will have no obligation to renovate or remodel the Leased Premises as a result of Tenant’s renewal of the Lease.

3. **PURPOSE.** The Leased Premises shall be used by Tenant in compliance with all Legal Requirements (as hereinafter defined) and the terms and provisions of this Lease solely for purposes of parking of commuter - passenger vehicles in connection with adjacent METRA rail line service, and for no other purposes (the “**Permitted Use**”). For purposes hereof, the term “**Legal Requirements**” shall mean all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, executive orders, court orders, rules of common law, and any judicial interpretations thereof, extraordinary as well as ordinary, of all governmental authorities, and all rules, regulations and government orders with respect thereto, and of any applicable fire rating bureau, or other body exercising similar functions, affecting the Leased Premises or the maintenance, use or occupation thereof, or any street, sidewalk or other property comprising a part thereof, regardless of whether imposed by their terms upon Landlord or Tenant, or the use and occupancy thereof by Tenant. Tenant’s use of the Leased Premises shall also be and remain subject to Landlord’s superior right to use all or any portion of the Leased Premises for its business purposes, including the installation, use and maintenance of any transmission, distribution or communications improvements, fixtures, facilities, machinery, equipment and/or other property owned by Landlord and now or hereafter installed by Landlord on or near the Leased Premises (“**Landlord’s Facilities**”).

4. **RENT.**

(a) **Base Rent.** Tenant shall pay to Landlord base rent (“**Base Rent**”), for the period from January 1, 2016, to and including December 30, 2020. Base Rent shall be paid in yearly installments in advance beginning on the first (1<sup>st</sup>) day of February, 2016, and on each February 1<sup>st</sup> during the remaining Term, according to the schedule in Exhibit B attached hereto and made a part hereof.

(b) **Proration of Rent.** Landlord and Tenant understand and agree that if the Commencement Date or last day of the Term occurs on a date that is other than the first or last day (as applicable) of a month, the Rent (as hereinafter defined) for that month shall be prorated on a per diem basis.

(c) Rent. For purposes of this Lease, the term “**Rent**” shall mean the Base Rent, together with all other amounts due and payable by Tenant to Landlord under this Lease.

(d) Payment of Rent. All Rent due and payable by Tenant under this Lease shall be paid to the following address:

Commonwealth Edison Company  
Real Estate Department, 4<sup>th</sup> Floor  
Three Lincoln Centre  
Oakbrook Terrace, IL 60181  
Attn: Lease Payment Department

or to such other place as Landlord may from time to time designate in writing. All payments due from Tenant hereunder which are not paid when due shall bear interest at a rate equal to ten percent (10%) per annum from the date due until paid (the “**Default Rate**”). Such interest shall be compounded monthly. In addition to, and not in lieu of, the foregoing (and any other rights and remedies to which Landlord is entitled under this Lease), in the event that any payment due from Tenant hereunder is not paid within five (5) business days of the date that the same is due, then a late fee in the amount of ten percent (10%) of the unpaid amount shall be due and payable by Tenant to Landlord. All Rent shall be paid by Tenant without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, in lawful money of the United States by bank check or wire transfer of immediately available funds. Tenant’s obligations to pay Rent are independent of each and every covenant contained in this Lease.

(e) Net Lease. Except as otherwise provided in this Lease, the Rent herein shall be absolutely net to Landlord, so that this Lease shall yield, net to Landlord, the Rent in each year during the Term of this Lease and any renewals thereof, and that all costs, expenses and obligations of every kind and nature whatsoever, relating to the Leased Premises which may arise or become due during the Term of this Lease or any renewal or extension thereof, or as a result of Tenant’s use or occupancy of the Leased Premises, shall be paid by Tenant, and Tenant agrees to indemnify, defend (with counsel acceptable to Landlord) and hold harmless Landlord from all such costs, expenses and obligations.

5. TAXES. Tenant shall pay the following amounts as “Taxes” to Landlord in each case no later than thirty (30) days after Landlord’s written demand.

(a) Tenant’s proportionate share of the land component of all real estate taxes for each tax parcel of which the Leased Premises is a part for all periods falling within the Term, which proportionate share shall be calculated as follows: (i) the total land component of each tax bill for each such real estate tax parcel which includes any portion of the Leased Premises, multiplied by (ii) a fraction, the numerator of which shall be the acreage of the portion of such tax parcel which falls within the Leased Premises, and the denominator of which shall be the total acreage of such tax parcel; plus

(b) All real estate taxes and other assessments which are allocable to any improvements, structures or fixtures constructed, installed, or placed by Tenant at the Leased Premises for all periods falling within the Term, plus

(c) Any increase in the real estate taxes and other assessments payable with respect to the Leased Premises (or any tax parcel of which the Leased Premises is a part) which is allocable to this Lease, Tenant’s use or occupancy of the Leased Premises, or any improvements, structures or fixtures constructed, installed or placed by Tenant at the Leased Premises (but without duplication of any amount payable pursuant to clause (b) above), for all periods falling within the Term.

For purposes of this Lease, Taxes “for” or “with respect to” any particular period (or portion thereof) shall mean the Taxes which are payable during the calendar year in which any portion of such period falls, irrespective of the fact that such Taxes may have accrued with respect to a different period.

6. **CONDITION.** Tenant has examined the Leased Premises and knows its condition. Tenant hereby accepts the condition of the Leased Premises in its AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS. No representations or warranties as to the condition, repair or compliance with Legal Requirements thereof, and no agreements to make any alterations, repairs or improvements in or about the Leased Premises have been made by or on behalf of Landlord. By accepting possession of the Leased Premises, Tenant shall be conclusively presumed to have accepted the condition thereof and to have unconditionally waived any and all claims whatsoever related to the condition of the Leased Premises.

7. **MAINTENANCE; SERVICES AND UTILITIES.**

(a) Tenant agrees at its sole cost and expense, to keep and maintain the Leased Premises (including any parking lot and/or area thereon) in a clean, neat, sanitary and slightly condition and repair, and commensurate with the conditions existing at the time this Lease is executed to Landlord’s satisfaction at all times during the Term hereof. Without limiting the generality of the foregoing, Tenant shall (subject to the terms and provisions of this Lease) perform any and all necessary paving, grading, landscaping, cutting and mowing of grass and weeds (including all Canadian thistles and other noxious weeds and growths at the Leased Premises) and snow and ice removal, all at Tenant’s sole cost and expense.

(b) Landlord shall not be responsible for furnishing or providing any services or utilities to the Leased Premises (or any costs or expenses associated therewith), but rather, Tenant shall be responsible, at Tenant’s sole cost and expense, for providing all such services and utilities. Landlord has made no representation, warranty or covenant of any kind regarding the availability (or future availability) of any such utilities and services, and no failure to provide or interruption of any such services or utilities or services shall give rise to any right or remedy in favor of Tenant under this Lease.

(c) Tenant assumes all of the responsibilities normally identified with the ownership of the Leased Premises, including, but not limited to, responsibility for the condition of the Leased Premises, such as the operation, repair, replacement, maintenance and management of the Leased Premises, including, without limitation, repairs to all buildings, structures, fixtures, equipment and other property thereat; provided, that (except as expressly set forth below) in no event shall Tenant maintain, repair, gain access to or in any way use or operate any of Landlord’s Facilities.

8. **SURRENDER OF LEASED PREMISES; RESTORATION.** Tenant agrees that upon termination of the Term of this Lease, whether by expiration or otherwise, Tenant will peaceably quit and surrender the Leased Premises to Landlord, and will, at its sole cost and expense, remove all Tenant’s personal property, fixtures, structures and improvements, and will, at Landlord’s sole and absolute discretion, restore and regrade the Leased Premises to substantially the same condition the Leased Premises were in on the date Tenant took possession (other than any improvements, installations and modifications made by Landlord). Prior to the end of the Term, or earlier termination of the Lease, Landlord may notify Tenant that Tenant shall not remove any fixtures, structures and improvements specified in such notice, in which event Tenant shall leave such specific items in place and in good condition, ordinary wear and tear excepted, and title to such items shall pass to Landlord upon the expiration or earlier termination of the Lease. This Section shall survive the termination or expiration of the Lease.

9. **COMPLIANCE WITH LAWS; WASTE; OTHER COVENANTS OF TENANT.**

(a) **General.** Tenant, at its sole expense, shall comply, and cause the Leased Premises to comply, with all Legal Requirements. In addition, Tenant covenants and agrees that it will not commit waste, loss or damage to the Leased Premises or any other property of Landlord.

(b) **Change in Law.** Tenant acknowledges that Landlord may incur costs as a result of the enactment of new Legal Requirements relating to the Leased Premises, and/or changes in Legal Requirements relating to the Leased Premises. Tenant agrees that any such costs incurred by Landlord for complying with such new or changed Legal Requirements and due in whole or in part to Tenant's use and/or occupancy of the Leased Premises shall be an expense recoverable by Landlord from Tenant. To the extent any such expense paid by Tenant to Landlord is subsequently recovered by or reimbursed to Landlord through insurance or recovery from responsible third parties or other action, Tenant shall be entitled to a proportionate share (as reasonably determined by Landlord) of such recovery or reimbursement.

(c) **Notice of Violations.** Tenant shall immediately provide Landlord with written notice: (i) upon Tenant's obtaining knowledge of any potential or known violations of any Legal Requirements relating to the Leased Premises, and/or (ii) of Tenant's receipt of any notice, correspondence, demand or communication of any nature from any governmental authority related to any alleged or actual violation of any Legal Requirements relating to the Leased Premises.

(d) **Height and Other Limitations.** No vehicles, equipment or anything else (including, but not limited to, any equipment attached to vehicles or equipment such as antennas) having a height which exceeds the maximum allowable height under OSHA's height standards in effect from time to time during the Term, shall be driven, moved or transported on the Leased Premises without Landlord's prior written consent.

10. **ALTERATIONS.**

(a) **General.** Tenant shall not make any alterations, installations, improvements, additions or other physical changes (collectively, the "Alterations") in or about the Leased Premises without Landlord's prior written consent in each instance, which consent may be granted or denied by Landlord in its sole and absolute discretion. Alterations shall be performed: (i) by Tenant, at Tenant's sole cost and expense (and Landlord shall have no duty or obligation with respect thereto), (ii) pursuant to final and stamped plans and specifications approved in writing by Landlord (in Landlord's sole discretion), (iii) by contractors and subcontractors approved in writing by Landlord (in Landlord's sole discretion), (iv) in compliance with all Legal Requirements, and (v) in a good and workmanlike manner, free of all liens. Tenant, at Tenant's sole cost and expense, shall obtain any and all permits and approvals necessary for the performance of any Alterations. During the performance of any Alterations, Tenant shall carry, and shall cause its contractors and subcontractors to carry, such insurance as Landlord shall, in its sole discretion, direct. Neither Tenant nor any of Tenant's authorized agents, at any time prior to or during the Term, directly or indirectly, shall employ, or permit the employment of, any contractor, mechanic or laborer in the Leased Premises, or permit any materials to be delivered to or used in the Leased Premises, whether in connection with any Alterations or otherwise, if, in Landlord's sole judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Leased Premises (or any other property) by Landlord, Tenant or others, or the use and enjoyment of the Leased Premises by Landlord or other tenants or occupants of the Leased Premises. In the event of such interference or conflict, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Leased Premises immediately. At the sole discretion of Landlord, any proposed

Alterations shall be subject to a review fee, the amount of which will be determined by Landlord upon receipt of Tenant's request for consent to such Alterations. Such fee shall be due and payable by Tenant within five (5) days from receipt of notice from Landlord of the amount of such review fee and Landlord shall not be required to consider Tenant's request for Landlord's consent to any Alterations until the review fee for such Alterations is paid.

(b) Paving and Filling. Without limiting the generality of the terms and provisions of Section 9(a) above, Tenant acknowledges and confirms that any and all grading, leveling, adding or removing soil and/or paving of the Leased Premises (or any portion thereof) shall constitute an Alterations for purposes of this Lease, and shall be subject to each and all of the terms and provisions relating thereto. In any event, any and all debris from any Alterations of Tenant shall be promptly removed from the Leased Premises by Tenant. In the event that, in connection with Tenant's Alterations, Tenant elects to fill any low spots on the Leased Premises, only clean fill (defined as not containing debris such as gravel, concrete, tree roots, brick or any contaminants) shall be used prior to the spreading of base fill underlying any paving. No paving or grading work (or similar work) of any kind will be undertaken within a ten (10) foot radius of any tower leg (or similar equipment, improvement or facility) of Landlord. Paving shall be well drained, firm and solid blacktop (or other substance approved in writing by Landlord), and shall be neat and clean in appearance. In addition, and not in lieu of the foregoing, any such grading, leveling, paving and/or filling of the Leased Premises shall comply with the terms and provisions of Section 13 below. Tenant shall not cause or permit the existing ground grade on the Leased Premises to be increased or decreased in excess of eight inches (8") without Landlord's prior written consent.

(c) Drainage. Tenant covenants and agrees that no Alterations made by Tenant pursuant to this Lease shall cause any surface water drainage problems for Landlord or any adjoining landowners. In the event that any such water drainage problems are caused by Tenant's Alterations, Tenant shall correct such problems immediately at Tenant's sole cost and expense.

(d) Fencing and Barriers. Tenant covenants and agrees that, in the event that Tenant installs (or is required (by Landlord or otherwise) to install) any fencing and/or gates in connection with Tenant's Alterations at the Leased Premises (or its use or occupancy of the Leased Premises), Tenant will install, maintain and operate such fences and/or gates in strict compliance with the requirements of Exhibits C1 and C2, attached hereto and made a part hereof, and any and all other fencing and locking rules, regulations and guidelines which Landlord may deliver to Tenant from time to time prior to or during the Term. Tenant also acknowledges and confirms that, in connection with Landlord's review and/or approval of the plans and specifications for Tenant's Alterations at the Leased Premises (as provided in Section 10(a) above), Landlord may require, prior to or at any time during the term of this Lease, that barriers ("**Barriers**") be installed on the Leased Premises in order to protect Landlord's Facilities and/or other equipment, improvements and facilities of Landlord and other users and occupants of the Leased Premises. Any such Barriers shall be installed either (at Landlord's sole option): (i) by Tenant, at Tenant's sole cost and expense, in a manner satisfactory to Landlord, or (ii) by Landlord, in which event Tenant shall pay to Landlord, prior to such installation, Landlord's reasonable estimate of the cost of such installation of the Barriers. Any barriers required to be installed hereunder shall be installed, maintained and operated by Tenant in strict compliance with the requirements of Exhibits C1 and C2, attached hereto, and any and all rules, regulations and guidelines regarding barriers which Landlord may deliver to Tenant from time to time prior to or during the Term.

(e) Soil Removal. Tenant hereby agrees that it will not remove any soil from the Leased Premises without the prior written consent of Landlord. Any soil removed from the Leased Premises to which Landlord consents (as provided in the preceding sentence) shall become the property of Tenant and shall be: (i) transported and disposed of by Tenant (at its sole cost and expense) in a manner approved in

writing by Landlord and in compliance with all Legal Requirements, and (ii) promptly replaced by Tenant at its sole cost and expense, with clean soil not contaminated with Hazardous Materials (as defined in Section 16 below).

(f) Third Party Facilities. In addition to any Landlord's Facilities located on or near the Leased Premises, Tenant hereby acknowledges that the Leased Premises may be used from time to time to accommodate equipment and facilities of other persons and/or entities (including, without limitation, pipeline and utility companies) which are (or will be) located on, above or below the surface of the Leased Premises. Tenant agrees that it will contact any such persons and/or entities holding rights to use and/or occupy the Leased Premises, and provide the proper protection required by such persons or entities, in connection with Tenant's use and occupancy of the Leased Premises. Tenant further agrees to furnish Landlord copies of the correspondence between the any such persons or entities and Tenant. Tenant agrees that this requirement shall apply to any installations currently located at the Leased Premises and any and all future installations within the Leased Premises.

(g) Supervision. Landlord shall have the right (but not the obligation) to monitor and observe Tenant's performance of any Alterations at the Leased Premises (or any component thereof) and, in the event that Landlord so elects, Tenant shall reimburse Landlord for any and all costs of such monitoring and observation, together with a charge for Landlord's overhead, as determined by Landlord. In the event that Landlord elects to monitor or observe any such work, in no event shall Landlord be deemed to have approved or made any representation or warranty regarding the same.

(h) Notification. In addition to and not in lieu of, Tenant's other obligations under this Section, Tenant also agrees to notify Landlord's Representative at Telephone Number 866-340-2841 at least seventy two (72) hours prior to the commencement of any Alterations at the Leased Premises.

11. INDEMNITY. To the maximum extent permitted under Legal Requirements, Tenant agrees to protect, indemnify, defend (with counsel acceptable to Landlord) and hold harmless Landlord and Exelon Corporation, a Pennsylvania corporation, and their respective parents, subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, representatives, agents, contractors, licensees, lessees, guests, invitees, successors and assigns (collectively, the "**Indemnified Parties**"), from and against any and all losses, costs, damages, liabilities, expenses (including, without limitation, reasonable attorneys' fees) and/or injuries (including, without limitation, damage to property and/or personal injuries) suffered or incurred by any of the Indemnified Parties (regardless of whether contingent, direct, consequential, liquidated or unliquidated) (collectively, "**Losses**"), and any and all claims, demands, suits and causes of action brought or raised against any of the Indemnified Parties (collectively, "**Claims**"), arising out of, resulting from, relating to or connected with: (i) any act or omission of Tenant or its officers, directors, shareholders, employees, representatives, agents, contractors, licensees, lessees, guests, invitees, successors and assigns (collectively, "**Tenant Group**") at, on or about the Leased Premises, and/or (ii) any breach or violation of this Lease on the part of Tenant, and notwithstanding anything to the contrary in this Lease, such obligation to indemnify, defend and hold harmless the Indemnified Parties shall survive any termination or expiration of this Lease. This indemnification shall include, without limitation, claims made under any workman's compensation law or under any plan for employee's disability and death benefits (including, without limitation, claims and demands that may be asserted by employees, agents, contractors and subcontractors).

12. WAIVER. Any entry onto the Leased Premises by Tenant and, to the extent permitted by law, each and every member of the Tenant Group, shall be at such parties' sole risk, and Landlord makes (and has heretofore made) no representations or warranties of any kind whatsoever regarding the Leased Premises or the condition of the Leased Premises (including, without limitation, the environmental condition thereof). To the fullest extent permitted by law, Tenant and each member of the Tenant Group

hereby waives any and all claims, demands, suits and causes of action against the Indemnified Parties, and fully and forever releases the Indemnified Parties, for any loss, cost, damage, liability or expense (including, without limitation attorneys' fees) suffered or incurred by Tenant or any member of the Tenant Group in connection with any entry onto the Leased Premises pursuant to this Lease. Without limiting the generality of the foregoing, in no event shall any of the Indemnified Parties be responsible or liable for any loss, damage, destruction, theft or misappropriation of any of the property of Tenant or any member of the Tenant Group. This Section will survive termination or expiration of the Lease.

13. **DIGGING WORK.** If Tenant performs any grading, leveling, digging or excavation work on the Leased Premises (which work shall be subject to Landlord's prior written approval), Tenant will notify J.U.L.I.E. at telephone number 811 or (1-800) 892-0123, or D.I.G.G.E.R at (1-312) 744-7000 if the Leased Premises is located in the City of Chicago, or in the event the Leased Premises is located outside J.U.L.I.E.'s or D.I.G.G.E.R's jurisdiction, any other services required by the utilities in the jurisdiction, at least seventy-two (72) hours prior to the commencement of such work in order to locate all existing utility lines that may be present on the Leased Premises. If Tenant damages any such underground facilities in the course of its work, Tenant will promptly reimburse Landlord or the owner of such equipment or facilities for any and all expense incurred in repairing or replacing such damage.

14. **CASUALTY.** In the event of any damage to or destruction of the Leased Premises, by fire or other casualty, which materially and adversely affects Tenant's use and enjoyment of the Leased Premises for the purposes specified in this Lease, then either Landlord or Tenant shall have the right, no later than ninety (90) days after such party becomes aware of such damage or destruction, to terminate this Lease upon sixty (60) days' prior written notice to the other. In the event of any damage or destruction which is not so extensive, or in the event that Landlord and Tenant elect not to terminate this Lease pursuant to the preceding sentence, then this Lease shall continue in full force and effect, and Tenant will promptly and diligently, at its sole cost and expense, repair, restore, rebuild and replace the Leased Premises (and all improvements, fixtures, equipment and property thereat) as nearly as possible to the condition they were in immediately prior to such damage or destruction. Any such work shall be done in a manner satisfactory to Landlord, and in accordance with all Legal Requirements and the terms and provisions of this Lease. Landlord shall not be liable or responsible for any loss or damage caused to any property of Tenant or any member of the Tenant Group (including, without limitation, any such loss or damage caused by fire, vandalism or other casualty) at any time during the Term hereof.

15. **CONDEMNATION.** If the Leased Premises, or a substantial part thereof, or a portion which prevents use of the Leased Premises for the purposes specified herein, shall be taken or condemned by any competent authority for any public use or purpose, the Term shall end on the date when the possession of the part so taken shall be required for such use or purpose, and without apportionment of any condemnation award or proceeds (it being understood that Landlord shall be entitled to the entire amount of any such award or proceeds, and Tenant shall have no right to share therein). Current Rent shall be apportioned as of the date of such termination.

16. **ENVIRONMENTAL PROTECTION.**

(a) **General.** Tenant covenants and agrees that Tenant shall conduct its operations on the Leased Premises in compliance with all applicable Environmental Laws (as hereinafter defined) and further covenants that neither Tenant nor any member of the Tenant Group shall use, bring upon, transport, store, keep or cause or allow the discharge, spill or release (or allow a threatened release) in each case of any Hazardous Materials (as hereinafter defined) in, on, under or from the Leased Premises. Without limiting any other indemnification obligations of Tenant contained herein, Tenant hereby agrees to protect, indemnify, defend (with counsel acceptable to Landlord) and hold harmless the Indemnified Parties from and against any and all Losses and Claims (including, without limitation, (i) reasonable

attorneys' fees, (ii) liability to third parties for toxic torts and/or personal injury claims, (iii) fines, penalties and/or assessments levied or raised by any governmental authority or court, and (iv) assessment, remediation and mitigation costs and expenses and natural resource damage claims) arising out of, resulting from or connected with any Hazardous Materials used, brought upon, transported, stored, kept, discharged, spilled or released by Tenant, any member of the Tenant Group or any other person or entity (except for any person or entity which is an Indemnified Party) in, on, under or from the Leased Premises. For purposes of this Lease, the term "**Hazardous Materials**" shall mean all toxic or hazardous substances, materials or waste, petroleum or petroleum products, petroleum additives or constituents or any other waste, contaminant or pollutant regulated under or for which liability may be imposed by any Environmental Law. For purposes of this Lease, the term "**Environmental Laws**" shall mean all federal, provincial, state and local environmental laws, statutes, ordinances, regulations, and other requirements (including common law) regulating or imposing standards of care with respect to the handling, storage, use, emitting, discharge, disposal or other release of Hazardous Materials, including, but not limited to, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., the Clean Air Act, 42 U.S.C. §§7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601, et seq., the Oil Pollution Control Act, 33 U.S.C. §§2701, et seq., any successor statutes to the foregoing, or any other comparable local, state or federal statute or ordinance pertaining to protection of human health, the environment or natural resources, including without limitation the preservation of wetlands, and all regulations pertaining thereto, as well as applicable judicial or administrative decrees, orders or decisions, authorizations or permits.

(b) Wetlands. If there are wetlands on the Leased Premises, or if wetlands should develop on the Leased Premises during the Term, Tenant shall strictly comply with and observe all applicable Environmental Laws. At Landlord's request, Tenant, at its cost, shall furnish Landlord with a survey of the Leased Premises delineating any wetland areas located on the Leased Premises. Under no circumstances shall Tenant change the physical characteristics of any wetland areas located on the Leased Premises or any adjoining land or place any fill material on any portion of the Leased Premises or adjoining land, without in each instance obtaining Landlord's prior written consent (which may be granted or withheld in Landlord's sole discretion), and only then in compliance with applicable Environmental Laws.

(c) Notice of Violation/Release. Tenant shall provide Landlord with prompt written notice upon Tenant's obtaining knowledge of the existence of any Hazardous Materials on, in or under the Leased Premises in violation of Environmental Laws, or of any potential or known release or threat of release of any Hazardous Materials affecting the Leased Premises.

(d) Survival. This Section shall survive the expiration or other termination or expiration of the Lease.

17. INSURANCE. Tenant shall comply with the insurance provisions contained in Exhibit D, attached hereto and made a part hereof.

18. ZONING. Tenant hereby acknowledges that Landlord has made no representations that the Leased Premises may be used or is properly zoned for the Permitted Use, and Tenant further agrees that it will (at its sole cost and expense) obtain all necessary permits and other approvals prior to undertaking the Permitted Use. Tenant assumes all obligations and responsibilities for compliance with all Legal Requirements including, without limitation, all applicable zoning laws and ordinances, building codes and governmental regulations. This Lease is not preconditioned on Tenant obtaining any zoning or use permits or approvals. This Lease does not constitute the authority to seek a zoning change to permit the

Permitted Use, and in no event shall Tenant seek or apply for any such zoning change to the Leased Premises without Landlord's prior written consent, which consent may be given or withheld in Landlord's sole and absolute discretion.

19. **NO SIGNS.** Tenant shall not place or permit to be placed by any person or entity (other than Landlord) on the Leased Premises any signs or billboards (including, without limitation, any advertising signs or billboards) without prior written approval of Landlord, which approval Landlord may give or withhold in Landlord's sole and absolute discretion.

20. **DAMAGE TO LANDLORD'S FACILITIES.** Tenant agrees that in the event any work done by or on behalf of Tenant on the Leased Premises causes damage to Landlord's Facilities, Tenant will promptly reimburse Landlord for any and all expense incurred for the repairing or replacement of such damage, within thirty (30) days, after presentation to Tenant of Landlord's statement therefor.

21. **DEFAULT.**

(a) In the event that any of the following shall occur (each, a "Default"):

(i) Tenant shall at any time fail to make any payment of Rent (or any portion thereof) or any other payments required of Tenant hereunder when required, and such failure continues for a period of more than ten (10) days (without necessity of any notice or demand therefor), ("Delinquent") or if Tenant is Delinquent more than three (3) times in any twelve (12) month period;

(ii) Tenant shall breach or violate any of its duties or obligations set forth in Section 7 (Surrender of Leased Premises; Restoration), Section 17 (Insurance), Section 22 (Covenants Against Liens), Section 23 (Assignment and Subletting) or Section 30 (Subordination; Estoppel) of this Lease;

(iii) Tenant shall at any time be in default in any other covenants and conditions of this Lease to be kept, observed and performed by Tenant, and such default continues for more than thirty (30) days (or such shorter time period as may specifically be set forth in this Lease);

(iv) this Lease or Tenant's interest herein, or any interest in Tenant, shall be assigned, transferred, mortgaged or pledged, levied on or attempted to be taken by execution, attachment or other process of law, or if any execution or attachment shall be issued against Tenant, or any of Tenant's property in the Leased Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant;

(v) a receiver, assignee or trustee shall be appointed for Tenant or Tenant's property or if Tenant shall file bankruptcy, or if involuntary bankruptcy proceedings shall be filed against Tenant;

(vi) Landlord shall receive notice of any alleged violation of any Legal Requirements resulting from or in any way connected with Tenant's use of the Leased Premises and such violation is not cured (and all liabilities connected therewith fully satisfied) by Tenant prior to the earlier of (A) ten (10) days after notice from Landlord to Tenant of such alleged violation, (B) the last day of the period permitted by law for curing such violation or (C) the first date Landlord becomes subject to any fine, penalty, lien, judgment, order or other liability due to the continued existence of such violation; or

(vii) Tenant shall abandon the Leased Premises or vacate same during the Term.

(b) If a Default occurs at any time during the Term, Landlord may do any or all of the following (all of which remedies shall be cumulative and not exclusive, and all of which remedies shall be in addition to, and not in lieu of, any other rights and remedies to which Landlord may be entitled under this Lease, at law or in equity):

(i) Landlord, at its option, at once, without notice to Tenant or to any other person, terminate this Lease and at its option, require payment in full of the Rent due for the unexpired term of the Lease.

(ii) Landlord may enter into the Leased Premises, and remove Tenant's property and effects therefrom, and/or take and hold possession thereof, without such entry and/or possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligations to pay Rent and perform all its other obligations hereunder for the remainder of the Term, and to relet the Leased Premises or any part or parts thereof, either in the name of or for the account of Landlord or Tenant, for such rent and on such term and terms as Landlord may see fit, which term may at Landlord's option extend beyond the balance of the Term of this Lease. Except to the extent required under applicable Legal Requirements, Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting. In any case, Landlord may make such repairs, alterations and additions in or to the Leased Premises as Landlord sees fit. Tenant shall pay Landlord any deficiency between the Rent hereby reserved and covenanted to be paid and the net amount of the rents collected on such reletting, for the balance of the Term of this Lease, as well as any expenses incurred by Landlord in such reletting, including, but not limited to, attorney's fees, broker fees, the expenses of repairing and altering the Leased Premises, and otherwise preparing the same for re-rental. All such costs, other than the rental, shall be paid by Tenant upon demand by Landlord. Any deficiency in rental amounts shall be paid in monthly installments, unless Landlord has declared the entire Rent for the balance of the Term due, as provided elsewhere in this Lease. Any suit brought to collect the amount of the deficiency for any one or more months' Rent shall not preclude any subsequent suit or suits to collect the deficiency for any subsequent month's Rent.

(iii) Landlord may require that upon any termination of this Lease, whether by lapse of time, 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 at once surrender possession of the Leased 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 do so, Landlord may forthwith re-enter the Leased 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 or forcible entry, without thereby waiving Landlord's rights to Rent or any other rights given Landlord under this Lease or at law or in equity.

(iv) At its option, Landlord may remove, if Tenant shall not remove all effects from the Leased Premises in this Lease as provided, any or all of such effects in any manner that Landlord shall choose and store the same without liability for loss thereof, and Tenant will pay Landlord, upon demand, any and all expenses incurred in such removal and also storage of said effects for any length of time during which the same shall be in Landlord's possession or in storage, or Landlord, at its option and without notice, may sell any or all of said effects in such manner and for such price as Landlord may deem best and apply the proceeds of such sale upon

any amounts due under this Lease from Tenant to Landlord, including the expenses of removal and sale.

(v) Landlord may collect from Tenant any other loss or damage Landlord may sustain by reason of any breach (including, without limitation, the unamortized portion of any brokerage fee or commission paid by or on behalf of Landlord to any broker or finder with respect to this Lease) and any diminished value of the Leased Premises resulting from said breach.

(vi) Landlord may enjoin any such breach of this Lease by Tenant.

(vii) Landlord may take any and all corrective actions Landlord deems necessary or appropriate to cure the default of Tenant in question and charge the cost thereof to Tenant, together with (A) interest at the Default Rate and (B) an administrative charge in an amount equal to ten percent (10%) of the cost of the corrective action to defray part of the administrative expense incurred Landlord in administering such cure, such payment to be made by Tenant upon Landlord's presentment and demand therefore.

(c) Except as specifically provided in this Section, Tenant expressly waives the service of any notice of intention to terminate this Lease or to terminate Tenant's right of possession of the Leased Premises or to re-enter the Leased Premises and waives the service of any demand for payment of Rent or for possession and waives the service of any and every other notice or demand prescribed by any statute, law or ordinance and agrees that the simple breach of any of the covenants of this Lease (beyond any applicable notice and cure periods) shall, of itself, without the service of any additional notice or demand whatsoever, at Landlord's option, constitute a default on the part of Tenant. No receipt of monies by Landlord from or for the account of Tenant or from anyone in possession or occupancy of the Leased Premises after termination or expiration of the Lease in any way of this Lease or after the giving of any notice, shall reinstate, constitute or extend the term of this Lease or affect any notice given to Tenant prior to the receipt of such money, it being agreed that after the service of notice of the commencement of a suit, or after final judgment for possession of the Leased Premises, Landlord may receive and collect any Rent or other amounts due Landlord and such payment shall not waive or affect such notice, suit, or judgment.

(d) Any and all rights and remedies which Landlord may have under this Lease at law or in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more or all of said rights and remedies may be exercised at the same time or at different times and from time to time.

(e) If Landlord is required to incur expense, legal, incidental, or consequential, because of the breach of this Lease by Tenant, Tenant shall promptly reimburse Landlord for such expense upon being given a written itemization and explanation thereof. In the event of commencing a court action as a result of any breach, it is agreed that such expenses are to be considered a part of the damages claimed in said action and any expense incurred in prosecuting that action shall be included. It is agreed that the term "expenses" as used herein shall include, but shall not be limited to, attorney's fees, court costs, district justice costs, and any and all other costs and expenses reasonably related to such breach.

(f) The failure of Landlord to enforce any of its rights under this Lease on one or more occasions shall not affect Landlord's ability to enforce that right on any subsequent occasion or occasions.

(g) Upon the occurrence of a Default or any breach or default under this Lease by Tenant, Tenant shall be liable for and shall reimburse Landlord upon demand for all reasonable attorney's fees and costs incurred by Landlord in enforcing Tenant's obligations under this Lease, whether or not Landlord files legal proceedings in connection therewith.

(h) In the event that a Default shall occur and Landlord elects to terminate this Lease, or upon expiration of this Lease, Tenant shall not be relieved of its duties or obligations under this Lease so long as Tenant or any of Tenant's property remains on the Leased Premises. Additionally, any rights and obligations created under or by this Section shall survive termination or expiration of this Lease.

(i) In the event of a threatened breach by Tenant of any of the covenants or provisions of this Lease, Landlord shall (without limiting any of Landlord's other rights or remedies hereunder, at law or in equity) have the right to enjoin any such threatened breach.

21. **LIMITATION ON LIABILITY.** It is expressly understood and agreed by Tenant that none of Landlord's covenants, undertakings or agreements contained in this Lease are made or intended as personal covenants, undertakings or agreements by Landlord or any entity which is affiliated with Landlord its parent or subsidiaries. Tenant specifically agrees to look solely to Landlord's interest in the Leased Premises for the recovery of any sums, damages, awards or judgments from Landlord. It is agreed that neither Landlord, nor any entity which is affiliated with Landlord (nor any of their respective parents or subsidiaries, nor any of their respective shareholders, investors, officers, directors or employees) shall be personally liable for any such sums, damages, awards or judgments. This Section will survive termination or expiration of the Lease.

22. **COVENANTS AGAINST LIENS.** Tenant hereby covenants and agrees that it will not cause or permit any lien (including, without limitation, any mechanic's lien) or claim for lien to be asserted against the Leased Premises or any interest therein, whether such lien or claim for lien results from or arises out of any act or omission of Tenant or any member of the Tenant Group or otherwise. In the event any such lien or claim for lien is filed, Tenant will immediately pay and release the same. In the event such lien or claim of lien is not released and removed within five (5) days after notice from Landlord, Landlord, at its sole option and in addition to any of its other rights and remedies, may take any and all action necessary to release and remove such lien or claim of lien (it being agreed by Tenant that Landlord shall have no duty to investigate the validity thereof), and Tenant shall promptly upon notice thereof reimburse Landlord for all sums, costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by Landlord in connection with such lien or claim of lien. Tenant hereby agrees to indemnify, defend and hold harmless Landlord from and against any and all liens or claims for lien arising out of or in any way connected with Tenant's use and occupancy of the Leased Premises. Any rights and obligations created under or by this Section shall survive termination or expiration of this Lease.

23. **ASSIGNMENT AND SUBLETTING.** Tenant shall not, directly or indirectly, assign, mortgage, pledge, encumber, or otherwise transfer this Lease (or any interest of Tenant herein), whether by operation of law or otherwise, and shall not sublet (or underlet), or permit, or suffer the Leased Premises or any part thereof to be used or occupied by others, without Landlord's prior written consent in each instance, which consent may be granted or denied by Landlord in its sole and absolute discretion. Any assignment, sublease, mortgage, pledge, encumbrance or transfer by Tenant in contravention of the provisions of this Section shall be void. For purposes of this Lease any transfer, directly, indirectly or by operation of law, of a "controlling" interest in Tenant shall constitute an assignment of this Lease, and shall be subject to the terms and provisions of this Section. For purposes hereof, a "controlling" interest in Tenant shall mean: (a) the ownership, directly or indirectly, of a majority of the outstanding voting stock or interests of Tenant, or (b) the possession, directly or indirectly, of the power to direct or cause the

direction of the management and policies of Tenant, whether through the ownership of voting securities or other ownership interests, by statute, or by contract.

24. **TERMINATION.** Prior to the end of the Term, this Lease may be terminated at any time by Landlord by giving ninety (90) days prior written notice to Tenant of such termination. This Lease may also be terminated by Landlord, if Landlord is required to do so by a regulatory body, by a court of competent jurisdiction or Legal Requirements. In the event this Lease is terminated for any reason, any Rent paid in advance shall be prorated to the effective date of such termination and the unearned portion thereof refunded to Tenant.

25. **LANDLORD'S RIGHTS.** The rights of Landlord to utilize the Leased Premises in its business operations will, at all times, be and remain paramount to the rights herein granted to Tenant by Landlord and nothing stated herein is to be construed as restricting Landlord from granting rights to other parties or persons in, upon or under the Leased Premises. Without limiting the generality of the foregoing, the parties specifically refer to rights relating to sewers, water pipes and mains, drainage tiles and pipes, gas main and pipelines and other associated uses. In addition, Landlord shall have the right to enter upon the Leased Premises at any time and from time to time to show the same to prospective tenants, mortgagees and/or purchasers, and to place "For Rent" and/or "For Sale" signs thereon.

26. **RIGHT OF ENTRY.** Tenant agrees that Landlord and Landlord's agents, representatives, employees, contractors, licensees, invitees, tenants, successors and assigns (collectively, "**Landlord Parties**"), shall have the right to enter the Leased Premises at any time Landlord deems necessary, to alter, modify, augment, supplement, improve, upgrade, use, operate, repair, replace, install, construct, maintain or protect Landlord's Facilities. Landlord has the right to require Tenant to remove and relocate any paving, improvements or property owned or used by Tenant at the Leased Premises, in connection with the use, operation, maintenance, repair, installation and/or removal of Landlord's Facilities by any Landlord Party, and/or or in connection with any other use (present or future) of the Leased Premises by Landlord Parties, all of which removal and relocation shall be at Tenant's sole cost and expense. In the event that Tenant fails to remove and/or relocate any such paving, improvements or property upon notice from Landlord, then Landlord shall have the right (but not the obligation) to remove such paving, improvements or property on Tenant's behalf, and at Tenant's cost, and Tenant shall promptly reimburse Landlord for any costs and expenses paid or incurred by Landlord in connection therewith. Tenant agrees that it will cooperate with Landlord in connection with any entry on, and work at, the Leased Premises by Landlord Parties, and shall coordinate Tenant's use of the Leased Premises with any use of the Leased Premises by any of Landlord Parties. Landlord shall not in any event be liable for inconvenience, disruption, disturbance, loss of business or other damage to Tenant by reason of any entry on, or work at, the Leased Premises by any Landlord Party, or on account of bringing materials, supplies, and equipment into or through the Leased Premises. Tenant understands that the business of Landlord involves, among other things, the construction, installation, maintenance, operation, and use of Landlord's Facilities now or which may hereafter be erected or installed upon, along, on, over, across or under the Leased Premises, or property adjacent thereto, which are used or useful in connection with the generation, conversion, transmission or distribution of electricity and gas and communications services. Tenant covenants and agrees (as a specific condition of this Lease) that Tenant and each member of the Tenant Group will not, under any circumstances whatsoever, touch, handle, tamper with or contact, directly or indirectly, any of Landlord's Facilities, nor damage, destroy, interfere with, obstruct or otherwise adversely affect, Landlord's Facilities. Tenant hereby acknowledges that the Leased Premises may be used from time to time to accommodate equipment and facilities of other persons and/or entities (including, without limitation, pipeline and utility companies) which are (or will be) located on, above or below the surface of the Leased Premises. Tenant agrees that it will contact any such persons and/or entities holding rights to use and/or occupy the Leased Premises, and provide the proper protection required by such persons or entities, in connection with Tenant's use and occupancy of the Leased Premises. Tenant further agrees to

furnish Landlord copies of the correspondence between the any such persons or entities and Tenant. Tenant agrees that this requirement shall apply to any installations currently located at the Leased Premises and any and all future installations within the Leased Premises.

27. **LANDLORD'S RIGHT TO TRANSFER.** This Lease shall not in any manner or to any extent limit or restrict the right of Landlord to use or dispose of the Leased Premises as Landlord may in its discretion desire, subject to rights of Tenant hereunder. Landlord shall have the right, without notice to or consent from Tenant, to assign this Lease to any person or entity who succeeds (directly, indirectly or by operation of law) to any of Landlord's right, title or interest in or to the Leased Premises.

28. **TENANT'S PROPERTY.** It is expressly understood and agreed that all equipment and other personal property that Tenant may install upon the Leased Premises during the Term shall remain the property of Tenant and shall be removed by Tenant (as set forth in Section 8 hereof), at its sole cost and expense, at the expiration of the term of this Lease or at any time prior thereto.

29. **HOLDING OVER.** Tenant shall have no right to remain in possession of all or any part of the Leased Premises after the expiration of the Term is renewed in accordance with the terms and conditions contained in this Lease. In the event that Tenant remains in possession of all or any part of the Leased Premises after the expiration or earlier termination of the Term, at Landlord's option (exercised by giving Tenant written notice): (a) such tenancy shall be deemed to be either (at Landlord's sole option) a periodic tenancy from month-to-month only, or a tenancy at sufferance terminable at will by Landlord, or a renewal of this Lease for an additional (1) year term; (b) such tenancy shall not, unless Landlord otherwise elects (as set forth above), constitute a renewal or extension of this Lease for any further Term; and (c) such tenancy may be terminated by Landlord upon the earlier of thirty (30) days' prior written notice or the earliest date permitted by law. In the event Tenant remains in possession after the expiration or earlier termination of the Term, then: (i) monthly Base Rent shall be increased to an amount equal to two hundred percent (200%) of the monthly Base Rent payable during the last month of the Term, and any other sums due under this Lease shall be payable in the amount and at the times specified in this Lease, and (ii) Tenant agrees to indemnify, defend (with counsel acceptable to Landlord) and hold the Indemnified Parties harmless from and against any and all Losses and Claims sustained, incurred and/or brought against any of the Indemnified Parties by reason of such retention of possession of the Leased Premises (which may include, without limitation, any Claims made by any actual or prospective subsequent lessee or other user or occupant of the Leased Premises or any portion thereof). Any such month-to-month tenancy or tenancy at sufferance shall be subject to every other term, condition, and covenant contained in this Lease.

30. **SUBORDINATION; ESTOPPEL.**

(a) This Lease and the rights of Tenant hereunder shall be and are hereby made expressly subject and subordinate at all times to the lien of any mortgage now or hereafter existing against all or any portion of the Leased Premises. Tenant acknowledges that its title is and always shall be subordinate to the title of the owner of the Leased Premises and nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of the owner of the Leased Premises. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument that Landlord or any mortgagee of Landlord may request to evidence such subordination no later than ten (10) business days after Landlord's request therefor. If any mortgagee of Landlord (or its successors or assigns), or any other person or entity, shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights ("**Successor Landlord**") and upon Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize Successor Landlord as Tenant's Landlord under this Lease, and shall promptly execute and deliver any instrument that Successor

Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment.

(b) Tenant agrees, at any time and from time to time, as requested by Landlord, upon not less than ten (10) days' prior notice, to execute and deliver to Landlord a written statement executed and acknowledged by Tenant, (i) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the then current Base Rent, (iii) setting forth the date to which the Rent (including Base Rent) has been paid, (iv) stating whether or not, to the best knowledge of Tenant, Landlord is in default under this Lease, and if so, setting forth the specific nature of all such default, (v) stating whether there are any subleases affecting the Leased Premises, (vi) stating the address of Tenant to which all notices and communication under the Lease shall be sent, and the Commencement Date, and (vii) containing any other matters reasonably requested by Landlord. Tenant acknowledges that any statement delivered pursuant to this paragraph may be relied upon by others with whom Landlord may be dealing, including any purchaser or owner of the Leased Premises, or of Landlord's interest in the Leased Premises or any lender or mortgagee of Landlord. If Tenant fails to execute and return such written statement to Landlord within such ten day period, such failure shall constitute Tenant's agreement as to the accuracy of the information contained in the written statement submitted to Tenant by Landlord.

31. MISCELLANEOUS.

(a) Illinois Commerce Commission Approval. Landlord and Tenant acknowledge that Landlord is a public utility regulated by the Illinois Commerce Commission ("**Commission**") and other governmental authorities, and this Lease and the obligations of the parties hereto are subject to all Legal Requirements applicable to Landlord as a public utility. Although it is not expected that the Commission's or other governmental authorities' approval will be required for this Lease, the rights and obligations of the parties hereunder are conditioned upon the Commission's and any other applicable governmental authorities' approval of this Lease, under any circumstances in which such approval is required. It is further agreed and understood that this Lease may be terminated by Landlord immediately at any time in the event that Landlord is required to do so by the Commission or some other governmental authority.

(b) Notices. Whenever notice is required to be given pursuant to this Lease, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the parties at their respective addresses as follows:

If to Landlord:

Commonwealth Edison Company  
4<sup>th</sup> Floor, Three Lincoln Centre  
Oakbrook Terrace, Illinois 60181  
Attn: Manager, Real Estate Asset Management

with a copy to:

Exelon Business Services Company, LLC  
Law Department  
10 South Dearborn Street, 49<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attn: Assistant General Counsel – Real Estate

If to Tenant:

The Village of Wheeling  
2 Community Boulevard  
Wheeling, Illinois. 60090  
Attn: Mr. Michael Mondschain

or at such other addresses as any party, by written notice in the manner specified above to the other party hereto, may designate from time to time. Unless otherwise specified to the contrary in this Lease, all notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

(c) Prohibition on Recording. To the maximum extent permitted under Legal Requirements, Tenant agrees not to record this Lease. This Section will survive the termination or expiration of this Lease.

(d) Waiver of Jury Trial. Landlord and Tenant, by this Section, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Lease against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Leased Premises, or any other claims, and any emergency statutory or any other statutory remedy.

(e) Captions. The section headings appearing in this Lease are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

(f) Binding Effect. The covenants, conditions, and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors and permitted assigns. In the event that Tenant is comprised of more than one individual or entity, the obligations of such individuals or entities under this Lease shall be joint and several.

(g) Entire Agreement. This Lease, the exhibits and addenda, if any, contain the entire agreement between Landlord and Tenant regarding the subject matter hereof, and fully supersede all prior written or oral agreements and understandings between the parties pertaining to such subject matter. No promises or representations, except as contained in this Lease, have been made to Tenant respecting the condition or the manner of operating the Leased Premises.

(h) Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Lease.

(i) No Waiver. The failure of either party to enforce at any time any provision of this Lease shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Lease

or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Lease shall be held to constitute a waiver of any other or subsequent breach.

(j) No Third Party Beneficiaries. Landlord and Tenant agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Lease nor any of the rights and privileges conferred herein.

(k) Governing Law; Venue. The terms and provisions of this Lease shall be governed by and construed in accordance with the laws of the State of Illinois. With respect to any suit, action or proceeding relating to this Lease (each a "**Proceeding**"), the parties hereto each irrevocably: (a) agree that any such Proceeding shall be commenced, brought, tried, litigated and consummated in the courts of the State of Illinois located in the County of Cook or (as applicable) the United States District Court for the Northern District of Illinois, (b) submit to the exclusive jurisdiction of the courts of the State of Illinois located in the County of Cook and the United States District Court for the Northern District of Illinois, and (c) waive any objection which they may have at any time to the laying of venue of any Proceeding brought in any such court, waive any claim that any Proceeding brought in any such court has been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceeding, that any such court does not have jurisdiction over such party.

(l) Counterparts. This Lease may be executed by the parties in counterparts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement.

(m) Subordinate. This Lease, and all of Tenant's rights and interests hereunder, are subject and subordinate to any and all recorded and unrecorded easements, licenses, leases and permits, and all other matters (whether recorded or unrecorded) affecting the Leased Premises (or title thereto) dated prior to the date of this Lease.

(n) Severability. If any term, provision or condition in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease (or the application of such term, provision or condition to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(o) Time of the Essence. Time is of the essence of this Lease, and each and every term and provision hereof.

(p) No Partnership. None of the terms or provisions of this Lease shall be deemed to create a partnership between or among the parties hereto in their respective businesses or otherwise, nor shall any of the terms or provisions of this Lease cause them to be considered joint venturers or members of any joint enterprise.

(q) Not an Employee. By signing this Lease, Tenant affirms and states that it is not an employee of Commonwealth Edison Company nor Exelon Corporation, nor any of their respective parents, subsidiaries or affiliates, nor does Tenant have any affiliated interest in any such entities.

(r) No Oral Change. This Lease cannot be changed orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to waive, change, modify or discharge it in whole or in part unless the same is in writing and is signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(s) Tenant's Authority. Tenant represents and warrants that it has full right, power and authority to execute and deliver this Lease, and to perform each and all of its duties and obligations hereunder. If Landlord so requests, Tenant shall provide Landlord with reasonable written evidence of such right, power and authority.

(t) Termination of Lease Based Upon Change In Law. If any Legal Requirement is enacted or modified during the Term, and such enactment or modification places any additional material burden on Landlord (as determined by Landlord) as a result of Tenant's use or occupancy of the Leased Premises for any purpose, or if the use of the Leased Premises by Tenant would violate any Legal Requirements hereinafter enacted or modified, then (without limiting any other rights or remedies of Landlord hereunder) Landlord shall have the right to terminate this lease effective as of the effective date of such Legal Requirement is so enacted or modified.

(u) Negotiated: The parties acknowledge that the parties and their counsel have reviewed and revised this Lease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(v) Brokers. Tenant represents and warrants to Landlord that Tenant has dealt with no broker, finder or similar person or entity in connection with this Lease, or Tenant's use or occupancy of the Leased Premises. Tenant agrees to indemnify, defend (with counsel acceptable to Landlord) and hold Landlord harmless from and against any and all Claims and Losses brought against, sustained or incurred by Landlord by reason of Tenant's breach of the foregoing representation and warranty.

(w) Confidentiality. Tenant acknowledges and agrees that the terms and conditions of this Lease, including, without limitation, the Rent, and all other books, records, documents, files and other information, whether computerized, written or oral, pertaining to Landlord, Landlord's affiliates or the Leased Premises which was or shall be provided to Tenant from the negotiations of this Lease throughout the Term of this Lease (collectively, "**Confidential Information**") is nonpublic, confidential or proprietary relating to Landlord, its business operations and the Lease Premises, and that Landlord would be irreparably damaged if Tenant's confidential knowledge of such information were disclosed to or utilized on behalf of any other person, firm, corporation or any other tenant of Landlord. Tenant agrees that any Confidential Information provided to Tenant is, and shall remain, property owned by Landlord, and Tenant shall have no right in or to such information other than to use the Confidential Information for the purposes set forth in the Lease. Tenant agrees to keep confidential and agrees to cause its respective employees, associates, agents, attorneys and advisors to keep confidential any and all Confidential Information.

(x) Additional Requirements. Tenant shall comply with the Additional Requirements listed on Exhibit E attached hereto and made a part hereof.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

**LANDLORD:**

COMMONWEALTH EDISON COMPANY

By: \_\_\_\_\_

Name: Kendall Hodge

Title: Director of Real Estate & Facilities

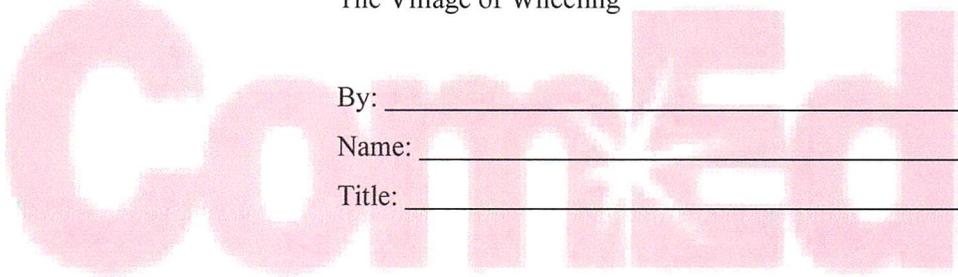
**TENANT:**

The Village of Wheeling

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Schedule of Exhibits

- A. Leased Premises
- B. Rent Payment Schedule
- C. Fencing and Barrier Requirements
- D. Insurance Requirements
- E. Additional Requirements

**EXHIBIT A**

**Leased Premises**

[drawing attached]

**ComEd**



## EXHIBIT B

Base Rent shall be calculated as follows:

1. An amount equal to \$28, 180.75 (annual amount) multiplied by the Adjustment Factor (defined below) for the period from January 1, 2016 to December 31, 2016;

2. The Adjustment Factor shall be calculated annually based on the following formula:

$$\left( \frac{\text{total number of cars parked in the CPF in prior 2 years during business days}^*}{\text{number of business days in two prior years}} \right) \div 130 = \text{Adjustment Factor}$$

\*Business days are days for which Tenant has an actual non-zero count of automobiles parked Monday through Friday, excluding the following, New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Third of July, Fourth of July, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas.

### Calculation:

Base Rent due for the period January 1, 2016 to December 31, 2016 is:

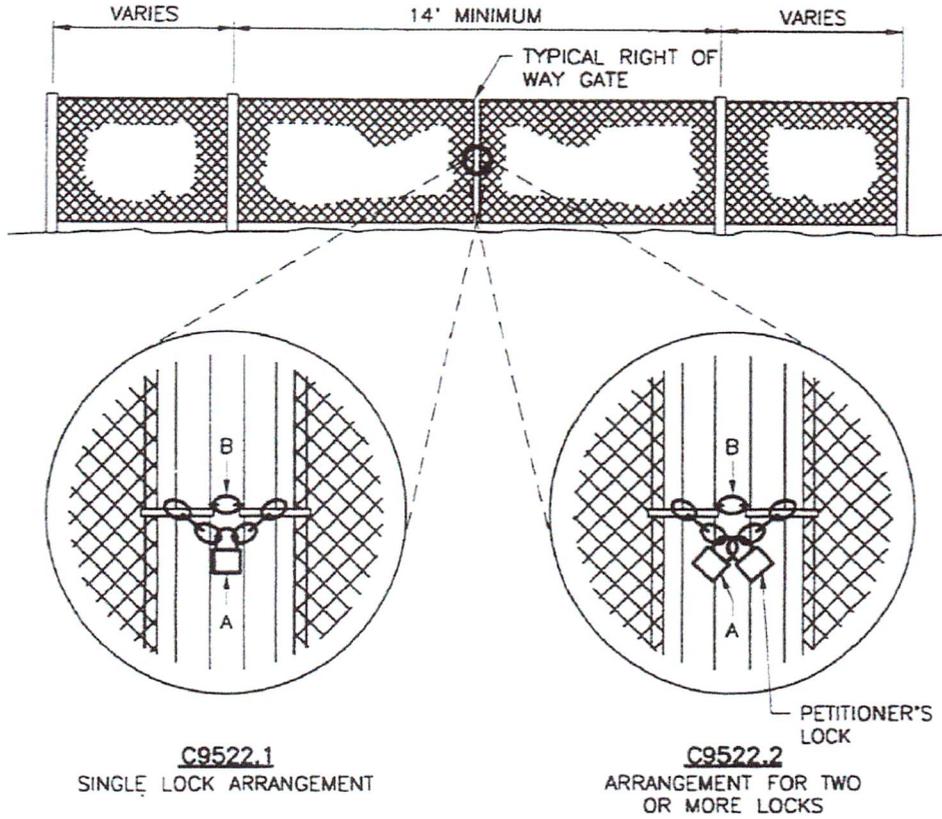
$$(26,259 \text{ cars} / 500 \text{ business days}) \div 130 = .404 = \text{Adjustment Factor}$$

$$.404 \times \text{Annual Payment} = \underline{\$11,385.02 \text{ Base Rent due on February 1, 2016}}$$

EXHIBIT C-1

ComEd

### LOCKING ARRANGEMENTS FOR TRANSMISSION RIGHT-OF-WAY GATES & TRANSMISSION LINE TERMINALS



ITEM	DESCRIPTION	EM	S.I.	UNIT	QUANTITY	
					.1	.2
A	LOCK, PADLOCK, SHACKLE OPENING 1 1/2" IN. X 3/8 IN. PLATED STEEL	-	716027	EA.	1	1
B	STRAIGHT LINK CHAIN, HOT DIPPED GALVANIZED (1)	-	786756	FT.	3	3

**ENGINEERING INFORMATION**

- CHAIN ORDERING DESCRIPTION STRAIGHT LINK CHAIN, TRADE SIZE 5/0, MATERIAL DIAMETER 0.26 IN., LINK WIDTH 0.44 IN. X LINK LENGTH 1.52 IN.

TRANSMISSION RELIABILITY AND STANDARDS

COMMONWEALTH EDISON COMPANY  
 SYSTEM STANDARD

X T L S C O E  
 REVISION

ACAD

EXHIBIT C-2

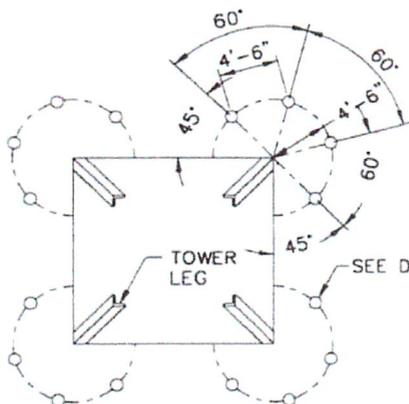
8-1-00  
**C9520**  
 PAGE 1 OF 7

CONSTRUCTION SPECIFICATION  
 REVISED SPECIFICATION DATED 1-15-99

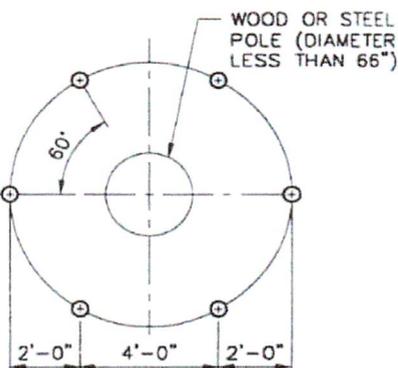
8-1-00  
**C9520**  
 PAGE 1 OF 7

**PROTECTIVE BARRIERS**  
 FOR TRANSMISSION STRUCTURES (69KV AND ABOVE)

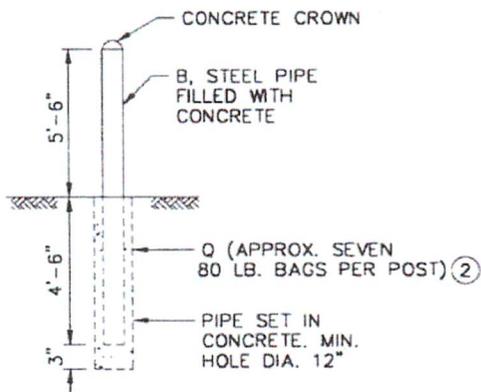
PROTECTIVE BARRIERS FOR TRANSMISSION STRUCTURES  
 ADJACENT TO PARKING AREAS (USING CONCRETE-FILLED STEEL PIPES)  
 C9520.1\_



**PLAN**  
 TYPICAL TOWER LEG PROTECTION  
 C9520.11



**PLAN**  
 TYPICAL WOOD OR STEEL POLE PROTECTION  
 C9520.12



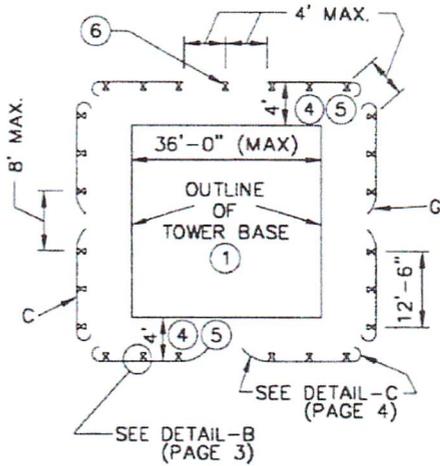
**DETAIL-A**

ComEd STANDARD SPECIFICATION

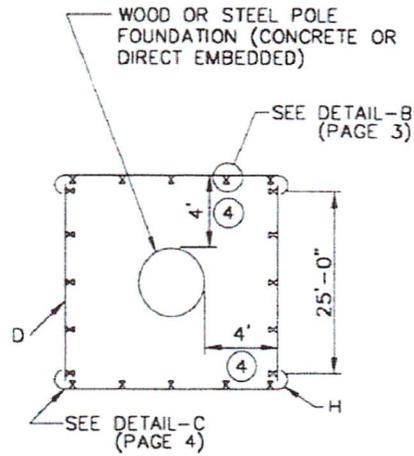
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DISTRIBUTION CODE: X ACAD

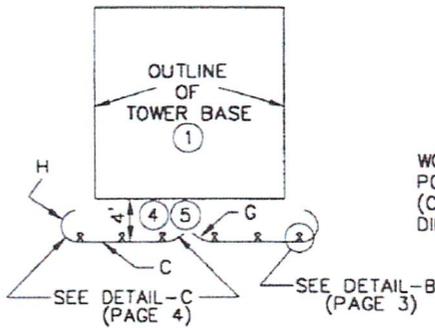
PROTECTIVE BARRIERS FOR TRANSMISSION STRUCTURES  
 NEAR ROADWAYS (USING HIGHWAY GUARDRAIL)  
 C9520.2



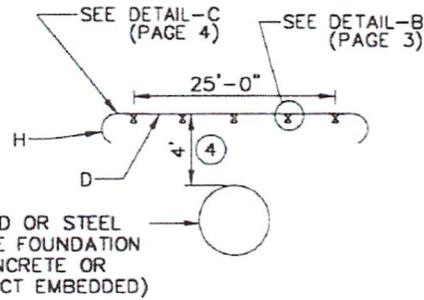
**PLAN**  
 TYPICAL TOWER PROTECTION  
 ON ALL SIDES  
 C9520.21



**PLAN**  
 TYPICAL POLE PROTECTION  
 ON ALL SIDES  
 C9520.22

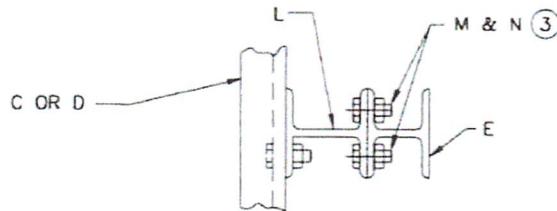


**PLAN**  
 TYPICAL TOWER PROTECTION  
 ON ONE SIDE  
 C9520.23

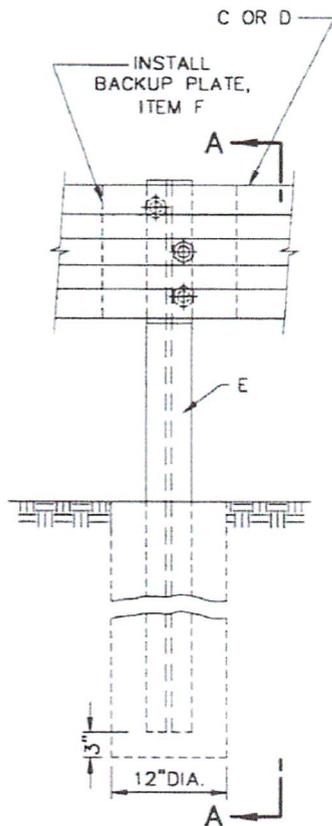


**PLAN**  
 TYPICAL POLE PROTECTION  
 ON ONE SIDE  
 C9520.24

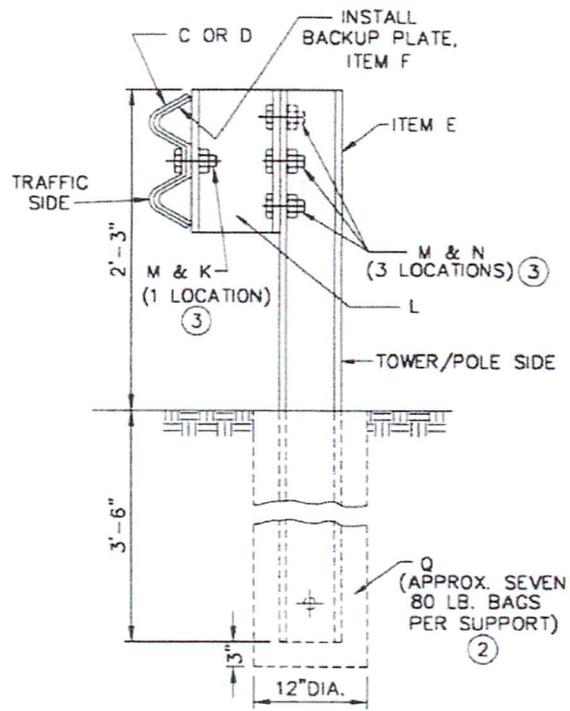
GUARDRAIL SUPPORT DETAILS, C9520.2\_



**DETAIL-B. PLAN**

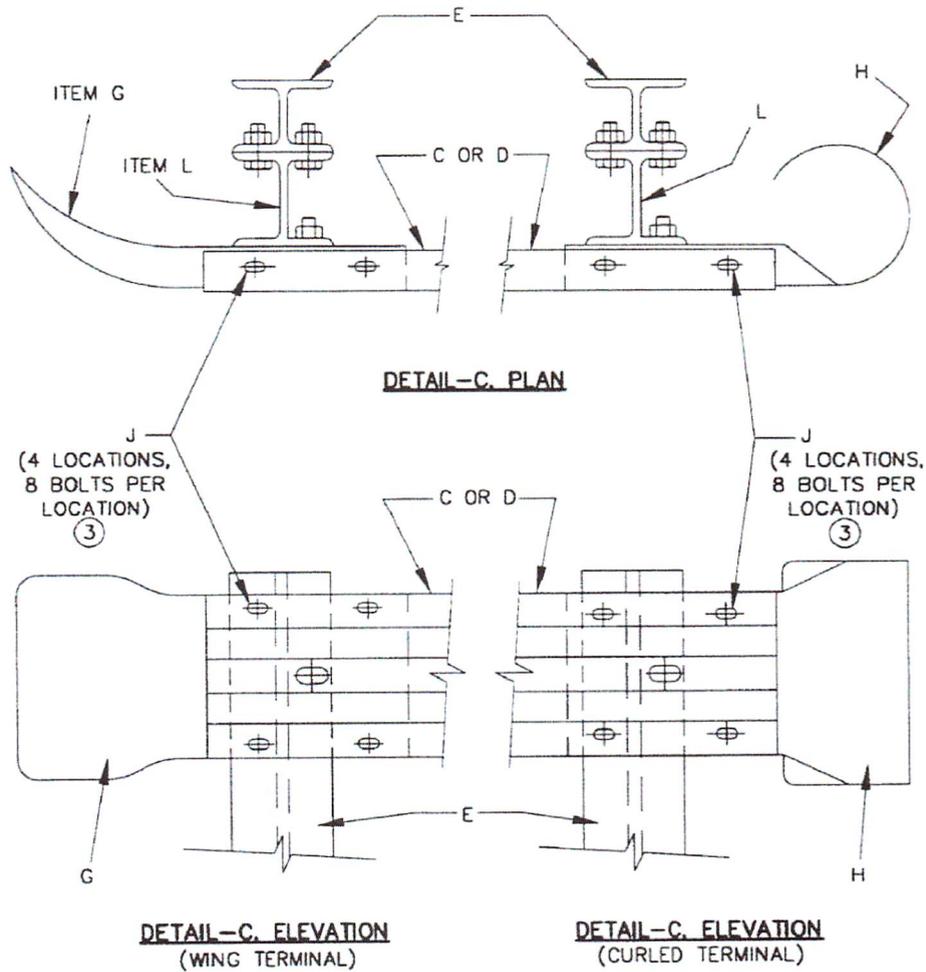


**DETAIL-B. ELEVATION**

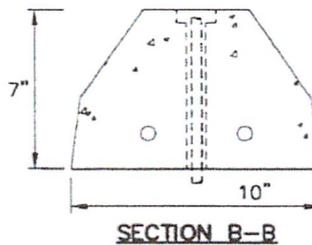
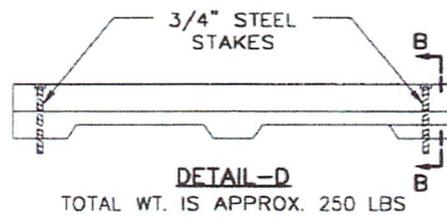
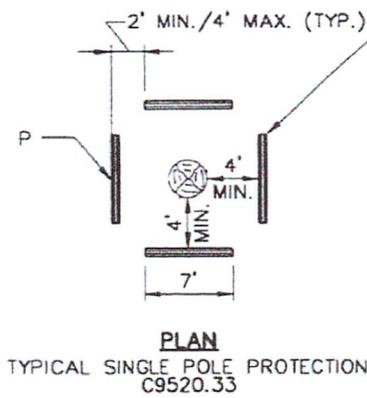
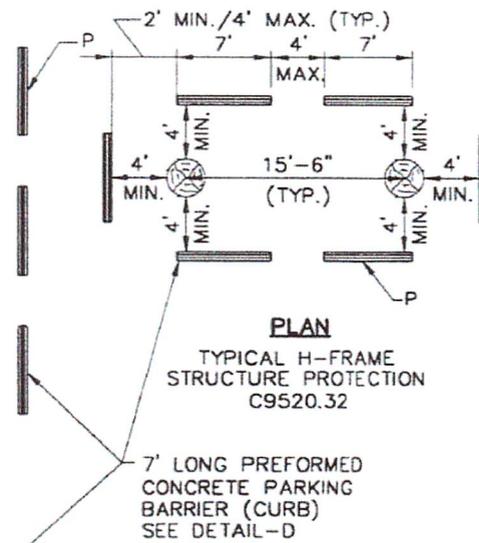
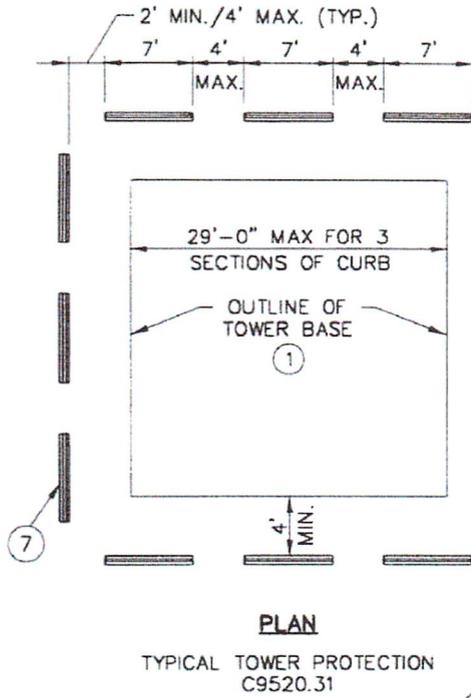


**SECTION A-A**

GUARDRAIL END SUPPORT/TERMINAL SECTION DETAILS, C9520.2\_



**PROTECTIVE BARRIERS FOR TRANSMISSION STRUCTURES  
 ADJACENT TO PARKING AREAS (USING PARKING CURBS)**  
 C9520.3\_



**APPLICATION**

- THIS STANDARD SHALL BE USED FOR INSTALLATION OF VEHICLE BARRIERS AROUND TRANSMISSION STRUCTURES AND ILLUSTRATES THE DIFFERENT TYPES OF VEHICLE BARRIERS WHICH MAY BE USED FOR TRANSMISSION STRUCTURE PROTECTION.

**INFORMATION**

- ① ACTUAL STRUCTURE TYPE, SHAPE & BASE DIMENSIONS MAY VARY. DETAILS WILL BE FURNISHED ON THE PROJECT DRAWINGS WHERE DIFFERENT THAN SHOWN.
- ② ITEM "O", (S.I.#701129) CAN BE REPLACED WITH 4000 PSI READY-MIX CONCRETE PER EM48003. ONE CONCRETE TRUCK WITH 7 CUBIC YARD CAPACITY IS APPROXIMATELY EQUIVALENT TO 220 BAGS OF S.I.#701129 AFTER ADDING WATER AND MIXING.
- ③ NUTS ON GUARDRAIL BARRIER SHALL BE TIGHTENED WITH A TORQUE WRENCH TO A TORQUE VALUE OF 75 FOOT-POUNDS.
- ④ SPACING OF BARRIERS FROM STRUCTURE OUTLINE AS SHOWN IS MINIMUM AND MAY BE INCREASED WHERE NECESSARY.
- ⑤ THE TOWER PROTECTIVE BARRIER SPACING SHALL BE BASED ON ACTUAL TOWER BASE DIMENSIONS. DETAILS SHOWN ARE APPLICABLE TO A TOWER WITH A MAXIMUM BASE DIMENSION OF 36'-0". ADD ONE UNIT AT EACH SIDE IF THE TOWER BASE DIMENSION EXCEEDS 36'-0".
- ⑥ WHERE THIS DIMENSION CAN BE KEPT AT 4 FEET OR LESS, WITH CORNER OPENING NO MORE THAN 4 FEET. THE INTERMEDIATE POST SHOWN HERE CAN BE ELIMINATED.
- ⑦ NUMBER OF UNITS DEPENDENT ON SIZE OF TOWER BUT SPACES BETWEEN UNITS SHALL NOT EXCEED THE 4 FEET SHOWN, NOR SHALL THE MINIMUM DISTANCE FROM TOWER BE CHANGED. ADD ONE UNIT AT EACH SIDE IF THE TOWER BASE DIMENSION EXCEEDS 25'-0".
- ⑧ THE LOCATIONS OF THE PROTECTIVE BARRIERS WILL BE STAKED BY THE OWNER UNLESS OTHERWISE INDICATED ON THE PROJECT DRAWINGS.
- ⑨ CARE SHALL BE TAKEN TO AVOID DISTURBANCE OF ALL AREAS OUTSIDE OF THE IMMEDIATE WORK AREA. ANY DAMAGE TO PROPERTY SHALL BE IMMEDIATELY REPAIRED. ALL ADJACENT PROPERTY SHALL BE RESTORED TO ITS ORIGINAL CONDITION IMMEDIATELY AFTER THE INSTALLATION OF THE VEHICLE BARRIERS.

ITEM	DESCRIPTION	EM	SI	UNIT	QUANTITY									
					.11	.12	.21	.22	.23	.24	.31	.32	.33	
A														
B	CONDUIT, RIGID, STEEL, 5 IN. IPS, GALV., 10FT. LONG.		376232	EA	16	6								
C	GUARD RAIL, BEAM TYPE, 13'-6 1/2" LONG, 10 GAGE STEEL, HOT DIP GALVANIZED (AASHTO M-180).	10220 ITEM 1	388003	EA			8		2					
D	GUARD RAIL, BEAM TYPE, 26'-1/2" LONG, 10 GAGE STEEL, HOT DIP GALVANIZED (AASHTO M-180).	10220 ITEM 2	386004	EA				4		1				
E	1 BEAM POST SUPPORT, 4" X 6" X 5'-9" LONG, 9 LBS./FT., A36 CARBON STEEL, HOT DIPPED GALVANIZED W6 X 9.	10220 ITEM 3	386005	EA			25	20	6	5				
F	BACKUP PLATE 12 1/4" X 12 1/2" LONG, 10 GAGE STEEL, HOT DIP GALVANIZED.	10220 ITEM 4	386006	EA			8	12	2	3				
G	WING, TERMINAL SECTION, 10 GAGE STEEL, HOT DIP GALVANIZED (AASHTO M-180)	10220 ITEM 5	386007	EA			8		2					
H	CURLED, TERMINAL SECTION, 10 GAGE STEEL, HOT DIP GALVANIZED (AASHTO M-180)	10220 ITEM 6	386008	EA			8	4	2	2				
J	BOLT, CARRIAGE 5/8" DIA. x 1 1/4" LONG, A307 BOLT WITH NUT WASHER, HOT DIPPED GALVANIZED	10220 ITEM 7	386009	EA			128	32	32	16				
K	WASHER 3" X 1 3/4" X 3/16" THICK (8 GAGE WASHER) A36 STEEL HOT DIPPED GALV.	10220 ITEM 8	388011	EA			24	20	6	5				
L	1 BEAM BOLTS W 8 X 10 X 1'-1" LONG, A36 CARBON STEEL, HOT DIPPED GALV., 10# PER FT.	10220 ITEM 9	386010	EA			24	20	6	5				
M	MACHINE BOLTS 5/8" DIA. X 2" LONG A307 BOLT HOT DIPPED GALVANIZED WITH NUT A563	10257	621602	EA			96	80	24	20				
N	5/8" DIA. FLAT WASHER (HOT DIPPED GALVANIZED)	10220 ITEM 11	532666	EA			168	140	42	35				
P	CURB, PARKING, 7 FT. LONG X 7 IN. HIGH X 10 IN. WIDE, W/TWO 3/4" X 18" STEEL STAKES		247982	EA							12	6	4	
Q	MIXTURE, CONCRETE 80 LB. (2)		701129	BG	112	42	175	140	42	35				

Continued STANDARD SPECIFICATION

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ACAD

## EXHIBIT D

### Insurance Requirements (current 9/29/2010)

Tenant agrees to require its contractors, before commencing any work on the Leased Premises to purchase and maintain, or at the option of Tenant to itself purchase and maintain, at the cost of Tenant or its contractors, a policy or policies of insurance issued by insurance companies authorized to do business in the State of Illinois, having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance) and in a form satisfactory to Landlord as follows:

#### COVERAGE #1

Workers' Compensation Insurance with statutory limits, as required by the state in which the work is to be performed, –and Employers' Liability Insurance with limits not less than One Million dollars (\$1,000,000.00) each accident/occurrence

#### COVERAGE #2

Commercial General Liability (CGL) Policy or Policies (with coverage consistent with ISO CG 0001 (12 04)) covering all contractors, subcontractors and all their subcontractors with limits not less than Four Million dollars (\$4,000,000.00) per occurrence covering liability for bodily injury and property damage arising from premises, operations, independent contractors, personal injury/advertising injury, blanket contractual liability and products/completed operations for not less than three (3) years from the date the work is accepted. (CGL insurance includes, but is not limited to coverage for claims against Landlord for injuries to employees of Tenant and its contractors or any subcontractors) Landlord shall be added as an Additional Insured providing coverage consistent with ISO Form CG 20 26 11 85 or the combination of ISO Form CG 20 10 10 01 and CG 20 37 10 01.

#### COVERAGE #3

Automobile Liability in an amount of not less than one million dollars (\$1,000,000) per accident for bodily injury and property damage, covering all owned, leased, rented or non-owned vehicles, which shall include automobile contractual liability coverage.

Policies covering contractors may substitute lower limits for any of the policies listed above, provided that Contractors maintains an umbrella or excess liability policy or policies which provide a total minimum limit of four million dollars (\$4,000,000) per occurrence for general liability and one million dollars (\$1,000,000) for automobile liability, and that all other requirements of this insurance clause are satisfied by such umbrella or excess policy or policies.

Tenant will, in any event, purchase and maintain during the term hereof;

#### COVERAGE #4

(i) Commercial General Liability (CGL) Insurance (with coverage consistent with ISO CG 00 01 12 04) with a limit of not less than four million dollars (\$4,000,000) per occurrence covering liability for bodily injury and property damage, arising from premises, operations, independent contractors, personal injury/advertising injury, blanket contractual liability and products/completed operations (CGL insurance includes, but is not limited to coverage for claims against Landlord for injuries to employees of Tenant and its contractors or any subcontractors). Landlord shall be added as an Additional Insured providing coverage consistent with ISO Form CG 2026 (11/85) or combination of ISO Form CG 20 10 10 01 and GC20 37 19 91. (ii) Automobile Liability in an amount of not less than \$1,000,000 per accident for bodily injury and property damage, covering all owned, leased, rented or non-owned vehicles, which shall include automobile contractual liability coverage.

#### COVERAGE #5

Workers' Compensation Insurance with statutory limits, as required by the state in which the work is to be performed, and Employers' Liability Insurance with limits not less than One Million dollars (\$1,000,000.00) each accident/occurrence.

Tenant may substitute lower limits for any of the policies listed above, provided that Tenant maintains an umbrella or excess liability policy or policies which provide a total minimum limit of \$4,000,000.00 per occurrence for general liability, and that all other requirements of this insurance clause are satisfied by such umbrella or excess policy or policies.

If any work on the Leased Premises involves or includes Contractor handling, transporting, disposing, or performing work or operations with hazardous substances, contaminants, waste, toxic materials, or any potential pollutants, Tenant and/or contractors shall purchase and maintain pollution legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the Leased Premises. Coverage shall be maintained in an amount of at least five million dollars (\$5,000,000) per loss and aggregate. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. Landlord shall be included as an additional insured and the policy shall be primary with respect to Landlord as the additional insured.

There shall be furnished to Landlord, prior to commencing the work above described a certificate of insurance showing the issuance of insurance policies pursuant to the requirements contained in Coverages #1, #2, and #3 of this paragraph. Insurance coverage as required herein shall be kept in force until all work has been completed. All policies shall contain a provision that coverages afforded under the policies will not be canceled or material change until at least thirty (30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to Landlord.

Tenant shall provide evidence of the required insurance coverage under Coverage #4 and #5, which shall be delivered to Landlord upon execution of this document. The insurance under Coverage #4 and #5 shall be kept in force through the term hereof through the above-referred policy, or such subsequent or substitute policy or policies as Tenant may, at its discretion, obtain. Tenant shall also provide Landlord with evidence of all of the insurance required hereunder prior to the effective date of the Lease whenever any insurance policy procured by Tenant hereunder is renewed and whenever Tenant obtains a new insurance policy hereunder.

Insurance coverage provided by Tenant and its contractors shall not include any of the following; any claims made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by Landlord; any endorsement limiting coverage available to Landlord which is otherwise required by this Article; and any policy or endorsement language that (i) negates coverage to Landlord for Landlord's own negligence, (ii) limits the duty to defend Landlord under the policy, (iii) provides coverage to Landlord only if Tenant or its contractors are negligent, (iv) permits recovery of defense costs from any additional insured, or (v) limits the scope of coverage for liability assumed under a contract.

To the extent permitted by applicable Laws, all above-mentioned insurance policies shall provide the following:

- (1) Be primary and non-contributory to any other insurance carried by Landlord
- (2) Contain cross-liability coverage as provided under standard ISO Forms' separation of insureds clause; and
- (3) Provide for a waiver of all rights of subrogation which Tenant's, or its Contractors' insurance carrier might exercise against Landlord; and
- (4) Any Excess or Umbrella liability coverage will not require contribution before it will apply

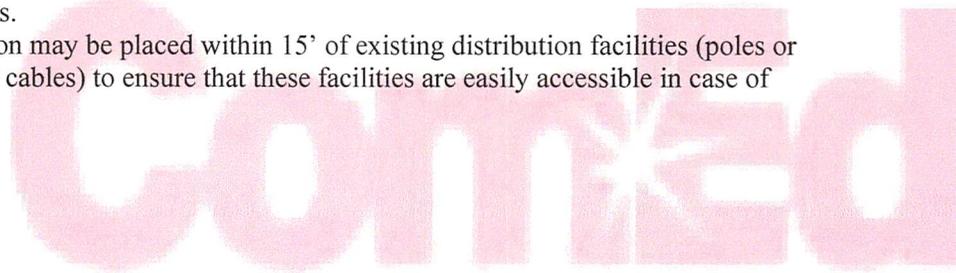
Landlord hereby reserves the right to amend, correct and change from time-to-time the limits, coverages and forms of policies as may be required from Tenant and/or its contractors.

#### WAIVER OF SUBROGATION

Tenant and its contractors shall waive all rights of subrogation against Landlord under those policies procured in accordance with this Lease.

**EXHIBIT E**  
**Additional Requirements**

1. The property may be used only for the stated purpose of overflow parking of passenger vehicles. No improvements or construction activities are approved with this response.
2. All vehicles must be operational, capable of being driven, and must not have any flat tires if they are parked in the leased area.
3. The leased area is not intended to be a long-term storage area for vehicles that are not actively being used. Anything that is being moved regularly (or at least every 90 days) is permissible. We define "actively in use" as at least once every 90 days.
4. In the event of a leak/spill on ComEd property, Lessee must notify ComEd within 24 hours and provide a written report within 5 business days.
5. Washing of vehicles is NOT permitted on ComEd property.
6. Tenant is not permitted to develop unpaved areas or change grading of the property without prior authorization from ESD. This includes activities of adding gravel other fill-in activities to the surface of ComEd property.
7. Parking protection shall be provided at existing distribution poles within the parking area /access drives.
8. No obstruction may be placed within 15' of existing distribution facilities (poles or underground cables) to ensure that these facilities are easily accessible in case of emergency.



**VILLAGE OF WHEELING  
LEGISLATIVE COVER MEMORANDUM**

**AGENDA ITEM NO(S): #11.B**  
(To be inserted by Deputy Clerk)

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEMS SUBMITTED:** A Resolution Authorizing the Village President and Clerk to Execute Amendment No. 4 to the Commuter Station Development Agreement with Metra

**SUBMITTED BY:** James V. Ferolo, Village Attorney

**BASIC DESCRIPTION OF ITEM:** The resolution authorizes the Village President and Clerk to execute a ten year extension to the original Commuter Station Development Agreement entered into with Metra that will allow the east commuter parking lot to be incorporated into the Town Center Development provided that 150 parking spaces be available for commuters on weekdays from 6:00 am to 12:00 noon.

**EXHIBIT(S) ATTACHED:** Resolution and Agreement

**RECOMMENDATION:** Submitted for Approval

**SUBMITTED FOR APPROVAL:** Village Manager

**KTJ**KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law20 N. Wacker Drive, Ste 1660  
Chicago, Illinois 60606-2903  
T 312 984 6400 F 312 984 644415010 S. Ravinia Avenue, Ste 10  
Orland Park, Illinois 60462-5353  
T 708 349 3888 F 708 349 1506**CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION  
MEMORANDUM**

To: Village President, Wheeling Board of Trustees and Village Manager  
From: James V. Ferolo-Klein, Thorpe and Jenkins, Ltd.  
Re: Amendment No.4 to METRA Commuter Station Development Agreement  
Date: August 15, 2016

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**EXECUTIVE SUMMARY**

Before the Board is Amendment No. 4 to the Commuter Station Development Agreement with METRA. The Amendment is necessary as a result of the pending expiration of the current Commuter Station Development Agreement which was originally dated March 12, 1996. The current Amendment takes into consideration the transit oriented development known as the Town Center Development. Through the current Amendment, METRA has agreed to allow the east METRA station parking lot to be incorporated into the Town Center Development provided that a certain number of spaces remain available for commuter parking on a daily basis.

**Terms of Amendment No. 4**

1. The Agreement is a 10 year Agreement that will expire on August 18, 2026.
2. The Agreement allows for the existing east commuter lot to be redeveloped as part of the Town Center Development.
3. Pursuant to the Agreement, at least 150 parking spaces and six ADA spaces must be available for commuter use from 6:00 a.m. until 12:00 noon on weekdays; nine short-term kiss and ride spaces must be available from 3:00 p.m. until 8:00 p.m. on weekdays.
4. The Agreement requires Wheeling to replace the 136 parking stalls displaced in the event there is a determination that more parking is needed.
5. The Village will pass certain maintenance obligations of the commuter parking lot to the Developer through a maintenance agreement that will be financed through a cost sharing arrangement.

JVF/an

**RESOLUTION NO. 16- \_\_\_\_\_**

**RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND CLERK  
TO EXECUTE AMENDMENT NO. 4 TO THE COMMUTER STATION  
DEVELOPMENT AGREEMENT WITH METRA**

**WHEREAS**, the Village of Wheeling (“**Village**”) Metra (the “**Parties**”) entered into a Commuter Station Development Agreement, dated March 12, 1996, (“**Agreement**”) to govern the construction, operation and maintenance of the Wheeling commuter rail station (“**Station**”) and related commuter parking facilities (“**CPFs**”) in the Village of Wheeling.

**WHEREAS**, Amendment No. 1, dated March 12, 1996, was entered into by the Parties to allow for pass through funding for construction of the Station, CPFs, and related facilities (“**Facility**”). Amendment No. 1 was adopted by the Village of Wheeling through Resolution No. 96-36.

**WHEREAS**, Amendment No. 2, dated May 3, 1996, was entered into by the Parties to allow for the sublease of railroad property needed for a portion of the Facility. Amendment No. 2 was adopted by the Village of Wheeling through Resolution No. 96-82.

**WHEREAS**, Amendment No. 3, dated December 6, 2005, was entered into by the Parties to allow for the construction of various improvements, such as a 12’ x 24’ brick and glass windbreak, a platform extension, additional platform lighting, which would then become part of the Project Facilities as defined in the Agreement.

**WHEREAS**, the Agreement provides for an initial 20-year term beginning at the date that the Facilities are first used for Commuter Service. Commuter service officially commenced on August 19, 1996, thus requiring the first renewal to be executed prior to August 19, 2016.

**WHEREAS**, the Parties have observed that the actual demand for Commuter Rail Service from the Wheeling Metra Station, as measured in daily boardings, is currently an average of 310 per day and significantly below the 2010 projections (900 per day).

**WHEREAS**, the Municipality has entered into a redevelopment agreement with a developer (“**Developer**”) which includes the land which is part of the Facility (as well as a parcel of real property owned by Metra) and will, pursuant to this Amendment, facilitate a transit-oriented development (“**TOD**”) which would continue to provide commuter parking for the Station as required by the Agreement.

**WHEREAS**, the preliminary Planned Unit Development plans associated with this development were approved through Village Ordinance No. 4991, passed February 1, 2016 (“**TOD Plans**”).

**WHEREAS**, the Parties are in agreement that it is mutually beneficial to renew the Agreement and that said renewal must also incorporate amendments to the Agreement to allow for construction as contemplated by the TOD Plans. Said amendments are generally summarized as follows:

1. Allow for the existing Commuter Lot to be redeveloped as part of a mixed-use development, similar to that depicted on the TOD Plans;
2. Require that the mixed-use development reserve a minimum of 150 regular parking spaces 6 ADA spaces for commuter use from 6:00am until 12:00 noon on weekdays, and also, 9 short term "Kiss-n-Ride" spaces are reserved from 3:00pm to 8:00pm on weekdays in close proximity to the platform;
3. Require that the Municipality replace the 136 stalls displaced by the redevelopment if it is determined that commuter parking demand increases in the future; and
4. Allow the ownership of the East Commuter Lot, currently owned by the Municipality, to be transferred to another party subject to approval by Metra, provided the Village enters into an agreement with said party to provide adequate commuter parking facilities in accordance with the Agreement, as amended.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Wheeling, Lake and Cook Counties, Illinois as follows:

1. The Amendment No. 4 to the Commuter Station Development Agreement, attached hereto as Exhibit A, is hereby approved and the President and Clerk are authorized to execute a document that is in substantial conformity with the document attached hereto as Exhibit A. All final changes may be approved by the Village Manager.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2016, pursuant to a roll call vote as follows:

President Argiris	_____	Trustee Papantos	_____
Trustee Brady	_____	Trustee Vito	_____
Trustee Krueger	_____	Trustee Vogel	_____
Trustee Lang	_____		

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016

---

Dean S. Argiris, Village President

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Elaine E. Simpson, Village Clerk

**EXHIBIT A**

**AMENDMENT NO. 4 TO COMMUTER STATION DEVELOPMENT AGREEMENT**

**AMENDMENT NO. 4 TO  
THE COMMUTER STATION  
DEVELOPMENT AGREEMENT**

**THIS AMENDMENT No. 4** (“**Amendment**”) to the Commuter Station Development Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the Commuter Rail Division of the Regional Transportation Authority, with offices at 547 Jackson Boulevard, Chicago, Illinois, a division of an Illinois municipal corporation (“**Metra**”) and the Village of Wheeling, located at 2 Community Boulevard Wheeling, Illinois 60090, an Illinois municipal corporation (“**Municipality**”). Metra and Municipality are hereinafter sometimes individually referred to as a “**Party**” and jointly referred to as the “**Parties.**”

**RECITALS**

- A. The Parties entered into a Commuter Station Development Agreement, dated March 12, 1996, (“**Agreement**”) to govern the construction, operation and maintenance of the Wheeling commuter rail station (“**Station**”) and related commuter parking facilities (“**CPFs**”) in the Village of Wheeling. This Agreement was adopted by the Village of Wheeling through Resolution 96-35.
- B. Amendment No. 1, dated March 12, 1996, was entered into by the Parties to allow for pass through funding for construction of the Station, CPFs, and related facilities (“**Facility**”). Amendment No. 1 was adopted by the Village of Wheeling through Resolution No. 96-36.
- C. Amendment No. 2, dated May 3, 1996, was entered into by the Parties to allow for the sublease of railroad property needed for a portion of the Facility. Amendment No. 2 was adopted by the Village of Wheeling through Resolution No. 96-82.
- D. Amendment No. 3, dated December 6, 2005, was entered into by the Parties to allow for the construction of various improvements, such as a 12’ x 24’ brick and glass windbreak, a platform extension, additional platform lighting, which would then become part of the Project Facilities as defined in the Agreement and a revised Exhibit A delineating the revised sublease area of railroad property.
- E. The Agreement provides for an initial 20-year term beginning at the date that the Facilities are first used for Commuter Service. Commuter service officially commenced on August 19, 1996, thus requiring the first renewal to be executed prior to August 19, 2016.

- F. The Parties have observed that the actual demand for Commuter Rail Service from the Wheeling Metra Station, as measured in daily boardings, is currently an average of 310 per day and significantly below the 2010 projections (900 per day) illustrated in Exhibit C-1 of the Agreement.
- G. The Municipality has entered into a redevelopment agreement with a developer (“**Developer**”) which includes the land which is part of the Facility (as well as a parcel of real property owned by Metra) and will, pursuant to this Amendment, facilitate a transit-oriented development (“**TOD**”) which would continue to provide commuter parking for the Station as required by the Agreement.
- H. The preliminary Planned Unit Development plans associated with this development were approved through Village Ordinance No. 4991, passed February 1, 2016 (“**TOD Plans**”) attached to and made a part of this Amendment as **Exhibit B**.
- I. The Parties are in agreement that it is mutually beneficial to renew the Agreement prior to August 19, 2016, and that said renewal must also incorporate amendments to the Agreement to allow for construction as contemplated by the TOD Plans. Said amendments are generally summarized as follows:
1. Allow for the existing Commuter Lot to be redeveloped as part of a mixed-use development, similar to that depicted on the TOD Plans;
  2. Require that the mixed-use development reserve a minimum of 150 regular parking spaces 6 ADA spaces for commuter use from 6:00am until 12:00 noon on weekdays, and also, 9 short term “Kiss-n-Ride” spaces are reserved from 3:00pm to 8:00pm on weekdays in close proximity to the platform;
  3. Require that the Municipality replace the 136 stalls displaced by the redevelopment if it is determined that commuter parking demand increases in the future; and
  4. Allow the ownership of the East Commuter Lot, currently owned by the Municipality, to be transferred to another party subject to approval by Metra, provided the Village enters into an agreement with said party to provide adequate commuter parking facilities in accordance with the Agreement, as amended.

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Amendment and Renewal, and the mutual covenants and agreements set forth herein, and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, Metra and Municipality agree as follows:

**1. Redevelopment of the Existing Commuter Parking Facilities.**

The Municipality agrees to assure the adequate amount of commuter parking serving the Wheeling Commuter Station up to the number of parking spaces reserved for commuter parking at the time of the signing of this Agreement as follows:

(a) The Municipality owns and operates a Metra commuter parking lot containing 286 regular parking spaces, 6 ADA spaces and 9 spaces reserved for short-term “Kiss-n-Ride” use, as CPF 1 on the Metra Wheeling Station Commuter Lot Map, attached to and made a part of this Amendment and Renewal as **Exhibit A**. The Municipality also leases and operates a Metra commuter parking lot illustrated as CPF 2 on Exhibit A, which contains an additional 196 commuter parking stalls.

(b) The Municipality intends to convey the land utilized as the East Commuter Parking lot to a Developer for the purpose of a mixed-use redevelopment similar to that represented in the TOD Plans depicted in Exhibit B.

(c) In conjunction with the redevelopment of CPF 1, the commuter parking will be converted to shared parking within the TOD. The following number of parking spaces in the TOD shall be reserved for commuter use only: 150 regular parking spaces and 6 ADA spaces shall be reserved for commuter use on weekdays from 6:00am until 12:00 noon; and 9 short-term “Kiss-n-Ride” spaces shall be reserved in close proximity to the platform on weekdays from 3:00pm until 8:00pm.

(d) The Municipality agrees that throughout the term of this Agreement and as the primary consideration and condition thereof, if the number of commuters regularly parking within the TOD area or CPF 2 ever reaches or exceeds eighty-five percent (85%) of that respective lot’s capacity, as reasonably determined by Metra, the Municipality, at its sole cost and expense, shall construct, or otherwise provide the 136 regular parking spaces for commuter use that were displaced by the TOD, at a location acceptable to Metra in the vicinity of the Wheeling commuter station.

(d) If reasonable progress toward the replacement of the 136 regular parking spaces after one hundred twenty (120) days following written notice to the Municipality by Metra of the circumstances as above and the need for the replacement regular parking spaces or, if once built, the TOD is abandoned or used for another purpose, Metra may terminate commuter rail service in accordance with the terms and provisions of the original Agreement.

## 2. **Transfer of Ownership.**

Metra agrees that the Municipality may convey the title of the land illustrated as CPF 1 for the purpose of constructing the TOD, subject to the following:

(a) Municipality shall provide Metra with the information it may request regarding the Developer;

(b) Metra shall be provided with an appropriate instrument, such as a Maintenance Agreement and Deed with a restrictive covenant, transferring the obligation to maintain CPFs in the TOD area, as described in this Agreement, from the Municipality to the Developer. Said instrument to include a reversionary clause returning the maintenance responsibilities and obligations to the Municipality if Developer, for whatever reason, does not maintain any part of the Facility which it may, by said instrument, be responsible for to the satisfaction of Metra. The obligations and rights described with the Agreement, as amended, and this Amendment shall not be transferred or otherwise assigned without the prior written consent of Metra. The effective date of the transfer of rights and obligations on all such instruments executed prior to obtaining the written consent of Metra shall be deemed to be the date of the written consent of Metra.

(c) The Municipality agrees that the minimum commuter parking in the East Commuter Lot as described above shall be maintained throughout the construction of the TOD.

(d) The Municipality agrees that adequate notice, deemed to be a minimum of thirty (30) days, shall be provided to Metra prior to the start of construction within the TOD area.

(e) The Municipality agrees that all obligations for maintenance of the Project Facilities as defined in the original Agreement and subsequently amended, shall continue to be the responsibility of the Municipality unless explicitly transferred to the Developer. These obligations include, but are not limited to, maintenance of the Train Station, maintenance of the CPFs, and the collection of daily and monthly parking permit fees.

## 3. **Applicability to Additional Land not included in CPF 1**

The TOD Plans include a parcel approximately twelve thousand, eight hundred fifty square feet (12,850 sq. ft.) in area owned by Metra (“**Metra Parcel**”) which is immediately south of CPF 1 and is legally described in **Exhibit C** and is illustrated on

**Exhibit D.** Municipality desires, and Metra agrees to allow Municipality to utilize, the Metra Parcel pursuant to this Agreement.

(a) Municipality and, subsequent to the transfer of ownership and responsibilities and obligations contemplated by Section 2 herein, Developer, may incorporate the Metra Parcel into the TOD as depicted on Exhibit B.

(b) Said use as above shall be by license only, allowing the use of the Metra Parcel pursuant to the terms and conditions of the Agreement as amended.

**4. Renewal of Commuter Station Development Agreement**

The Municipality and Metra, by execution of this Amendment hereby jointly agree to the following:

(a) The Parties are in mutual agreement to extend the Agreement for a period of ten years, commencing August 19, 2016, and concluding on August 18, 2026.

(b) All rights and obligations included in the Agreement, as amended, are expressly reaffirmed unless explicitly modified in this Amendment.

**5.** This Amendment and all of the terms, conditions, rights and obligations herein contained shall inure to and be binding upon the Parties, their respective legal representatives, lessees, permittees, successors and/or assigns whether hereinabove so stated or not; but it is distinctly agreed that the Municipality shall not assign its rights under this Amendment and Renewal without first having received the prior written consent of Metra as described in Section 2(b) above.

**6.** All notices, demands and elections required or permitted to be given or made by either Party upon the other under the terms of this Amendment and Renewal or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail, return receipt requested, with proper postage prepaid, facsimile transmission or hand delivered to the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of successful transmission if sent by facsimile transmission or on the day of delivery if hand delivered.

(a) Notices to Metra shall be sent to:

Commuter Rail Division  
547 W. Jackson Boulevard

Chicago, Illinois 60661  
Attn: Director, Real Estate & Contract Management  
Phone: (312) 322-8006  
Fax: (312) 322-7098

(b) Notices to Grantee shall be sent to:

The Village of Wheeling  
2 Community Boulevard  
Wheeling, IL 60090  
Attn: Jon Sfondilis, Village Manager  
Phone: (847) 459-2600  
Fax: (847) 459-9692

7. This Agreement shall be governed by the internal laws of the State of Illinois. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties. No waiver of any obligation or default of Grantee shall be implied from omission by Metra to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day. This Easement constitutes the entire agreement between the Parties with respect to the subject matter hereof.

**(Signature Page to Follow)**

IN WITNESS WHEREOF, the Parties hereto have duly executed this Easement Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016

ATTEST:

THE VILLAGE OF WHEELING:

By: \_\_\_\_\_  
Elaine E. Simpson

By: \_\_\_\_\_  
Dean S. Argiris

Its: Village Clerk

Its: Village President

ATTEST:

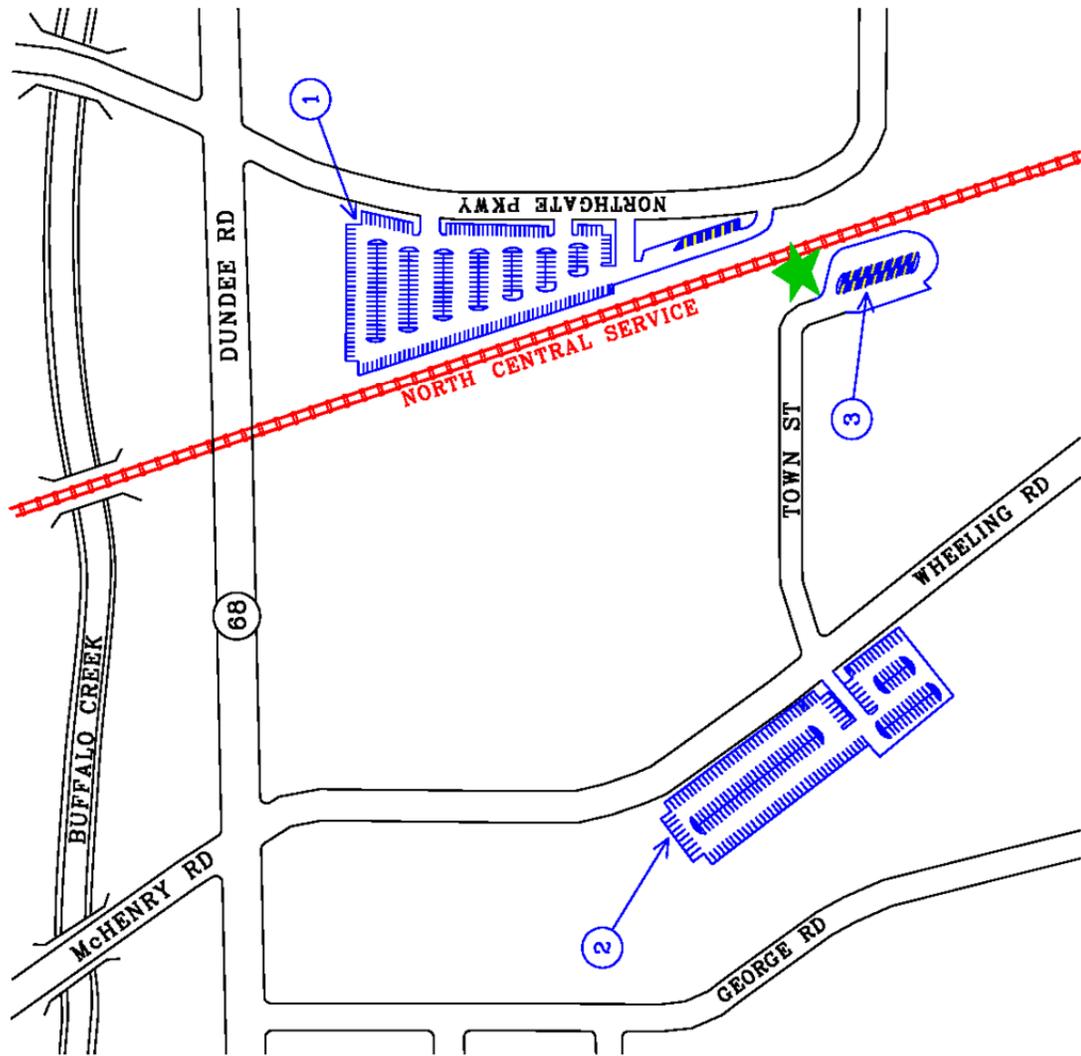
THE COMMUTER RAIL DIVISION OF  
THE REGIONAL TRANSPORTATION  
AUTHORITY:

By: \_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Donald A. Orseno  
Executive Director/CEO

# Exhibit A Wheeling Station Commuter Lot Map

NOTE:  
LOT 3 CONSISTS OF ADA  
PARKING SPACES ONLY.



WHEELING (16272)						
LOT*	SURF	CAP	ADA	FEE	METHODS/R/USERS	
1	PAVED	696	6	B	\$ 1.75/DAY	B
2	PAVED	196		P	\$ 36.00/MO.	B
3	PAVED			B	\$ 1.75/DAY	B
				P	\$ 36.00/MO.	B
				F	FREE	B
TOTAL		482	20			

\* MISSING LOT NUMBERS REPRESENT FACILITIES WHICH NO LONGER EXIST AS COMMUTER PARKING

**Exhibit B  
TOD Plans**

## Exhibit C Metra Parcel – Legal Description

### Legal Description

That part of the West Half of the Northwest Quarter of Section 11 and that part of the East Half, of the Northeast Quarter of Section 10, both in Township 42 North, Range 11 East of the Third Principal Meridian, described as follows:

Commencing at the Southwest corner of Lot 2 in Wickes Corporate Subdivision, being a Subdivision of part of Lots 3 and 10 in a Subdivision of Sections 2 and 11, Township 41 North, Range 11 East of the Third Principal Meridian, recorded as Document 147546;

Thence South 88 degrees, 15 minutes, 59 seconds West along the South line, extended, of said Lot 2, a distance of 52.18 feet to a point on the original Easterly right of way line of the Minneapolis, Saint Paul and Saulte Saint Marie Railroad for the Point of Beginning;

Thence South 18 degrees, 21 minutes, 03 seconds East along said Easterly right of way line, a distance of 84.47 feet;

Thence South 71 degrees, 38 minutes, 57 seconds West, a distance of 50.00 feet;

Thence North 18 degrees, 21 minutes, 03 seconds West parallel with said Easterly right of way line, a distance of 257.00 feet;

Thence North 71 degrees, 38 minutes, 57 seconds East, a distance of 50.00 feet to a point on said Easterly right of way line;

Thence South 18 degrees, 21 minutes, 03 seconds East along said right of way line, a distance of 172.53 feet to the Point of Beginning, in Cook County, Illinois.



**VILLAGE OF WHEELING  
LEGISLATIVE COVER MEMORANDUM**

**AGENDA ITEM NO(S): #11.C**  
(To be inserted by Deputy Clerk)

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEMS SUBMITTED:** A Resolution Ratifying the Execution of an Agreement between the Village of Wheeling and Andy Frain Services, Inc. for Crossing Guard Services

**SUBMITTED BY:** James V. Ferolo, Village Attorney

**BASIC DESCRIPTION OF ITEM:** The Resolution ratifies the execution of an agreement by the Village Manager with Andy Frain for crossing guard services for School District 21 students pursuant to the intergovernmental Agreement between the Village and School District 21.

**EXHIBIT(S) ATTACHED:** Resolution and Agreement

**RECOMMENDATION:** Submitted for Approval

**SUBMITTED FOR APPROVAL:** Village Manager

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION RATIFYING THE EXECUTION OF AN AGREEMENT  
BETWEEN THE VILLAGE OF WHEELING AND ANDY FRAIN SERVICES, INC.  
FOR CROSSING GUARD SERVICES**

**WHEREAS**, District 21 (“District 21”) is a public school district organized and operating pursuant to the *Illinois School Code*; 105 ILCS 5/1-1, et seq.; and

**WHEREAS**, the Village of Wheeling (the “Village”) is a municipal corporation organized and operating pursuant to the *Illinois Municipal Code*, 65 ILCS 5/1-1-1, et al.; and

**WHEREAS**, District 21 and the Village (the “Parties”) on May 2, 2016, entered into an Intergovernmental Agreement (“IGA”) to share the cost of providing crossing guard services to promote the safety of School District 21 students walking to and from school; and

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution authorizes units of local government, such as the Parties, to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance;

**WHEREAS**, Section 5 of the Illinois *Intergovernmental Cooperation Act*, 5 ILCS 220/5, provides that one or more units of local government may contract to perform any governmental service, activity or undertaking which any unit of local government entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each governmental unit to the contract; and

**WHEREAS**, pursuant to the IGA, the Village Manager executed a contract with Andy Frain Services, Inc. to provide the crossing guard services.

**NOW THEREFORE BE IT RESOLVED**, by the President and Board of Trustees of the Village of Wheeling Cook and Lake Counties, Illinois, as follows:

**SECTION 1:** That the contract between the Village and Andy Frain, attached hereto as Exhibit A, is hereby ratified and in full force and effect.

**SECTION 2:** That this Resolution shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016, pursuant to a roll call vote as follows:

President Argiris	_____	Trustee Papantos	_____
Trustee Brady	_____	Trustee Vito	_____
Trustee Krueger	_____	Trustee Vogel	_____
Trustee Lang	_____		

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Dean S. Argiris, Village President

ATTEST:

\_\_\_\_\_  
Elaine E. Simpson, Village Clerk

Approved as to form only:

\_\_\_\_\_  
Village Attorney

Published by me in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Village Clerk

**EXHIBIT A**

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE VILLAGE OF WHEELING AND ANDY FRAIN SERVICES, INC.**

## **CROSSING GUARD SERVICE AGREEMENT**

This Service Agreement (“Agreement”) is entered into as of July 1, 2016 (“Effective Date”), by and between Andy Frain Services, Inc., an Illinois corporation with its principal office located at 761 Shoreline Drive, Aurora, IL. 60504, and the Village of Wheeling, an Illinois home rule municipal corporation, 1 Community Boulevard, Wheeling, IL 60090 (“Client or Village”) (and collectively as the “Parties”).

### **UNDERSTANDINGS**

1. Client represents that it is an Illinois Municipal Corporation located at 2 Community Boulevard, Wheeling, IL 60090 ;
2. Contractor is in the business of supplying crossing guard personnel and (“Services”) and is willing to furnish such services and personnel to Client with respect to the Property and subject to the terms, conditions and provisions of this Agreement;
3. Client desires Contractor to furnish the Services and Contractor desires to furnish the Services at the Property, as further described below;

NOW, THEREFORE, in consideration of the foregoing, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor and Client hereby agree as follows:

### **AGREEMENT**

1. **Engagement.** Client and Contractor agree that Contractor shall furnish Services in the Village, and Contractor agrees to furnish Services and subject to the terms, conditions, and provisions of this Agreement. The rates, location, scope, and other specifics of the Services are more fully described in Schedule 1. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions set forth in Schedule 1, the terms and conditions of this Agreement shall control.
2. **Term.** This Agreement shall commence on the Effective Date, and shall continue until June 30, 2017, unless terminated earlier pursuant to the terms and conditions of this Agreement.
3. **Nature of Services.** As set forth in Schedule 1, Contractor shall furnish crossing guard personnel (“Service Personnel”) as requested by Client in the Village in accordance with the term and conditions of this Agreement (collectively known hereinafter as the “Services” unless specifically identified otherwise).
  - a. At the request of Client, the Contractor’s Service Personnel shall be assigned to specific crossing guard posts throughout the Village. The service dates, number of Service Personnel, hours and locations for Service may also be included in Schedule 1. Any Post Orders prepared by or at the direction of Client may also include information related to the assigned post, provided, however, that such Post Orders are not

incorporated herein and may not contradict the terms of this Agreement. In the event of a conflict between the Contractor's obligations set forth herein and any applicable Post Orders, this Agreement shall control.

b. If at any time Contractor believes that additional Service Personnel or related actions in excess of the Services expressly requested by Client are necessary to properly furnish Services, Contractor may so inform Client. However, the Parties agree that Contractor's responsibility is solely limited to providing Service Personnel, and Contractor has not been engaged by Client as a consultant or otherwise to provide advice or an assessment of security, site evaluation or event staffing needs at the Property, except as otherwise specifically stated herein. Contractor shall not be responsible for any decisions or security assessments made by Client or anyone else, including pertaining to the sufficiency and assigned location of Service Personnel.

4. Obligations of Contractor. Contractor agrees as follows:

a. Contractor shall provide the Service Personnel and furnish the Services requested by Client. The Parties agree that any change in the scope of Services contemplated by this Agreement, including any modification, supplementation or reduction in Services, shall be made by a request in writing by Client and, if such changes or modifications are accepted by Contractor, shall be agreed upon in writing signed by Client and Contractor.

b. Contractor represents that all Service Personnel utilized by Contractor under this Agreement shall be trained by Contractor using Contractor's approved materials/instructions and shall be competent to perform their duties and otherwise furnish the Services.

c. At Contractor's sole cost and expense, Contractor shall provide each Service Personnel with a proper uniform.

d. Contractor shall furnish Services in conformity with practices which are generally accepted and current in the crossing guard industry.

e. Contractor shall comply with all applicable local, State, and Federal laws, rules and regulations which govern the Services and furnishing of the same. Contractor shall obtain all such licenses and permits which may be required by any governmental authority for the furnishing of Services prior to furnishing the same.

f. The Parties agree that Contractor does not herein or otherwise represent and cannot warrant, expressly or impliedly that the Services furnished will prevent or minimize the likelihood of loss or damage.

g. Contractor represents it is fully authorized to furnish Services.

5. Obligations of Client. Client agrees as follows:

a. Client shall pay Contractor for the Services provided by Contractor at the hourly rates mutually agreed upon and pursuant to the terms and conditions contained stated in this Agreement.

b. Client shall remain solely responsible for any decisions or directions to Contractor concerning the location, number or extent, or placement or sufficiency of Service Personnel requested under this Agreement. If Client materially alters any express instructions or directions given by Contractor to the Service Personnel or if Client assumes any material supervision over the Service Personnel, Client shall be solely liable for any and all such alterations or supervision and Client agrees to

indemnify, defend and hold harmless Contractor from and against any and all losses, claims, expenses (including reasonable attorney's fees) or damages arising from or relating to such alterations or supervision, but only to the extent they were the excess result of and caused by such alterations or supervision.

c. To effectuate this Agreement, Client shall provide Contractor with such information, including the Post Orders concerning the Services or sufficient information to enable Contractor to prepare Post Orders, as are necessary for Contractor to furnish the Services pursuant to this Agreement.

d. Client shall provide Contractor with information Client has pertaining to each location of Service necessary to ensure that the Service Personnel are trained and prepared to provide the Services at the Property, including information necessary to train those Service Personnel with responsibilities concerning the alarms systems, elevator and light controls, cameras and access control systems for the Property. Client represents it is fully authorized to retain Contractor to provide Services in the Village at locations designated by the Client..

6. Payment Terms.

a. Rates. Client shall remit payments to Contractor for the Services at the rates set forth in Schedule 1. The Contractor shall be paid on an hourly basis for actual services performed.

b. Invoices. Contractor shall invoice Client for Services performed under this Agreement. Invoices shall be sent to Client on a weekly schedule at Client's location identified in Schedule 1.

c. Payment. Payments for Services for each invoice are due thirty (30) days from the invoice date. Any objection, dispute or claim regarding the amount of an invoice or the Services rendered (or not rendered) must be sent in writing by Client to Contractor within thirty (30) days from the date Client received such invoice, setting forth the nature of the objection, dispute or claim, and including all supporting documentation, or such objection, dispute or claim shall for all purposes be deemed waived by Client. Client agrees to pay a late fee of 1½ % of the outstanding total balance owed for Services per month (or any part thereof) plus all reasonable collection and attorney's fees and costs which may be reasonably incurred by Contractor in the attempted collection or collection of any invoice(s) not paid pursuant to the terms of this Agreement.

d. Records. Upon request, Contractor shall furnish Client with copies of completed daily timesheets and other records which form the basis of billings for Services performed by Contractor under this Agreement. Such records shall contain information sufficiently detailed so as to indicate the Property where and when such Services were performed and with what Service Personnel.

e. Rate Change. Hourly rates as stated herein are subject to adjustment for changes in any federal, state or municipal law, regulation, administrative ruling or collective bargaining agreement resulting in any increase in work hours, wages, benefits, taxes, working conditions or other cost incurred by Contractor in the performance of this Agreement. In the event Contractor desires to adjust such rates, Contractor shall provide Client with written notice of such desired adjustment. Within thirty (30) days of receiving such notice of desired adjustment, Client may terminate this Agreement otherwise such desired adjustment shall become immediately effective and

shall remain in effect until the earlier of termination of this Agreement or any further annual or other adjustment as provided by this Agreement.

7. Service Personnel. Contractor's Service Personnel shall meet the following requirements:

a. Independent Contractor. Contractor is an independent contractor of Client. All Service Personnel shall be the employees of Contractor and shall not under any circumstances be deemed to be employees of Client. Contractor shall pay all wages, all applicable taxes and shall comply with all other legal obligations as the employer of the Service Personnel. Contractor agrees to hire the individuals listed on Schedule 2 as Crossing Guards to provide he services set forth in this Agreement provided that the Contractor determines, in its sole discretion that said individuals are qualified, competent to perform the agreed upon duties and pass background checks.

b. Supervision. Contractor shall at all times be responsible for the direct supervision of its Service Personnel, contractors, subcontractors, agents, licensees, and assigned to and responsible for managing Services at the Property. A designated representative of Contractor shall, in turn, report and confer with a designated representative of Client at the Property with respect to the Services performed under this Agreement. Such reporting and conferring shall occur as frequently as mutually agreed upon by the Parties from time to time.

c. Background Checks. Contractor represents that Contractor has or will perform background checks for those Service Personnel which are licensed security officers in accordance with applicable federal, state, municipal and local law that includes criminal and, if applicable, motor vehicle histories on licensed security officers and may include other matters as required by applicable law. Contractor further represents that all such Service Personnel have passed such background checks prior to furnishing the Services. Such background checks shall be obtained by Contractor at Contractor's sole cost and expense. The cost of any additional background checks or more extensive background checks required by Client shall be reimbursed by Client.

8. Equipment. Any and all property, equipment, supplies and materials furnished by Contractor hereunder and placed at or on any of the sites identified in this Agreement shall remain the property of Contractor, and Contractor shall at all times during and after the term of this Agreement have the sole and exclusive right to install, maintain, replace and remove such property, equipment, supplies and materials.

9. Insurance. Contractor shall maintain during the term of this Agreement, at its own expense, insurance policies insuring Contractor and the Service Personnel furnishing Services at the Property, as follows:

TYPE OF INSURANCE	LIMIT OF INSURANCE
General Commercial Liability - Occurrence Form	\$1,000,000 Per Occurrence
Workers Compensation & Employers Liability	Statutory
Business Auto Liability including Hired and Non Owned Auto Liability	\$1,000,000
Excess/Umbrella	\$9,000,000 Per Occurrence

10. Indemnification. Contractor shall indemnify Client, its officers, members, affiliates, subsidiaries, and employees from and against losses, claims, damages, injuries, liabilities and judgments that Client may sustain and which are caused solely by the direct negligent acts of Contractor or Service Personnel while engaged in the performance of Services under this Agreement, and subject to the provisions set forth herein. Client shall indemnify Contractor, its officers, members, affiliates, subsidiaries and employees from and against losses, claims, damages, injuries, liabilities and judgments that Contractor may sustain and which are caused solely by the direct negligent acts of Client.

Notwithstanding anything to the contrary in this Agreement, Contractor shall not indemnify or be required to indemnify Client from or against any losses, claims, damages, injuries, liabilities or judgments to the extent that they are: (I) caused by the contributory negligence of Client or its directors, officers, members, partners, affiliates, licensees, invitees, representatives, agents, or employees; (ii) arising from Client's business decisions, including but not limited to, decisions to remove patrons or personnel from the Property, as to number or placement of Service Personnel or hours of service; (iii) caused by or resulting from the wrongful or negligent acts, errors or omissions of third parties; or (iv) arising out of injury to or death of any employee of Contractor, unless caused solely by the direct negligence of Contractor.

Notwithstanding anything to the contrary in this Agreement, Contractor shall not be liable to Client for any injury (including death) to any person, including an employee of Contractor, arising from a slip, trip or fall while on or near the premises of Client. It is expressly understood and agreed that Contractor is not responsible for performing any maintenance or construction services including but not limited to elevator or escalator maintenance, light repair, lock or alarm device repair or maintenance, building upkeep, snow removal, garbage or debris removal and water removal. It is further understood and agreed that Contractor is not required or requested to report any maintenance needs or failures to Client.

Notwithstanding anything to the contrary in this Agreement, the Parties agree that any additional insured or indemnity provision throughout this Agreement applies only to claims caused by the direct negligent acts of Contractor and its employees while performing agreed upon duties and Services.

11. Limitation of Liability.

a. Liability: Contractor shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered or incurred by Client arising indirectly from the performance or non-performance of Contractor's obligations under this Agreement (including, but not limited to, a failure to meet any the agreed upon number of Service Personnel to for the purposes of the Agreement), any breach of Contractor's obligations under or in connection with this Agreement or from any negligence, misrepresentation or other act or omission by Contractor or Contractor's employees, agents or contractors.

12. Contractor's Employees. During the term of this Agreement and for a period of twelve (12) months immediately following the end or termination of this Agreement, Client shall not solicit or offer to hire, or hire any employees of Contractor, without the prior written consent of Contractor. This paragraph shall survive termination of this Agreement, regardless of the reason of, basis for or circumstances surrounding such termination.

13. Suspension of Service. In the event that Client's operations at the Property are halted or substantially decreased by reason of strike, labor dispute, picketing, acts of God, or other cause beyond the control of the Client, then those portions of this Agreement concerning Services to be provided at the affected Property shall, upon twenty-four (24) hours written notice from Client to Contractor, be suspended until further written notice by Client to Contractor.

14. Default. Each party may terminate this Agreement immediately if any of the following events shall occur: (a) default by the other party in the performance of the terms and conditions of this Agreement, including but not limited to Client's failure to timely make payments required hereunder when due, which default continues for five (5) days or more after written notice from the other party; (b) if at any time during the term of the Agreement there shall be filed by such party in any court, pursuant to any statute, either of the United States or of any state, territory or possession, a petition in bankruptcy, or insolvency, or for reorganization, or for the appointment of a receiver to receive all or a portion of such party's property; (c) if such party makes an assignment for the benefit of creditors; or (d) if such party is declared bankrupt in an involuntary proceeding, or is ordered into receivership.

15. Termination without Cause. The Village shall have the right to terminate this Agreement without cause at any time during the term of the Contract provided that the Village provides the Contractor thirty (30) days written notice.

16. Notices. All notices with respect to or required by this Agreement shall be deemed sufficient if deposited with the United States mail, certified or registered, with adequate postage affixed and properly addressed to the respective receiving Party at the address identified at the beginning of this Agreement or in Schedule 1. Either Party may amend the address it receives notice by providing the other Party with a writing setting forth the new address it desires to receive notice.

17. Assignment. This Agreement shall not be assigned in whole or in part by either Party without the prior written consent of the other Party provided, however, that so long as a Party is not in default under this Agreement, that Party may assign this Agreement to an entity with which it merges or consolidates or which acquires substantially all of its assets or stocks.

18. Entire Agreement, Amendments. This Agreement, Schedules, and other items expressly incorporated herein constitute the entire understanding and agreement of the Parties with respect to matters contained herein and supersede all prior agreements or understandings, if any, between the Parties related to the matters contained herein. Neither Party has relied on any, nor are there any, oral or parol agreements, promises,

representations or inducements not contained in this Agreement. No provisions of this Agreement may be amended or modified in any manner whatsoever, except by an agreement in writing signed by each of the Parties.

19. No Third Parties. No person other than the Parties to this Agreement has any rights or remedies to, under or deriving from this Agreement. This Agreement creates no third party benefits.

20. Severability. If any term or provision of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions to the person or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

21. Miscellaneous.

a. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution of this Agreement may be completed by electronic signature or e-mail transmission. Electronic or e-mail signatures shall have the same force and effect as an original, hard copy of such signature.

b. Survival. The representations, warranties, covenants and agreements contained in or made pursuant to this Agreement shall survive the termination of this Agreement.

c. Choice of Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The Parties' consent that any action brought to enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in the State of Illinois and the parties waive any right to object to the jurisdiction of the State of Illinois over any dispute concerning this Agreement.

d. Non-Waiver. Any waiver, permission, consent or approval of any kind or nature by any party hereto, must be in writing and shall be effective only in the specific instance, to the extent of and for the specific purpose given, and the same shall not operate or be construed as a waiver of any subsequent breach, default, provision or condition of this Agreement by any party hereto, including the party to whom originally given.

e. Successors. This Agreement shall be binding upon and inure to the benefit of Contractor and Client and their representative successors and/or assigns.

f. Time is of the Essence. Time is of the essence with respect to each Party's obligations under this Agreement.

[SERVICE AGREEMENT SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto as of the day and year first written above have duly executed this Agreement.

ANDY FRAIN SERVICES, INC., an Illinois Corporation

By:  \_\_\_\_\_  
Laura Grund  
Executive Vice President

THE VILLAGE OF WHEELING

By:  \_\_\_\_\_  
Jon A. Stodilis [Name]  
Village Manager [Title]

**SCHEDULE 1**

**SERVICES**

The rates, locations, and other specifications of the Services which are to be provided in accordance with the Service Agreement are as follows:

**CLIENT NAME AND CONTACT PERSON:** The Village of Wheeling  
Sergeant, Michael Conway

**ADDRESS:** 1 Community Boulevard, Wheeling, Illinois 60090

**STARTING DATE:** Effective Date of the Agreement

**CLIENT ADDRESS FOR INVOICE:** 1 Community Boulevard, Wheeling, Illinois 60090

**LOCATION OF SERVICES:** 1 Community Boulevard, Wheeling, Illinois 60090 at the Crossing Guard locations set forth in Exhibit A to the Client’s RFP.

**RATES:**

Contractor shall provide the Service Personnel at the below hourly rate:

<b>Service Personnel</b>	<b>Regular</b>	<b>Overtime</b>	<b>Holiday</b>	<b>Equipment</b>	<b>Other</b>
Crossing Guards	\$21.47	\$32.21	\$32.21	\$	\$
Field Supervisors	\$21.47	\$32.21	\$ 32.21	\$	\$
	\$	\$	\$	\$	\$

- Holidays shall include the following dates: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.
- Overtime: Service Personnel shall be billed at the “Overtime” rate if hours of Services are (i) requested with less than 48 hours prior notice to Contractor, and (ii) for a time period outside of the regularly schedule hours.

**SCOPE:**

1. Provide crossing guard at posts in the Village specified by Client.

**SCHEDULE 2**

# VILLAGE OF WHEELING LEGISLATIVE COVER MEMORANDUM

**AGENDA ITEM NO(S):** #11.D

*(To be inserted by Deputy Clerk)*

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEM SUBMITTED:** An Ordinance Declaring a Surplus and Authorizing the Disposal and/or Recycling of Municipal Property Owned by the Village of Wheeling.

**SUBMITTED BY:** Mark Janeck, Director of Public Works

**BASIC DESCRIPTION OF ITEM<sup>1</sup>:** An ordinance requesting various items, including but not limited to, street light pole-mounted snowflakes, season's greetings sign, various computer-related items, exercise equipment, cabinets, and other sundry items for disposal and/or recycling. All Village data from computers and laptops has been removed. Items were collected from the Police Department, Fire Department, Village Hall, Senior Center and Public Works, and are either damaged, discolored, or have not been utilized in the past 5-10 years.

**BUDGET<sup>2</sup>:** N/A

**BIDDING<sup>3</sup>:** N/A

**EXHIBIT(S) ATTACHED:** Memorandum and Ordinance

**RECOMMENDATION:** N/A

**SUBMITTED FOR BOARD CONSIDERATION:** Village Manager

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<sup>1</sup> The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.

<sup>2</sup> If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).

<sup>3</sup> If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered



**MEMORANDUM**

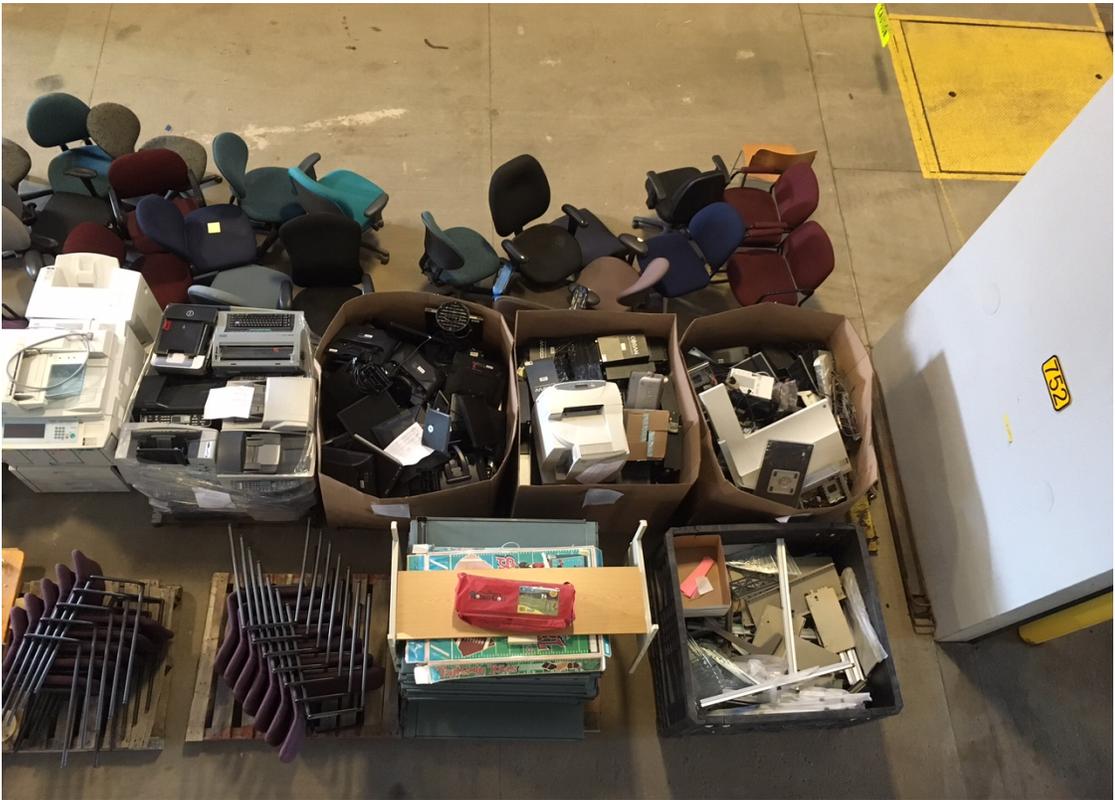
**TO:** Jon A. Sfondilis, Village Manager  
**FROM:** Mark Janeck, Director of Public Works  
**DATE:** August 9, 2016  
**SUBJECT:** Surplus Property for Disposal and/or Recycling

**EXECUTIVE SUMMARY**

Request for disposal and/or recycling of street light pole-mounted snowflakes, season greeting sign, computers/electronics, and miscellaneous items such as exercise equipment, chairs, desks, cabinets, couch, tool box, a wooden picture frame, and other sundry items.







**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE DECLARING A SURPLUS AND AUTHORIZING THE DISPOSAL  
AND/OR RECYCLING OF MUNICIPAL PROPERTY OWNED BY  
THE VILLAGE OF WHEELING**

**WHEREAS**, in the opinion of the corporate authorities of the Village of Wheeling, it is no longer necessary, useful, or in the best interests of the Village to retain ownership of the municipal property hereinafter described; and

**WHEREAS**, it has been determined by the President and Board of Trustees of the Village of Wheeling that said property should be donated to local entities or disposed of properly; and

**NOW, THEREFORE, BE IT ORDAINED** BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

SECTION ONE: Pursuant to Section 5/11-76-4 of the Illinois Municipal Code, Illinois Compiled Statutes, Ch. 65, the Board finds that the following described personal property:

- Sixty-Five (65) Street Light Pole-Mounted Incandescent Silhouette Snowflakes with Garland.
- One (1) Outdoor Ground-Mounted Seasons Greetings Sign with Garland (approx. 45 ft. long)
- Thirty-Six (36) computer keyboards, twenty-six (26) DVRs, twenty (20) PCs, twelve (12) monitors, eleven (11) printers, and ten (10) laptops
- Two (2) facsimiles and Two (2) typewriters
- One (1) copier, one (1) microwave, one (1) projector, one (1) scanner, one (1) shredder, one (1) television, and one (1) VCR
- Miscellaneous items such as exercise equipment, chairs, desks, cabinets, couch, tool boxes, a wooden picture frame, and other sundry items.

is all currently owned by the Village, is no longer necessary or useful to the Village, and it is in the best interest of the Village that said property be properly disposed of and/or recycled.

SECTION TWO: Pursuant to said Section 5/11-76-4, the Village Manager or his designee is hereby authorized and directed to seek a not-for-profit, non-profit, or charity for the subject property and/or dispose of said property in any appropriate way.

SECTION THREE: Upon the disposal or provision to a chosen entity as described above, the Village Manager is hereby authorized and directed to convey and transfer title of the aforesaid property.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage, by a majority vote of the corporate authorities, and approval in the manner provided by law.

Trustee \_\_\_\_\_ moved, seconded by Trustee \_\_\_\_\_, that

Ordinance No. \_\_\_\_\_ be passed.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

President Argiris \_\_\_\_\_

Trustee Brady \_\_\_\_\_

Trustee Papantos \_\_\_\_\_

Trustee Krueger \_\_\_\_\_

Trustee Vito \_\_\_\_\_

Trustee Lang \_\_\_\_\_

Trustee Vogel \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Dean S. Argiris, Village President

**ATTEST:**

\_\_\_\_\_  
Elaine E. Simpson, Village Clerk

**APPROVED AS TO FORM ONLY:**

\_\_\_\_\_  
Village Attorney

Published in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

**VILLAGE OF WHEELING  
LEGISLATIVE COVER MEMORANDUM**

**AGENDA ITEM NO(S) #13.A**  
(To be inserted by Deputy Clerk)

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEM SUBMITTED:** An Ordinance Authorizing a First Amendment to the Restated Redevelopment Agreement Between the Village of Wheeling and WTC LLC for the Development of Land at 351 W. Dundee Road, Wheeling, IL Comprising a Part of the Town Center II TIF District of the Village of Wheeling, Cook and Lake Counties, Illinois

**SUBMITTED BY:** James V. Ferolo-Klein Thorpe and Jenkins

**BASIC DESCRIPTION OF ITEM:** The Ordinance authorizes an amendment to the Restated Redevelopment Agreement to extend the time for Final PUD approval by one month to October 31, 2016.

**EXHIBIT(S) ATTACHED:** Ordinance and First Amendment

**RECOMMENDATION:** Approval

**SUBMITTED FOR BOARD APPROVAL:** Village Manager

**KTJ**

KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law

20 N. Wacker Drive, Ste 1660  
Chicago, Illinois 60606-2903  
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10  
Orland Park, Illinois 60462-5353  
T 708 349 3888 F 708 349 1506

**CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION**  
**MEMORANDUM**

To: Board of Trustees, Village of Wheeling  
From: James V. Ferolo-Klein, Thorpe and Jenkins, Ltd.  
Re: Town Center Restated RDA  
Date: August 15, 2016

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**EXECUTIVE SUMMARY**

The First Amendment to the Restated Redevelopment Agreement simply extends the final PUD approval date from August 31, 2016 to October 31, 2016 due to the changes necessitated by the change from Flix Brewhouse to CMX as the anchor theater tenant.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE RESTATED REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF WHEELING AND WTC LLC FOR THE DEVELOPMENT OF LAND AT 351 W. DUNDEE ROAD, WHEELING, IL COMPRISING A PART OF THE TOWN CENTER II TIF DISTRICT OF THE VILLAGE OF WHEELING, COOK AND LAKE COUNTIES, ILLINOIS**

BE IT ORDAINED, by the President and Board of Trustees of the Village of Wheeling Cook and Lake Counties, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village find as follows:

- A. The Village of Wheeling (hereinafter referred to as the "VILLAGE") is a home rule municipality pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois and is authorized to exercise and perform any function pertaining to its government and affairs.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (hereinafter referred to as the "TIF ACT").
- C. Pursuant to its home rule powers and in accordance with the TIF ACT, on July 7, 2014, 2014 the corporate authorities of the VILLAGE adopted Ordinance Numbers 4866, 4867, and 4868 in accordance with the TIF ACT and its home rule powers, approving a tax increment redevelopment plan and project, designating a tax increment redevelopment project area and adopting tax increment financing relative to the VILLAGE'S TOWN CENTER II TIF DISTRICT (hereinafter referred to as the "TOWN CENTER II TIF DISTRICT") for redevelopment and revitalization of a portion of the corporate limits of the VILLAGE, (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA").
- D. WTC, LLC (hereinafter referred to as the "DEVELOPER") desires to redevelop a portion of the REDEVELOPMENT PROJECT AREA, (hereinafter referred to as the "SUBJECT PROPERTY") on which the DEVELOPER intends to construct a mixed use project including a 300 unit luxury apartment building, movie theater, restaurants and retail establishments (hereinafter referred to as the "DEVELOPMENT").
- E. On March 7, 2016, the VILLAGE approved a Restated Redevelopment Agreement, between the DEVELOPER and the VILLAGE, which sets forth the terms and conditions pursuant to which the DEVELOPER will proceed

with the DEVELOPMENT (hereinafter referred to as the "RESTATED REDEVELOPMENT AGREEMENT").

a. It is necessary to amend certain sections of the RESTATED REDEVELOPMENT AGREEMENT to incorporate an amended schedule for zoning approval.

G. In accordance with the TIF ACT and the VILLAGE'S home rule powers it is in the best interest of the VILLAGE to approve the FIRST AMENDMENT TO the RESTATED REDEVELOPMENT AGREEMENT, pursuant to the TIF ACT.

SECTION 2: Based upon the foregoing, and pursuant to the TIF ACT and the VILLAGE'S home rule powers, a FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT that is in substantial conformity with the FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT A is hereby approved, with all final changes subject to the approval of the Village Manager. The President and Clerk of the VILLAGE are authorized and directed to execute and deliver such other instruments, once finalized, including said FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT A.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016, pursuant to a roll call vote as follows:

President Argiris	_____	Trustee Papantos	_____
Trustee Brady	_____	Trustee Vito	_____
Trustee Krueger	_____	Trustee Vogel	_____
Trustee Lang	_____		

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Dean S. Argiris, Village President

ATTEST:

\_\_\_\_\_  
Elaine E. Simpson, Village Clerk

Approved as to form only:

\_\_\_\_\_  
Village Attorney

Published by me in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_,  
2016.

\_\_\_\_\_  
Village Clerk

**EXHIBIT A**  
**FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT**

**FIRST AMENDMENT TO RESTATED REDEVELOPMENT  
AGREEMENT FOR WHEELING TOWN CENTER**

This First Amendment to the Restated Redevelopment Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of August, 2016 (the "Effective Date") by and between the Village of Wheeling Illinois, an Illinois home rule municipal corporation (the "Village"), and WTC LLC, a Delaware limited liability company, licensed to do business in Illinois (hereinafter collectively, the "Developer"). (The Village and the Developer are sometimes referred to individually as a "Party" and collectively as the "Parties.")

**RECITALS**

The following Recitals are incorporated herein and made a part hereof.

A. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.

B. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

C. Pursuant to the Act and Village Ordinance Numbers 4866, 4867, and 4868, adopted July 7, 2014, the Village approved a tax increment redevelopment plan and project, designated the tax increment redevelopment project area, and adopted tax increment financing relative to the Village's Town Center (Dundee Road) Tax Increment Financing District (the "Town Center II TIF District").

D. On March 7, 2016, the Village approved a Restated Redevelopment Agreement ("Restated Redevelopment Agreement") outlining the development of the Property at 351 W. Dundee Road with a high end by the Apartment complex and Retail Center known as the Wheeling Town Center.

E. It is necessary to amend the Restated Redevelopment Agreement to incorporate a revised schedule for zoning approval of the project.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**ARTICLE ONE**  
**INCORPORATION OF RECITALS**

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village and of the Developer according to the tenor and import of the statements in such Recitals.

**ARTICLE TWO**  
**AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT**

The following terms of the Original Redevelopment Agreement are hereby amended:

1. **The first sentence of Section 5.1** of the Restated Redevelopment Agreement entitled **Zoning** is amended to read:

**5.1 Zoning.** Subject to Uncontrollable Circumstances, no later than October 31, 2016, the Developer shall have obtained from the Village final approval of a planned unit development, ("Final PUD Approval") for the development of the Property with the Project, with said final planned unit development to be in substantial conformity with **Group Exhibit 2 attached hereto and made a part hereof** identified in Section 5.3 below (the "Concept Plans"), subject to mutually agreed upon changes by the Developer and Village.

2. Any terms of the Restated Redevelopment Agreement that are not expressly amended herein remain valid and in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

**Village of Wheeling,**  
an Illinois municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
Elaine E. Simpson, Village Clerk

By: \_\_\_\_\_  
Dean S. Argiris Village President

**DEVELOPER:**

**WTC LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGMENTS**

State of Illinois            )  
  ) SS  
County of Cook             )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Dean Argiris personally known to me to be the Village President of the Village of Wheeling, and Elaine Simpson, personally known to me to be the Village Clerk of said municipal corporation, and 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 severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

State of Illinois     )  
                                  ) SS  
County of Cook     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such \_\_\_\_\_ they signed and delivered the said instrument and caused the corporate seal of said Illinois Village to be affixed thereto, pursuant to authority given by the Members of said Illinois Village, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois Village, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

# VILLAGE OF WHEELING LEGISLATIVE COVER MEMORANDUM

**AGENDA ITEM NO(S):** #13.D

*(To be inserted by Deputy Clerk)*

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEM SUBMITTED:** Resolution Commemorating the Renaming of South Drive in the Village of Wheeling as Suncheon Drive

**BASIC DESCRIPTION OF ITEM<sup>1</sup>:** The attached resolution memorializes the renaming of South Drive—a roadway southwest of the Korean Cultural Center of Chicago that connects Capitol Drive to Palatine Road—in honor of the City of Suncheon, South Korea. The Village of Wheeling and the City of Suncheon are seeking opportunities for mutually-beneficial exchanges in the areas of business, culture, tourism, and education.

**BUDGET<sup>2</sup>:** N/A

**BIDDING<sup>3</sup>:** N/A

**EXHIBIT(S) ATTACHED:** Staff Memorandum, Resolution

**SUBMITTED FOR BOARD CONSIDERATION: VILLAGE MANAGER**

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<sup>1</sup> *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

<sup>2</sup> *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

<sup>3</sup> *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*



**MEMORANDUM**

**TO:** Village President, Clerk and Board of Trustees  
**FROM:** Jon A. Sfondilis, Village Manager  
**DATE:** August 11, 2016  
**SUBJECT:** Renaming of South Drive as Suncheon Drive

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**EXECUTIVE SUMMARY**

On August 15, the Board of Trustees will be asked to approve a commemorative resolution renaming South Drive as Suncheon Drive in honor of the City of Suncheon, South Korea. This resolution is ceremonial, since legislative action is not required to rename Village streets.

On Friday, August 12, a delegation from the City of Suncheon in the Republic of Korea (i.e. South Korea) will visit Wheeling and participate in several meetings and events, including the signing of the memorandum of understanding approved by the Board of Trustees on August 1 formalizing a shared commitment to pursuing mutually-beneficial exchanges in the field of education.

On the occasion of this visit, the Village will announce the renaming of South Drive—the roadway southwest of the Korean Cultural Center of Chicago that connects Capitol Drive to Palatine Road—as Suncheon Drive. Since legislative action is not required to rename Village streets, this action is ceremonial; it also helps create an easily-accessible historical record of the circumstances of the renaming, and of the Village’s broader outreach initiative to communities in Korea.

The renaming itself is not purely ceremonial; it will be reflected on maps, street signage, etc. Although South Drive is an important link between the various Capitol Drive campuses and Palatine Road, it includes no mailing addresses; therefore the renaming will have minimal practical impact on adjacent facilities. The attached map shows the location of the street.

This is the first of three planned street renamings / honorary designations intended to recognize the Village’s partnerships with communities in South Korea. Future such actions will honor the District of Gangnam and the City of Busan; staff will provide more information on these as the occasions draw closer.

I am available to respond to any questions or concerns.

RESOLUTION NO. 16 - \_\_\_\_\_

**RESOLUTION COMMEMORATING THE RENAMING OF SOUTH DRIVE IN THE VILLAGE OF WHEELING AS SUNCHEON DRIVE**

**WHEREAS**, as the home of the Korean Cultural Center of Chicago, the Village of Wheeling has cultivated bonds of friendship and shared interest with communities in the Republic of Korea, including the City of Suncheon; and

**WHEREAS**, the City of Suncheon has demonstrated notable hospitality and generosity toward the Village, toward the Korean Cultural Center, and toward other members of the broader community, as well as an investment in building productive long-term relationships in Wheeling and throughout the region; and

**WHEREAS**, the Board of Trustees of the Village of Wheeling has determined that it is appropriate to designate a permanent monument in recognition and in furtherance of the Village’s special partnership with the City of Suncheon;

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS**, that the roadway presently designated as South Drive be renamed as **SUNCHEON DRIVE** in honor of the City of Suncheon; and

**BE IT FURTHER RESOLVED** that the Village Manager is hereby directed to take the necessary measures to update signage, maps, and records to reflect this change.

Trustee \_\_\_\_\_ moved, seconded by Trustee \_\_\_\_\_  
that Resolution No. **16** - \_\_\_\_\_ be adopted.

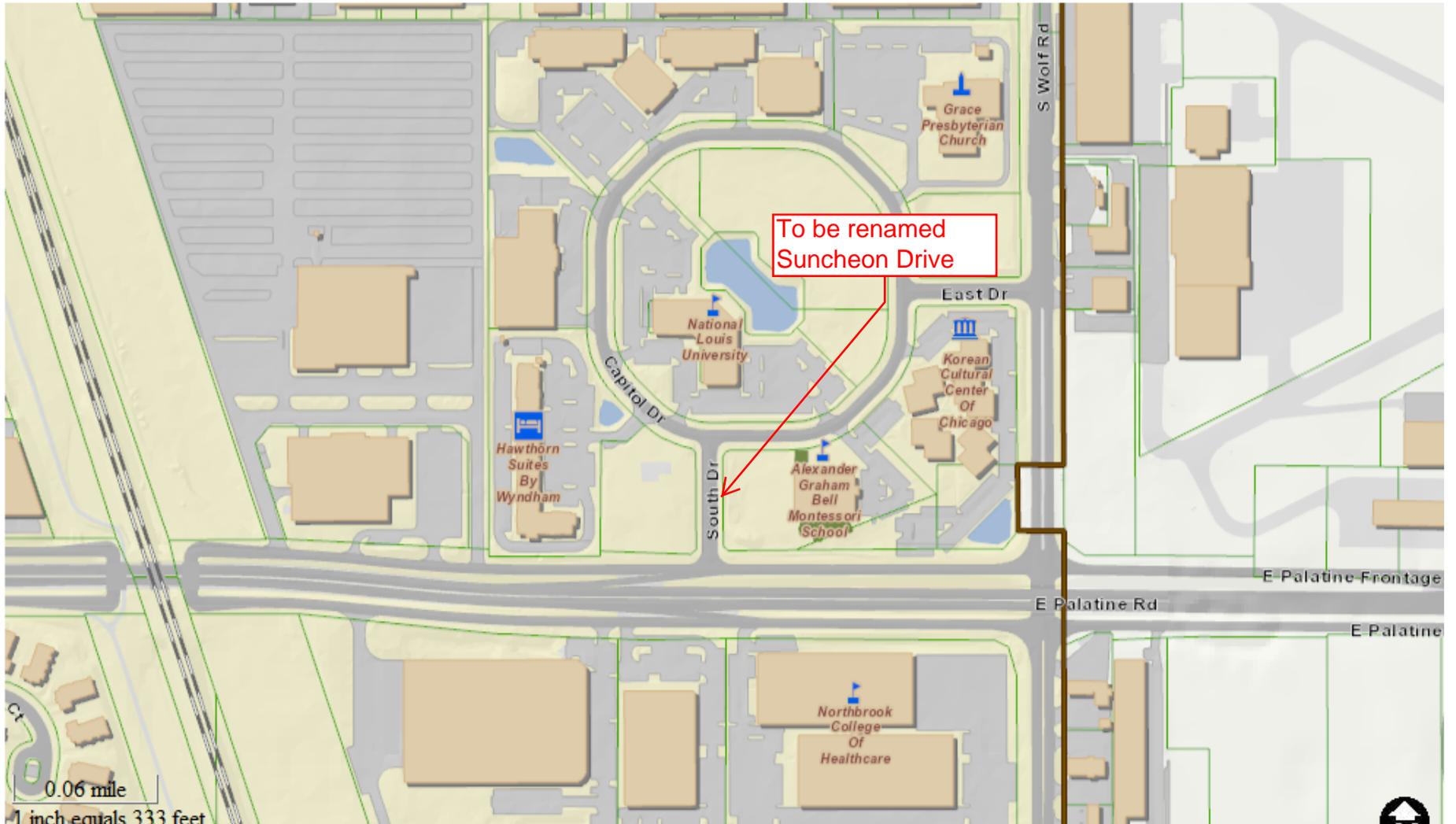
President Argiris	_____	Trustee Lang	_____
Trustee Brady	_____	Trustee Papantos	_____
Trustee Krueger	_____	Trustee Vito	_____
		Trustee Vogel	_____

**Adopted** this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the President and Board of Trustees of the Village of Wheeling, Illinois.

\_\_\_\_\_  
Dean S. Argiris  
Village President

ATTEST:

\_\_\_\_\_  
Elaine E. Simpson  
Village Clerk



1 inch equals 333 feet

Map created on August 5, 2016.  
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The GIS Consortium and MGP Inc. are not liable for any use, misuse, modification or disclosure of any map provided under applicable law.

Disclaimer: This map is for general information purposes only. Although the information is believed to be generally accurate, errors may exist and the user should independently confirm for accuracy. The map does not constitute a regulatory determination and is not a base for engineering design. A Registered Land Surveyor should be consulted to determine precise location boundaries on the ground.

**VILLAGE OF WHEELING  
LEGISLATIVE COVER MEMORANDUM**

**AGENDA ITEM NO(S):** #13.E  
*(To be inserted by Deputy Clerk)*

**DATE OF BOARD MEETING:** Monday, August 15, 2016

**TITLE OF ITEM SUBMITTED:** An Ordinance Repealing Ordinance No. 4722 and Granting Special Use-Site Plan Approval for a Daycare Center at 581-583 N. Wolf Road [Docket No. 2016-17].

**SUBMITTED BY:** Andrew C. Jennings  
Director of Community Development

**BASIC DESCRIPTION OF ITEM<sup>1</sup>:** The petitioner is requesting special use-site plan approval to expand the existing tutoring facility at 581 N. Wolf into 583 N. Wolf and to expand the use to include DCFS licensed daycare facilities.

**BUDGET<sup>2</sup>:** N/A

**BIDDING<sup>3</sup>:** N/A

**EXHIBIT(S) ATTACHED:** Ordinance  
Findings of Fact and Recommendation (Draft)  
Fire Department memo  
Engineering Division memo  
Photos of existing conditions (staff)  
Cover letter  
A1, Existing floor plan  
A2, Proposed floor plan  
T1, Site plan and fence elevation  
A3, Window and door schedule  
Plat of survey

**RECOMMENDATION:** To approve.

**SUBMITTED FOR BOARD CONSIDERATION: VILLAGE MANAGER**

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<sup>1</sup> *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

<sup>2</sup> *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

<sup>3</sup> *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*

## REQUEST FOR BOARD ACTION

**TO:** Jon Sfondilis  
Village Manager

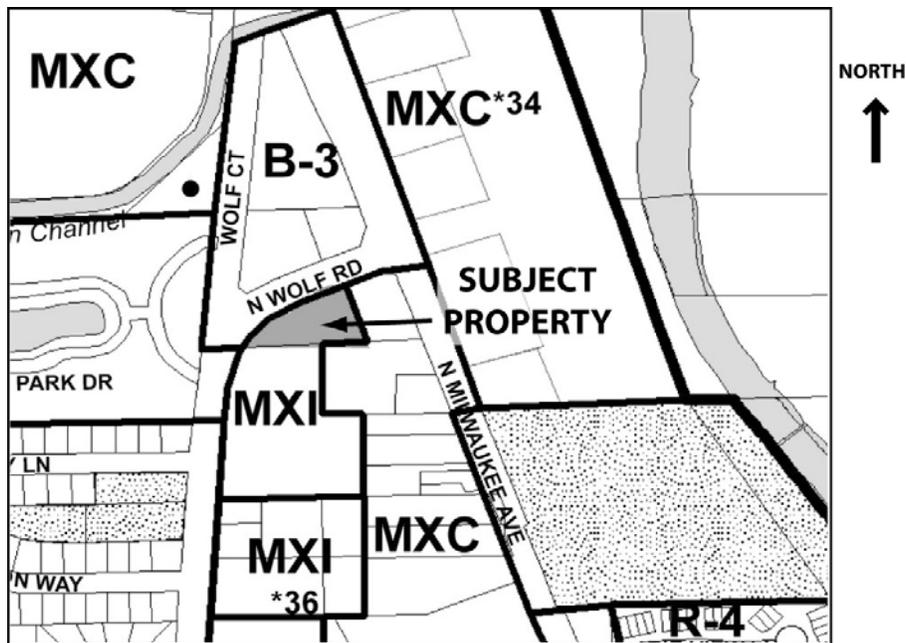
**FROM:** Andrew C. Jennings  
Director of Community Development

**DATE:** August 15, 2016

**SUBJECT:** Docket No. 2016-17  
Blooming Minds Academy  
581-583 N. Wolf Road  
Special Use-Site Plan Approval of a Daycare Center

**PROJECT OVERVIEW:** The petitioner is requesting special use-site plan approval to expand its tutoring facility to include daycare facilities. The existing business is also expanding from 581 N. Wolf to also include 583 N. Wolf Road.

### **LOCATION MAP:**



### PLAN COMMISSION RECOMMENDATION

At the Plan Commission hearing on Thursday, July 28, 2016, Commissioner Zangara moved, seconded by Commissioner Issakoo to recommend approval of Docket No. 2016-17 to grant Special Use-Site Plan approval under Chapter 19-05 Mixed Use Districts, Chapter 19-10 Use Regulations, and Chapter 19-12 Site Plan Approval Requirements, and associated sections, for a daycare center in accordance with the following exhibits submitted July 20, 2016 (except as noted), by Blooming Minds Academy, located at 581-583 N. Wolf Road, Wheeling, Illinois.

- Cover letter (2 pages), received 6.29.2016;
- A1, Existing floor plan;

**Request for Board Action**

**Page 2 of 8**

**RE: Plan Commission Docket No. 2016-17**

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- A2, Proposed floor plan;
- T1, Site plan and fence elevation; and
- A3, Window and door schedule.

And with the following conditions of approval:

1. That the exact location of the fence may be adjusted to avoid utility conflicts provided there is a minimum drive aisle clearance of 12-feet;
2. Additional insulation shall be added to reduce noise from neighboring tenants;
3. The fence shall not extend beyond the rear wall of Unit 583; and
4. The fence shall be white.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, and Zangara  
NAYS: None  
ABSENT: Commissioners Dorband and Sianis  
PRESENT: None  
ABSTAIN: None

There being five affirmative votes, the motion was approved.

**GENERAL PROPERTY INFORMATION**

**Applicant Name:** Olga Khamichonak  
**Property Owner Name:** Baker Holdings of Green Oaks, LLC  
**Common Property Address:** 581-583 N. Wolf Road  
**Common Location:** Located at the eastern intersection of Wolf Court and Wolf Road  
**Neighboring Property Land Use(s):** North: Light industrial / office  
West: Multi-Family Residential  
South: Light industrial / office  
East: Commercial  
**Comprehensive Plan Designation:** Commercial  
**Property size:** 45,767 sq. ft. for the entire site; 13,133 sq. ft. for the entire building; 3,600 sq. ft. leased building space  
**Existing Use of Property:** Recreation and Instruction (tutoring) Facility  
**Proposed Use of Property:** Recreation and Instruction (tutoring) Facility and Daycare Facility  
**Existing Property Zoning:** MXI Mixed Use Industrial

**Previous Zoning Action on Property:**

2012-13 Ordinance No. 4722, passed 9.17.2012, granted a Special Use for a Specialty School (Recreation and Instruction Facility) at 581 N. Wolf.  
PC 16-02 Minor Site Plan & Appearance Approval of an outdoor play area for 581 N. Wolf (5.26.2016).

**BACKGROUND / DESCRIPTION OF PROPOSAL**

In 2012, the applicant was approved for a special use (through Docket No. 2012-12) for a tutoring facility (recreation and instructional facility) that allows for education enrichment programs for children aged 1 to 17 at 581 N. Wolf Road. On May 26, 2016, the applicant was granted minor site plan and appearance approval (through Docket No. PC 16-02) to create an outdoor fenced play space at the rear of the building. The outdoor play area plans have been refined since the May 26<sup>th</sup> Plan Commission review.

At this time, the applicant proposes two objectives:

1. Expand the current tutoring facility into the adjacent 583 N. Wolf Road space; and
2. Expand the current tutoring facility to also include DCFS licensed daycare facilities.

The hours of operation for the expanded business will be:

- Monday-Friday: 7am-8pm; and
- Saturday-Sunday: 9am-3pm.

The applicant anticipates growth over the next few years. At maximum capacity, the applicant expects there to be no more than 50 students (daycare and tutoring combined) at one time.

Daycare will be offered for full-time and part-time service. Tutoring classes will last one to two hours. Due to the range of services offered, pickup and drop off times will be staggered.

**SITE PLAN REVIEW**

**Scale of Site Plan:** 1" = 20'

**General Site Layout:** The only site changes are at the rear of the property. The petitioner is proposing to create a fenced outdoor play area for children. The fenced area will be directly accessible to each unit. The proposal appears to meet the requirements of DCFS. The play area configuration includes an area for infants/toddlers separate from preschool school-aged children. Minor changes to the location of the fencing will be necessary to avoid utility conflicts. A minimum drive aisle width of 12-feet must be maintained for safety and clearance. A condition of approval was recommended by staff and added by the Plan Commission to address these issues.

There are 8 parallel parking stalls along the building front. These spaces will likely be used by parents during drop-off and pick-up.

**Floor Plan:** The petitioner is proposing to expand from the current location at 581 into the adjacent unit 583. Both units will be reconfigured to accommodate the changing use and

additional daycare facilities. There will be a total of 7 classrooms, an office, a waiting area, a kitchenette, and toilets.

**Ownership:** The applicant is currently occupying (leasing) 581 N. Wolf as a tutoring (recreational and instructional facility). The applicant is also now leasing 583 N. Wolf and is currently allowed to use this unit as a small (no more than 12 occupants) tutoring facility. Upon approval of the proposed special use, the units will be combined for tutoring throughout the units and for the addition of daycare services in the units.

**Total Number of Parking Spaces:**

The parking requirement for a commercial daycare is 2/1000 sq. ft. plus 1/employee at peak shift. At 3,465 sq. ft. the space requires 7 stalls plus 1 for each employee (7), which is a total of 14 spaces. The total number of parking spaces located on site is 33. Subtracting the subject unit, the floor area of the building is 9,533 sq. ft. with 700 sq. ft. of office space and 8,833 sq. ft. of warehouse space. Therefore, the total parking requirement for the remaining uses of the building is 12 stalls. There is more than ample parking for the proposed use at the existing multi-tenant building.

**Bicycle parking:** It is not likely that clients would bike to the facility. However, bicycle parking may be utilized by employees. The Plan Commission discussed indoor bicycle parking for employees. No outdoor bicycle parking was required by the Plan Commission.

**Appearance review:** The petitioner has provided fencing details on sheet T1. The proposal includes a solid white vinyl fence that is 6-feet in height. Safety bollards will also be installed on the outside of the fence. The previously approved fence for the play area was white. The Plan Commission added a condition of approval that the proposed fence be white.

Minor modifications are also proposed to the existing windows and doors at the rear of the units. An overhead garage door at the rear of unit 581 will be replaced with a storefront window configuration noted as Window Elevation #3 on the Window and Door Schedule. An existing window and door at the rear of unit 583 will be replaced with a storefront window and door configuration noted as Window Elevation #2 on the Window and Door Schedule.

**STANDARDS FOR SPECIAL USE**

Following are standards for special use with the petitioner's responses in italics. (**Village Planner comments are in bold.**)

1. State why the Special Use is necessary for the public convenience at the proposed location.

*“Per multiple client requests, it appears there is a shortage of full-time day care services that can offer high-quality instruction in Russian to the large Russian-speaking community in the area. At the moment, we are told by moms who are looking for such day-care centers, that they have to be on the waiting list. They are continuously asking us to offer such services to them.”*

**The petitioner has provided testimony of the need for the proposed use. The proposed use may also provide some indirect benefits to neighboring businesses from increased customer trips from the families dropping off, picking, or waiting for students taking classes at the proposed facility.**

2. State how the Special Use will not alter the essential character of the area in which it is to be located.

*“Blooming Minds Academy is currently offering enrichment services to the community, and by adding additional array of services it will enhance the attractiveness of the residential area located near-by by being able to offer full-time day care service to the families with both parents working full time. Adding such extra service will not change the current nature of the operations.”*

**There is a mix of light industrial and office businesses in the 571-593 N. Wolf Road building complex. The existing use allows for a children’s instruction facility. No impact on adjacent uses is expected from the proposed additional daycare facility use.**

3. State how the location and size of the Special Use, the nature and intensity of the operation involved in or conducted with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it will be in harmony with and not impede the normal, appropriate and orderly development of the district in which it is to be located and the development of surrounding properties.

*“Blooming Minds Academy (BMA) will continue operating its enrichment tutoring services, but adding unit 583 will allow it to offer full-time day care services. However, BMA will remain small, as the overall number of students will not change. BMA has currently a little over 120 students, who attend the center at various times throughout the day. BMA will seek day-care license for only 54 students, who will also be dropped off and picked up at various times of the day to allow parents flexibility in care for their children. As such, we do not foresee any major changes to the current operation of the business, and think that it will mainly benefit the community, rather than create any major changes to the established order.”*

**The proposed use will occupy about 27 percent of the existing multi-tenant building. Students/clients will attend classes and attend childcare at various days and times, though the hours and maximum capacity are not expected to have an impact adjacent uses.**

4. State how the location, nature and height of buildings, walls and fences, and the nature and extent of the landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or will not impair the value thereof.

*“The only change to the site that we are currently offering is addition of a fence in the back of the building. It will not be visible from the road and will be secluded, so that it will not change the appearance of the building from the front or the sides.”*

**No new exterior modifications are proposed. On May 26, 2016, the PC approved the proposed outdoor play space and fencing through Docket No. PC 16-02. The outdoor play space has not yet been installed. The proposed partial site plan is consistent with the approved outdoor play space per Docket No. PC 16-02.**

5. State how the parking areas will be of adequate size for the particular use, properly located and suitably screened from adjacent residential uses, entrance and exit drives shall be laid out so as to prevent traffic hazards and nuisances and the development will not cause traffic congestion.

*“The needs for parking for the site will not change. Parents will come to drop off and pick up their children throughout the day, the same way as it is done at the moment.”*

**The are 33 existing on-site parking spaces at the multi-tenant commercial facility, which meets the needs of the proposed daycare facility as well as the existing building tenants.**

6. State how the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulation in that zone.

*“Unfortunately, with the recent state of economy, more and more families will have to rely on dual income. We have noticed that a lot of our moms have to start working to supplement their income, especially when second and third children are born. As a result, we see that more moms take their children somewhere else, get on waiting lists in other day-care centers, despite the fact that they would really like to stay as our clients. A lot of our parents have been asking us to start offering full-time day care services to them. We truly believe that by offering such services, we will be able to benefit financial as a business, we will create additional work places, and will generate more tax income for the village of Wheeling.”*

**If the applicant is not approved for the proposed special use, the business will not be able to expand at the current location as proposed. The business would be able to continue its tutoring (recreational and instructional facility) operations at 581. The business would also be able to operate a small tutoring (recreational and operational facility) with no more than 12 occupants at one time at 583 without a special use.**

#### **CONDITIONS FROM PLAN COMMISSION RECOMMENDATION**

There are four conditions of approval associated with the Plan Commission recommendation for Docket No. 2016-17. The recommendation for Docket No. 2016-17 included the following conditions of approval, which have been incorporated into the attached special use ordinance:

1. That the exact location of the fence may be adjusted to avoid utility conflicts provided there is a minimum drive aisle clearance of 12-feet;
2. Additional insulation shall be added to reduce noise from neighboring tenants;
3. The fence shall not extend beyond the rear wall of Unit 583; and
4. The fence shall be white.

**MODIFICATIONS FOLLOWING PLAN COMMISSION HEARING**

The plans have not been modified following the Plan Commission hearing.

**STAFF REVIEW**

**Fire Department Review:** The Fire Department has provided a comment memo dated July 22, 2016. These comments can be addressed at building permit.

**Engineering Division Review:** The Engineering Division has provided a comment memo dated July 20, 2016. Due to the configuration of the proposed fence, there is a potential conflict with the underground sanitary sewer. Minor adjustments to the location of the fence will need to be made to satisfy the engineering review. At staff's suggestion, the Plan Commission included a condition of approval that the exact location of the fence may be adjusted to avoid utility conflicts provided there is a minimum drive aisle clearance of 12-feet.

**Health Division Review:** The Health Officer has reviewed the proposal and has determined that the Health Division requirements are met.

**Impact on adjacent uses:** No impact on adjacent uses is expected.

**Senior Planner's Recommendation to the Plan Commission:** Prior to making a motion at the July 28<sup>th</sup> hearing, staff recommended that the Plan Commission review of the following items with the petitioner:

1. Discuss if a bike rack shall be added to the site or if employee bicycle parking can be accommodated indoors; and
2. Determine the color of the fence.

**DIRECTOR OF COMMUNITY DEVELOPMENT RECOMMENDATION**

To meet the demands of its customer base, Blooming Minds Academy is expanding its current operations into the adjacent unit and is expanding the existing tutoring use to include child daycare facilities. One ordinance is attached for the Board's consideration: an ordinance repealing and replacing the tutoring special use ordinance (No. 4722) with the new special use for the daycare facility at 581-583 N. Wolf Road. The Plan Commission recommendation for the special use included four minor conditions of approval, which are listed in the attached ordinance.

  
\_\_\_\_\_  
Andrew C. Jennings  
Director of Community Development

**Request for Board Action**

**Page 8 of 8**

**RE: Plan Commission Docket No. 2016-17**

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**Attachments:** Ordinance (precedes this report)  
Findings of Fact and Recommendation (Draft)  
Fire Department memo  
Engineering Division memo  
Photos of existing conditions (staff)  
Cover letter  
A1, Existing floor plan  
A2, Proposed floor plan  
T1, Site plan and fence elevation  
A3, Window and door schedule  
Plat of Survey

ORDINANCE NO. \_\_\_\_\_

**An Ordinance Repealing Ordinance No. 4722, and Granting  
Special Use-Site Plan Approval for a Daycare Center  
at 581-583 N. Wolf Road**

**WHEREAS**, the Plan Commission of the Village of Wheeling has held a public hearing, duly noticed, on July 28, 2016, to consider a request for special use-site plan approval under Title 19, Zoning, of the Wheeling Municipal Code, Special Use-Site Plan Approval as required under Chapter 19-05 Mixed Use Districts, Chapter 19-10 Use Regulations, Chapter 19-12 Site Plan Approval Requirements, and associated sections, to expand the existing tutoring business and to establish a daycare center at 581-583 N. Wolf Road, Wheeling, Illinois, hereinafter legally described and zoned MXI Mixed Use Industrial District; and

**WHEREAS**, the business, Blooming Minds Academy, was previously granted special use approval for a Tutoring Facility (Indoor Recreation and Instruction Facility) at 581 N. Wolf Road through Ordinance No. 4722, passed September 17, 2012; and

**WHEREAS**, the current petition is a request for special use-site plan approval to expand the existing business to include a child Daycare Center; and

**WHEREAS**, the Plan Commission has submitted its Findings of Fact and Recommendation to the President and Board of Trustees, recommending approval, subject to conditions, by a vote of 5 ayes, 0 nay, 0 abstain and 2 absent; and

**WHEREAS**, the President and Board of Trustees deem it to be in the best interest of the Village to repeal Ordinance No. 4722, as described in this Ordinance, and to grant the petitioner's request, subject to conditions;

**NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:**

**Section A**

This Board of Trustees, after considering the Findings of Fact and Recommendation of the Plan Commission and other matters properly before it, hereby finds:

- That the special use as requested will not alter the essential character of the area in which it is to be located;
- That the location and size of the special use, the nature and intensity of the operation involved in or conducted with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, will be in harmony with and will not impede the normal, appropriate, and orderly development of the district in which it is located and the development of the surrounding properties;
- That the special use requested will not be injurious to the use and enjoyment of other property in the immediate vicinity for purposes already permitted nor diminish or impair property values of surrounding properties;
- That the parking areas will be of adequate size for the particular use, properly located, and suitably screened from adjoining residential uses, entrance and exit drives shall be laid out as to prevent traffic hazards and nuisances; and

- That the special use requested will conform to all applicable regulations and standards of the zoning district in which it is to be located.

**Section B**

A special use is hereby granted under Title 19, Zoning, of the Wheeling Municipal Code, Chapter 19-10 Use Regulations, Section 19.10.030 Special Uses, in order to expand the existing tutoring business to include child daycare facilities and to expand the existing business from 581 N. Wolf Road to include 583 N. Wolf Road, which is in the MXI Mixed Use Industrial District, in accordance with the site plan and appearance approval granted in Section C of this Ordinance, for Blooming Minds Academy, located at 581-583 N. Wolf Road, Wheeling, Illinois, hereinafter legally described:

**LEGAL DESCRIPTION:**

**PARCEL 1:**

THAT PART OF LOT 3 (EXCEPT PART OF SAID LOT 3 FALLING IN LOT 2 OF OWNERS' SUBDIVISION OF PART OF LOT 2 AND PART OF LOT 3) IN THE SUBDIVISION OF G. HECKINGER'S FARM IN THE NORTHEAST ¼ OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTHERLY LINE OF WOLF ROAD EXTENSION ACCORDING TO DOCUMENT 3014370 AND LYING EAST OF THE EASTERLY LINE OF WOLF ROAD AND WEST OF A LINE DRAWN AS POINT ON THE NORTH LINE OF SAID LOT 3, 175.00 FEET WEST, AS MEASURED ON SAID NORTH LINE OF THE WESTERLY OF MILWAUKEE AVENUE TO A POINT ON THE SOUTH LINE OF SAID LOT 3, 175.00 FEET WEST, AS MEASURED ON SAID SOUTH LINE OF THE WESTERNLY LINE OF MILWAUKEE AVENUE (EXCEPTING THEREFROM THAT PART OF SAID LOT 3 IN G. HECKINGER'S FARM LYING SOUTH OF THE NORTH LINE OF LOT 5 IN SAID OWNERS' SUBDIVISION), IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

THAT PART OF LOT 2, LYING SOUTH OF SAOD SOUTHERLY LINE OF WOLF ROAD EXTENSION IN OWNERS' SUBDIVISION OF PART OF LOTS 2 AND 3 IN SAID SUBIDIVISION OF G. HECKINGER'S FARM IN SECTION 2, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AND 2 AS CREATED BY RECIPROCAL GRANT OF EASEMENT DATED MAY 28, 1986 AND RECORDED JUNE 24, 1986 AS DOCUMENT 86256806 FROM CHICAGO TITLE TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 2, 1970 AND KNOWN AS TRUST NO. 54680 AND MAIN BANK, SUCCESSOR BY MERGER TO WHEELING TRUST AND SAVINGS BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 10, 1970 AND KNOWN AS TRUST NO. 810 FOR THE PURPOSE OF CONSTRUCTION, MAINTENANCE, REPAIR AND RESTORATION OF SAID DRIVEWAY.

(The above described property is located at 571-593 N. Wolf Road, Wheeling, Illinois, zoned MXI Mixed Use Industrial. The special use is for the units at 581-583 N. Wolf Road.)

**Section C**

Site Plan and Building Appearance Approval is hereby granted under Title 19, Zoning, of the Wheeling Municipal Code, Chapter 19-12 Site Plan Approval Requirements, with the site development to be completed substantially as shown on the following exhibits, herein attached and made part of, submitted July 20, 2016 (except as noted) by Blooming Minds Academy, located at 581-583 N. Wolf Road, Wheeling, Illinois:

- Cover letter (2 pages), received 6.29.2016;
- A1, Existing floor plan;
- A2, Proposed floor plan;
- T1, Site plan and fence elevation; and
- A3, Window and door schedule.

**Section D**

The Special Use and Site Plan Approvals granted in Sections B and C of this Ordinance are subject to the following conditions:

1. That the exact location of the fence may be adjusted to avoid utility conflicts provided there is a minimum drive aisle clearance of 12-feet;
2. Additional insulation shall be added to reduce noise from neighboring tenants;
3. The fence shall not extend beyond the rear wall of Unit 583; and
4. The fence shall be white.

**Section E**

Ordinance No. 4722 is hereby repealed in its entirety.

**Section F**

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee \_\_\_\_\_ moved, seconded by Trustee \_\_\_\_\_, that Ordinance No. \_\_\_\_\_ be passed.

President Argiris \_\_\_\_\_ Trustee Lang \_\_\_\_\_

Trustee Brady \_\_\_\_\_ Trustee Papantos \_\_\_\_\_

Trustee Krueger \_\_\_\_\_ Trustee Vito \_\_\_\_\_

Trustee Vogel \_\_\_\_\_

\_\_\_\_\_  
Dean D. Argiris  
Village President

ATTEST:

\_\_\_\_\_  
Elaine E. Simpson, Village Clerk

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Village Attorney

PUBLISHED in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

**FINDINGS OF FACT  
AND RECOMMENDATION**

To: Village President and Board of Trustees

From: Wheeling Plan Commission/Sign Code Board of Appeal

Re: Docket No. 2016-17  
Blooming Minds Academy  
581-583 N. Wolf Road  
Special Use-Site Plan Approval of a Daycare Center

Olga Khamichonak, President of Blooming Minds Academy, is seeking Special Use-Site Plan Approval as required under Chapter 19-05 Mixed Use and Overlay Districts, Chapter 19-10 Use Regulations, Chapter 19-12 Site Plan Approval Requirements, and associated sections, to operate a Daycare Center and Recreational and Instructional Facility at 581-583 N. Wolf Road, Wheeling, Illinois.

Chairman Ruffatto called Docket No. 2016-17 on July 28, 2016. Present were Commissioners Issakoo, Johnson, Powers, Ruffatto and Zangara. Commissioners Dorband and Sianis were absent with prior notice. Also present were Brooke Jones, Senior Planner, Mallory Milluzzi, Village Attorney, Fire Inspector Ron Antor and Kyle Goetzelmann, Civil Engineer.

Ms. Olga Khamichonak, Blooming Minds Academy, 581 N. Wolf Road, Wheeling was present and sworn in.

Ms. Khamichonak explained she leased the adjacent space located at 583 N. Wolf Road. She explained she was adding a daycare service in response to requests from the parents of her students. She explained she could offer daycare services in three of her rooms. If the children have the opportunity to stay for more than three hours at the facility, she has to be licensed by DCFS. She felt if she needed to be licensed she might as well offer them three rooms for daycare services and use other rooms for tutoring services.

Ms. Khamichonak referred to a suggestion from Fire Inspector Antor to exclude the manhole from the playground. She agreed and has adjusted the playground to exclude the manhole. Ms. Jones confirmed they had placed the fencing outside of the manhole.

Ms. Khamichonak referred to the request for a bike rack for the teachers. She checked with the teachers and a majority of the teachers have kids in the program so they would not be riding bikes to work. The only teacher without a child in the program lives too far away to bike.

Chairman Ruffatto opened the discussion to the public. From the audience, Mr. Rob Cook, Biomist, neighbor to the west. Mr. Cook mentioned it was sometimes hard to conduct business because of the music and noise from the children. He asked for a sound barrier. Ms. Khamichonak apologized she was not aware of the noise. She agreed to add something to the wall.

Commissioner Zangara asked about the hours and referred to the proposed kitchenette. Ms. Jones

explained food was required for daycare services through DCFS. Ms. Khamichonak confirmed they would not be cooking. They will bring in food. Ms. Jones confirmed the Health Officer had reviewed the plan and found everything to be satisfactory.

Commissioner Johnson referred to the fencing for the playground. He would prefer that it not extend past the line of the south wall to reduce the chance of it getting hit. Ms. Khamichonak agreed. Mr. Goetzelmann mentioned the fence posts and bollards needed to be augered into the ground. They don't want the fence posts or bollards damaging the sanitary sewer. They want the spacing of the fence posts maximized over the sanitary sewer to provide the most clearance as possible or chop off the corner to avoid the sanitary sewer. They are OK with either configuration as long they provide them with all the details (bollards cross sectional that show the depth, fence spacing, etc.).

Commissioner Powers questioned if DCFS needed to see the plan. Ms. Khamichonak explained DCFS requires Village approval first before applying for a DCFS license.

In reply to Commissioner Powers' question, Ms. Jones explained both addresses would be combined into one unit with one address.

In reply to Commissioner Powers' question, Ms. Jones explained the petitioner was amending their current special use for the tutoring facility to expand the site plan and floor area but were also applying for an additional special use for child care.

In reply to Commissioner Issakoo's question, Ms. Jones explained the previous use was a ballroom dance studio. Commissioner Issakoo felt the new use may not be adding any noise.

Commissioner Issakoo questioned if they were going to combine the entrances. Ms. Khamichonak explained for security purposes they will have one door. The second door will remain for emergencies. Ms. Khamichonak confirmed she would be using a security system for the entrance. There will also be a staff member located at the front.

In reply to Chairman Ruffatto's question, Ms. Jones confirmed the fence could be adjusted to avoid utility conflict. A condition has been added.

Chairman Ruffatto questioned if the fence material had been documented. Ms. Jones explained there was a fence detail included. The color of the fence has not been documented on the plan. Ms. Goetzelmann confirmed the color as white. The Commission was in agreement with the color.

Commissioner Zangara moved, seconded by Commissioner Issakoo to approve Docket No. 2016-17 granting special use-site plan approval for a daycare facility in accordance with the following exhibits submitted July 20, 2016 (except as noted) by Blooming Minds Academy, located at 581-583 N. Wolf Road, Wheeling, Illinois:

- Cover letter (2 pages), received 6.29.2016;
- A1, Existing floor plan;

**Findings of Fact and  
Recommendation**

**DOCKET NO. 2016-17**

- A2, Proposed floor plan;
- T1, Site plan and fence elevation; and
- A3, Window and door schedule.

And with the following conditions of approval:

1. That the exact location of the fence may be adjusted to avoid utility conflicts provided there is a minimum drive aisle clearance of 12-feet;
2. Additional insulation shall be added to reduce noise from neighboring tenants;
3. The fence shall not extend beyond the rear wall of Unit 583.
4. The fence shall be white.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Zangara  
NAYS: None  
ABSENT: Commissioners Dorband, Sianis  
PRESENT: None  
ABSTAIN: None

There being five affirmative votes, the motion was approved.

Commissioner Powers moved, seconded by Commissioner Johnson to close Docket No. 2016-17. The motion was approved by a voice vote.

Respectfully submitted,

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Jim Ruffatto, Chairman  
Wheeling Plan Commission/  
Sign Code Board of Appeals

**DISTRIBUTED TO THE COMMISSION 8.05.2016  
FOR APPROVAL ON 8.11.2016**



## MEMO – Fire Prevention Bureau

**TO:** Brooke Jones, Village Planner  
**FROM:** Ronald S. Antor, Fire Inspector  
**CC:** Andrew Jennings, Director of Community Development  
Keith Maclsaac, Fire Chief  
FPB File  
**DATE:** July 22, 2016  
**SUBJECT:** Expansion of Day Care Facility into Adjacent Tenant Space and Remodeling of Both Tenant Spaces plus an Outdoor Recreation Area – 581-583 North Wolf Road – Blooming Minds Academy – Plans received for review by the Fire Department, July 6, 2016 and July 20, 2016.

---

The Wheeling Fire Department has reviewed the submittals received related to the above referenced project and has the following comments:

### Site Plan

1. As with previous submittals, the Fire Department has safety concerns with the location of the proposed fenced area due to the proposed location being directly adjacent to a parking lot that serves an industrial building used by a number of trucks on a daily basis. The petitioner has worked to address this concern by providing protective posts to protect against vehicle impact.  
  
The installation of the posts shown shall comply with the Fire Prevention Code (Section 312) for protective bollards.
2. The fenced area is part of the exiting system for the petitioners tenant space. The gates referenced in the submittal documents shall meet the requirements in Chapter 10 of the Village's Fire Prevention Code. This would include:
  - a. The use of padlocks to secure the gate would prohibited.
  - b. Latching hardware provided shall be lever type or a push bar to meet the requirements in Section 1008.1.9 of the Fire Prevention Code
3. The clearance for the drive aisle between the fence/bollards and the nearby curbing shall be a minimum width of 12'-0" with 13'-0" preferred.

Ms. Brooke Jones

SUBJECT: Expansion of Day Care Facility into Adjacent Tenant Space and Remodeling of Both Tenant Spaces plus an Outdoor Recreation Area – 581-583 North Wolf Road – Blooming Minds Academy – Plans received for review by the Fire Department, July 6, 2016.

July 22, 2016

Page 2

**581-583 N. Wolf Road – Proposed Expansion of Existing Day Care Facility into an Adjacent Tenant Space**

1. The petitioner is proposing to expand their existing business at 581 N. Wolf Road into an adjacent tenant space at 583 N. Wolf Road. They would then remodel and occupy both tenant spaces as one tenant space. There would be a change in Use Group from the existing mixed use (B) Business Use Group and (F) Factory or (S) Storage occupancy as defined in the 2012 Edition of the International Building (IBC) and Fire Prevention Codes (IFC) to an (E) Educational Use Group occupancy for the proposed occupancy.
2. All construction within the building would need to comply with the Village's Building and Fire Prevention Codes (2012 Editions of the International Building Code & International Fire Code – with amendments).
3. As noted in Comment #2, the proposed tenant buildout will need to comply with the Village's Building and Fire Prevention Codes. Some of the items that this would include and would need to be addressed during the permitting process are:
  - a. The building has an existing sprinkler system that will require modifications.
  - b. The building has an existing fire alarm system that will require modifications.
  - c. Sufficient exits and spacing of those will need to be provided and verified during the remodeling Building Permit permitting process.

At this time there are no other Fire Department comments related to the project as presented in the documents reviewed.



## MEMORANDUM

**TO:** Brooke Jones, Senior Planner

**FROM:** Kyle Goetzelmann, Civil Engineer I

**COPY:** Jon Tack, Village Engineer

**DATE:** July 15th, 2016

**SUBJECT:** **Blooming Minds Academy  
581 N. Wolf Rd. - Review Comments**

---

The Engineering Division received a Cover Letter, Plat of Survey, Floor Plan, and Revised Fencing Plan for the subject project on July 6th, 2016. The Engineering Division has completed a review of the above referenced submittal and has the following comments:

1. A fence/bollard setup installed in the configuration proposed will potentially conflict with the underground sanitary sewer. Fence/Bollard post hole details showing foundation depth will need to be provided along with sanitary sewer invert elevation data. Fence/Bollard post spacing should be maximized at the location of the sanitary sewer crossing.
2. Access to the Village owned sanitary sewer must be maintained at all times.
3. Building permit must be obtained prior to installing fence in a configuration that is approved.

Received July 20, 2016

**Blooming Minds Academy – 581-583 N. Wolf Road**  
**Docket No. 2016-17 (Special Use-Site Plan Approval for a Daycare Facility)**  
Plan Commission Meeting – July 28, 2016  
Village Board Meeting – August 15, 2016



**Existing conditions of storefronts– looking south**

**Blooming Minds Academy – 581-583 N. Wolf Road**  
**Docket No. 2016-17 (Special Use-Site Plan Approval for a Daycare Facility)**  
Plan Commission Meeting – July 28, 2016  
Village Board Meeting – August 15, 2016



Existing conditions of rear space – looking east

**Blooming Minds Academy – 581-583 N. Wolf Road**  
**Docket No. 2016-17 (Special Use-Site Plan Approval for a Daycare Facility)**  
Plan Commission Meeting – July 28, 2016  
Village Board Meeting – August 15, 2016



**Existing conditions of rear space – looking northeast**

June 6, 2016

Exhibit received June 29, 2016

Blooming Minds Academy  
581 N. Wolf Rd.  
Wheeling, IL 60090

Re: Special Use Permit for 583 N. Wolf Rd.

Dear Officers:

I am the owner of Make Your Child Happy, Inc. DBA Blooming Minds Academy (BMA). For the past few years, I have successfully operated a specialty school/tutoring center for children ages 1 through 14. However, more and more parents are asking me to expand the range of services that I currently offer, and allow their children, ages 2 - 5 to stay for longer hours at BMA.

At the moment, we offer 1 and 2-hour tutoring classes, and we ask parents to stay on premises while children are in class. A lot of our parents ask us for extended hours and an ability to leave the premises while children are in class. In order for us to be able to provide such services, we are required to obtain DCFS licenses for a daycare center.

Adding such license will influence the way we do current operations in the following way:

1. Children will be able to stay for longer hours.
2. Parents will have ability to leave their children at the center and pick them up at their convenience.
3. There will be less traffic, as there will be less exchange of students per day throughout the work hours.
4. The overall number of children at the center will change slightly, but not significantly; hence the number of parking spaces used will not be affected. Although, parking has never presented any slightest concerns, but it will improve, as parents will not have to stay at the center, and will not use parking spaces for prolonged periods of time.
5. Adding a day-care service to the range of services we provide to our students will create additional working spaces.
6. As a business, we will financially grow and will be in a better position to contribute to the community.

In the evening and over the weekends, after the day-care hours, we would like to continue providing educational services to our students.

**Hours of Operation:**

**Day Care Rooms:** Mon – Fri 7:00 am – 6:00 pm

**Tutoring Rooms:** Mon – Fri 9:00 am – 2:00 pm and 5:00 pm – 8:00 pm

Saturday: 9:00 am – 3:00 pm

Sunday: 9:00 am – 3:00 pm

Number of Day Care Rooms: 3

Number of Tutoring Rooms: 4

Capacity of Children in Day Care Rooms: Room 1 – 16, Room 2 – 20, Room 3 – 11

Total at one time: 41

Capacity of Children in Tutoring Rooms: Room 1 – 9, Room 2 – 7, Room 3 – 5, Room 4 – 9.

Total at one time: 30

As classes are staggered throughout the day, and not all students are there at once, I think the maximum students that will be in both units at the same time (that after a few years, as we think the first year we will be at 20 students at one time, then 30) may be 50 students after a few years.

**Traffic and Parking:**

**Drop off:**

Children will come gradually in small groups. The majority of day care students will be dropped off between the hours of 7:00 – 8:45 am. Tutoring students will be dropped off from 8:45 – 12:00 pm, and from 4:45 to 7:00 pm.

During a drop off period, parents will park a car, drop off a child, and will drive away. Because the overall capacity of children for day-care rooms is small, it will not present any issues.

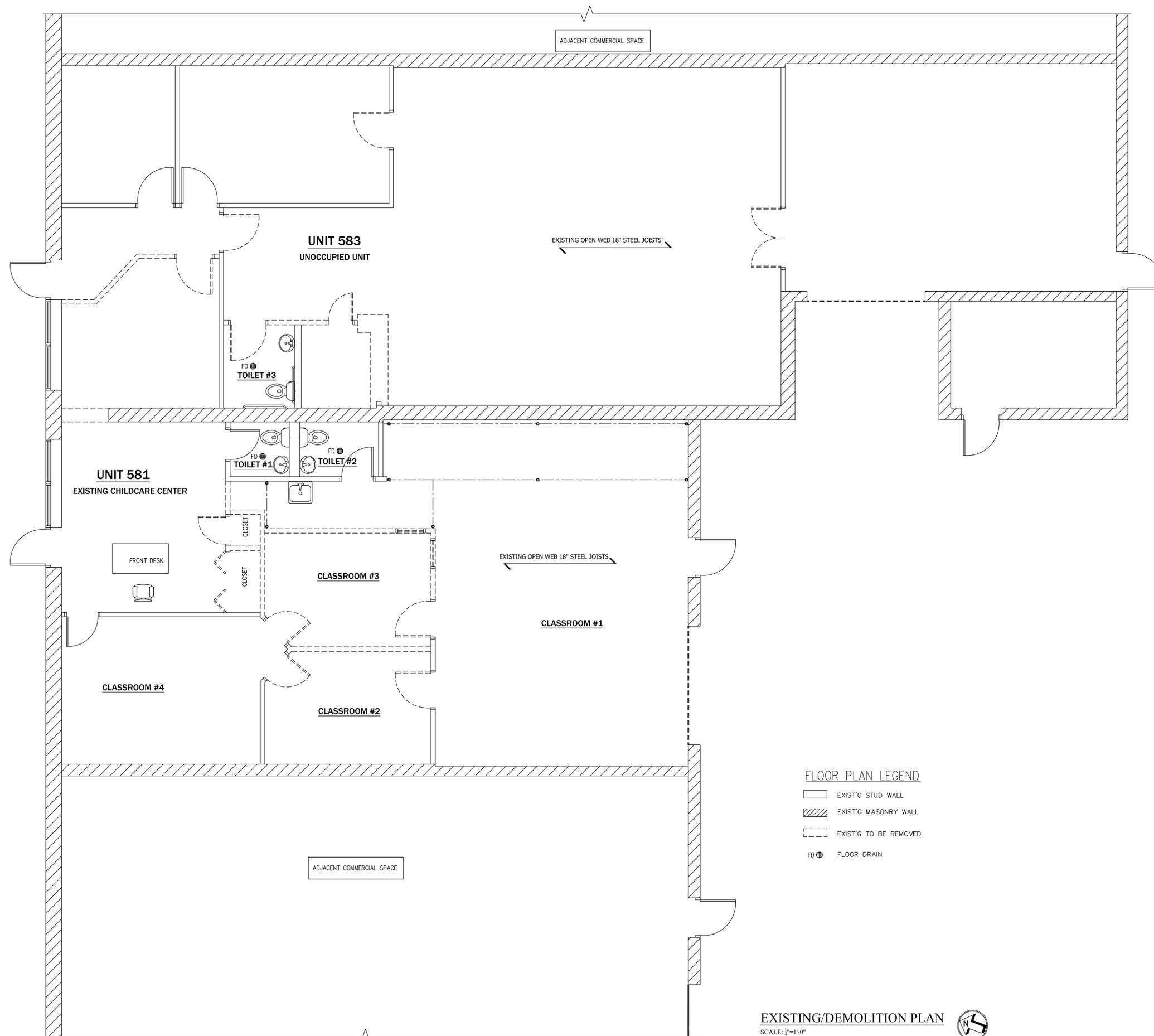
**Pick up:**

Pick up times for day care rooms will be from 1:00 – 6:00 pm. Pick up times for tutoring rooms will be 10:00 – 2:00 pm and from 6:00 – 8:00 pm.

During pick up period, parents will park their car, pick up their child, and will drive off. Since day care rooms will offer both full-time and part-time service, children will be picked up in small groups throughout the day, which will not represent any parking issues. Tutoring classes will be scheduled in such a way that bigger classes will be facilitated after day-care hours, and such pick up will not present any issues, and will not be different from what it is now.

I will be glad to answer any questions that may arise.

Thank you so much.  
Olga Khamichonak



**EXISTING/DEMOLITION PLAN**  
SCALE: 1/4"=1'-0"



**ERR Design**  
 GEORGE W. SIMOULIS  
 ARCHITECT  
 EWA ROMANOWSKA  
 PROJECT DESIGNER  
 2360 HIGH POINT DR.  
 LINDENHURST, IL 60046  
 Tel. (847) 347-0037

**Renovate Existing & New  
 Space to Daycare Center**  
 581-583 N Wolf Rd.  
 Wheeling, IL 60090

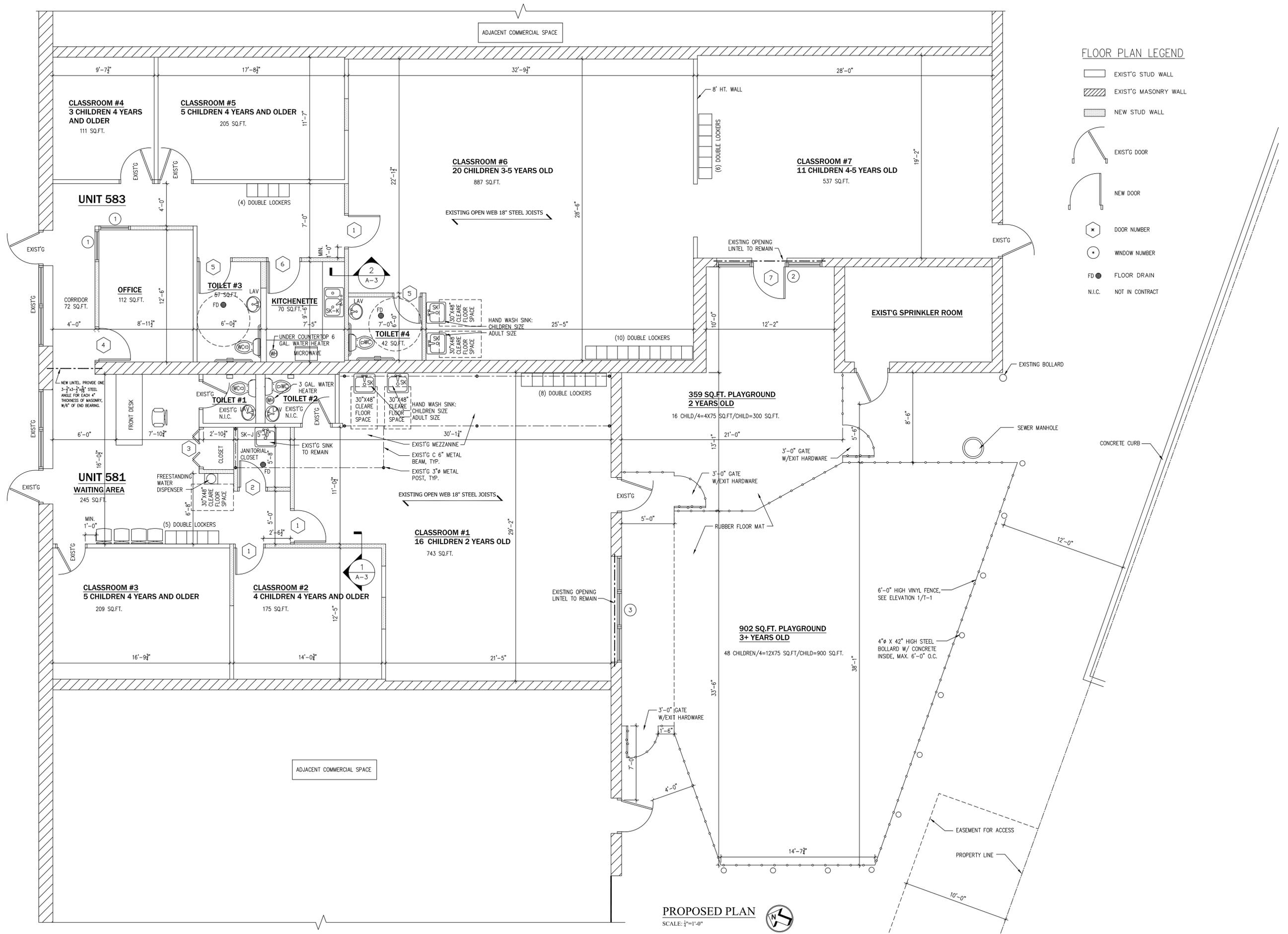
Exhibit received July 20, 2016

LICENSE EXP. 11/30/16

FOR PERMIT  
 DATE: 07-18-2016

CORRECTION  
 DATE:

**A-1**



**FLOOR PLAN LEGEND**

- EXIST'G STUD WALL
- EXIST'G MASONRY WALL
- NEW STUD WALL
- EXIST'G DOOR
- NEW DOOR
- DOOR NUMBER
- WINDOW NUMBER
- FLOOR DRAIN
- NOT IN CONTRACT

**PROPOSED PLAN**  
SCALE: 1/4"=1'-0"

**ERR Design**  
EWA ROMANOWSKA  
PROJECT DESIGNER  
GEORGE W. SIMOULIS  
ARCHITECT  
2360 HIGH POINT DR.  
LINDENHURST, IL 60046  
Tel. (847) 347-0037

**Renovate Existing & New  
Space to Daycare Center**  
581-583 N Wolf Rd.  
Wheeling, IL 60090

Exhibit received July 20, 2016

LICENSE EXP. 11/30/16

FOR PERMIT  
DATE: 07-18-2016

CORRECTION  
DATE:

**A-2**

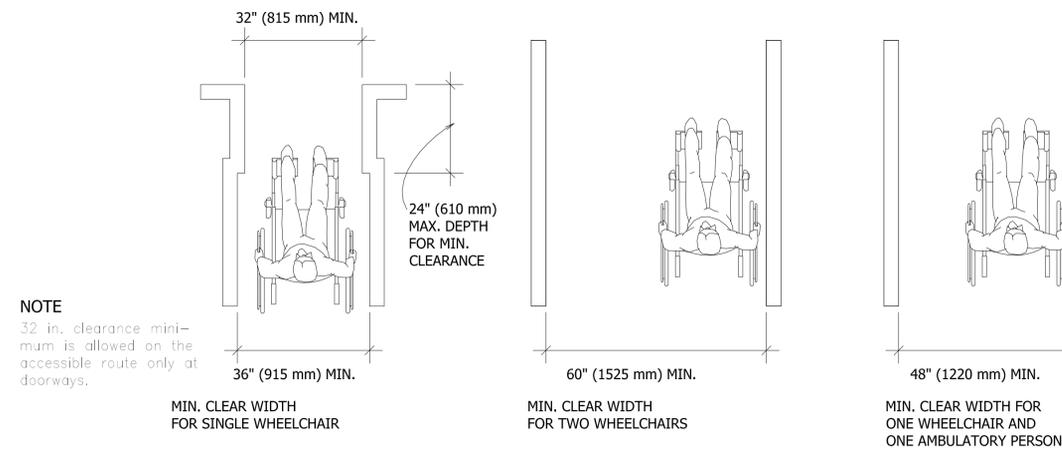
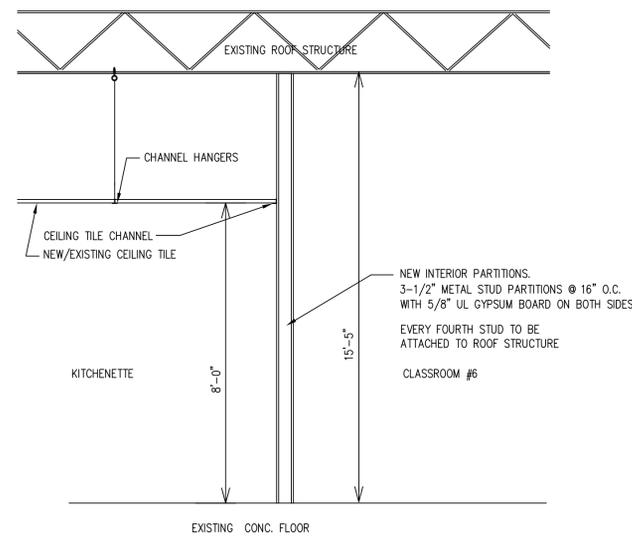
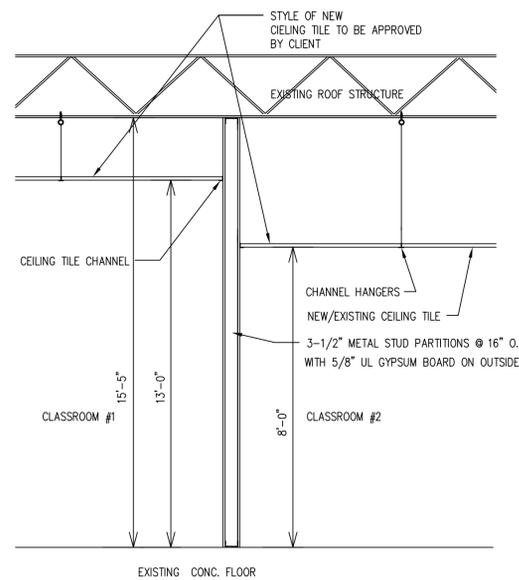
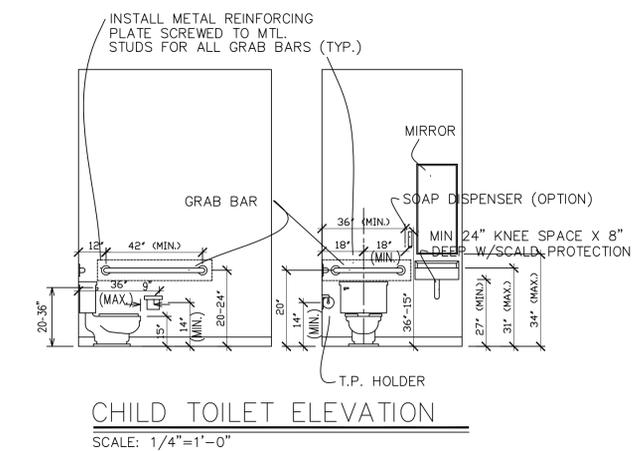
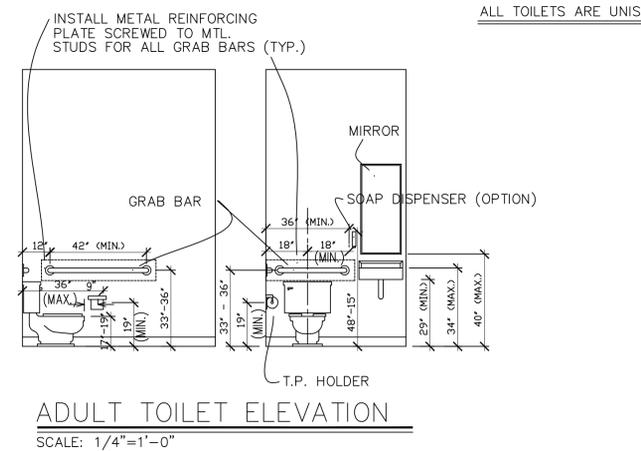
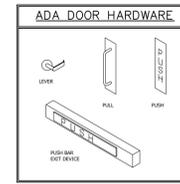
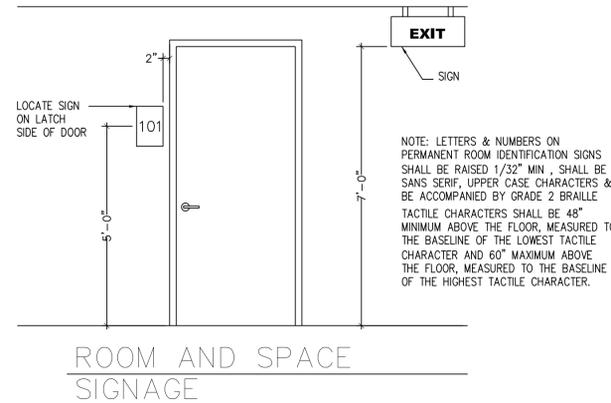
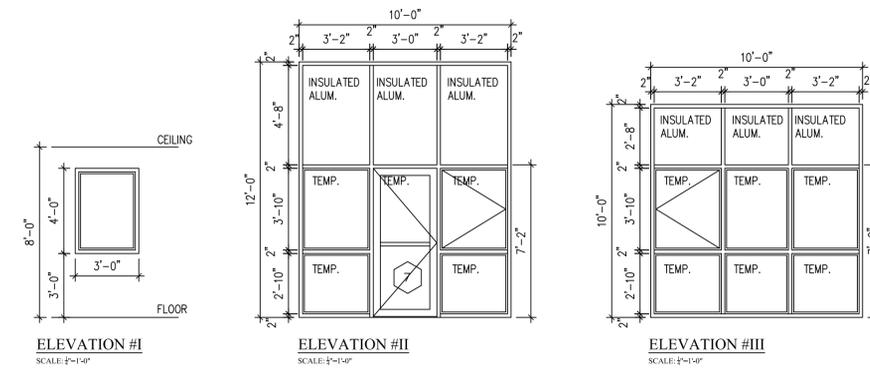


DOOR SCHEDULE						
DOOR No.	SIZE	QTY.	MATERIAL		REMARKS	
			DOOR	FRAME		
1	3'-0" x 6'-10" x 1 3/4"	3	WOOD	WOOD	ADA, SOLID CORE (S.C.) LEVER HANDLE	
2	3'-0" x 6'-10" x 1 3/4"	1	WOOD	WOOD	LEVER HANDLE, LOCKSET	
3	4'-0" x 6'-10" x 1 3/4"	1	WOOD	WOOD	BI-FOLD, DUMMY KNOB	
4	3'-0" x 6'-10" x 1 3/4"	1	WOOD	WOOD	ADA, S.C. LEVER HANDLE, PRIVACY LOCK @ OFFICE	
5	3'-0" x 6'-10" x 1 3/4"	1	WOOD	WOOD	ADA, S.C. LEVER HANDLE, PRIVACY LOCK @ TOILET	
6	3'-0" x 6'-10" x 1 3/4"	1	WOOD	WOOD	ADA, LEVER HANDLE, KEYLESS	
7	3'-0" x 6'-10" x 1 3/4"	1	GLASS	ALUM.	CLOSER, UNIT LOCKSET, PANIC HARDWARE W/PULL ON REVERSE, ADA, SEE ELEVATION #1	

**DOOR SCHEDULE NOTES:**

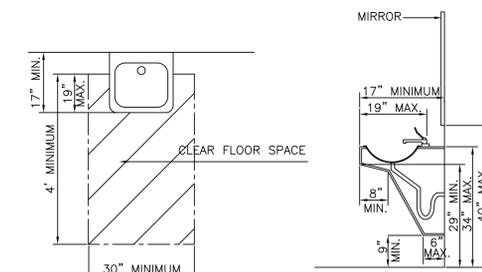
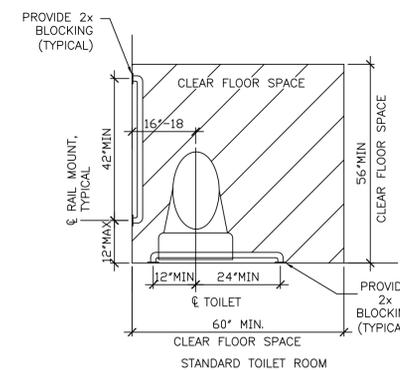
- VERIFY THAT ALL EXISTING EGRESS DOORS ARE OPERABLE AND KEYLESS FROM THE SIDE OF WHICH EGRESS IS MADE.
- VERIFY ALL EXISTING DOOR HARDWARE IN FIELD.
- DOOR HANDLES, PULLS, LATCHES, LOCKS AND OTHER OPERATING DEVICES SHALL BE AT A MAX. HEIGHT OF 48" A.F.F. THE OPERATING DEVICES SHALL BE CAPABLE OF OPERATION WITH ONE HAND AND SHALL NOT REQUIRE TIGHT GRASPING, TIGHT PINCHING OR TWISTING OF THE WRIST TO OPERATE.
- THE MAXIMUM FORCE FOR PUSHING OR PULLING OPEN A DOOR SHALL BE 5 LBF.

WINDOW SCHEDULE					
WINDOW No.	SIZE	QTY.	FINISH	TYPE	REMARKS
1	3'-0"x4'-0"	1	WOOD	PICTURE	ELEVATION #1
2	10'-0"x12'-0"	1	ALUM.	STOREFRONT	ELEVATION #II
3	10'-0"x10'-0"	2	ALUM.	STOREFRONT	ELEVATION #III



**NOTE**

32 in. clearance minimum is allowed on the accessible route only at doorways.



**ADA CLEAR SPACE REQUIREMENTS**

SCALE: 1/2"=1'-0"

**1 WALL SECTION**  
SCALE: N.T.S.

**2 WALL SECTION**  
SCALE: N.T.S.

**ERR Design**  
EWA ROMANOWSKA  
PROJECT DESIGNER  
GEORGE W. SIMOULIS  
ARCHITECT  
2360 HIGH POINT DR.  
LINDENHURST IL 60046  
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**Renovate Existing & New  
Space to Daycare Center**  
581-583 N Wolf Rd.  
Wheeling, IL 60090

Exhibit received July 20, 2016

LICENSE EXP. 11/30/16

FOR PERMIT  
DATE: 07-18-2016

CORRECTION  
DATE:

**A-3**



**UNITED SURVEY SERVICE CO.**  
 CONSTRUCTION AND LAND SURVEYORS  
 8033 CHURCHILL, NILES, IL 60714  
 TEL.: (847) 581-0040  
 FAX: (847) 581-0041

**ALTA / ACSM**  
**LAND TITLE SURVEY**  
 OF

**PARCEL 1:**

THAT PART OF LOT 3 (EXCEPT PART OF SAID LOT 3 FALLING IN LOT 2 OF OWNERS' SUBDIVISION OF PART OF LOT 2 AND PART OF LOT 3) IN THE SUBDIVISION OF G. HECKINGER'S FARM IN THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTHERLY LINE OF WOLF ROAD EXTENSION ACCORDING TO DOCUMENT 3014370 AND LYING EAST OF THE EASTERLY LINE OF WOLF ROAD AND WEST OF A LINE DRAWN AS POINT ON THE NORTH LINE OF SAID LOT 3, 175.00 FEET WEST, AS MEASURED ON SAID NORTH LINE OF THE WESTERLY OF MILWAUKEE AVENUE TO A POINT ON THE SOUTH LINE OF SAID LOT 3, 175.00 FEET WEST, AS MEASURED ON SAID SOUTH LINE OF THE WESTERLY LINE OF MILWAUKEE AVENUE (EXCEPTING THEREFROM THAT PART OF SAID LOT 3 IN G. HECKINGER'S FARM LYING SOUTH OF THE NORTH LINE OF LOT 5 IN SAID OWNERS' SUBDIVISION), IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

THAT PART OF LOT 2, LYING SOUTH OF SAID SOUTHERLY LINE OF WOLF ROAD EXTENSION IN OWNERS' SUBDIVISION OF PART OF LOTS 2 AND 3 IN SAID SUBDIVISION OF G. HECKINGER'S FARM IN SECTION 2, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

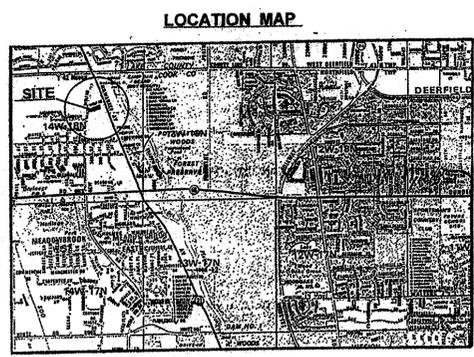
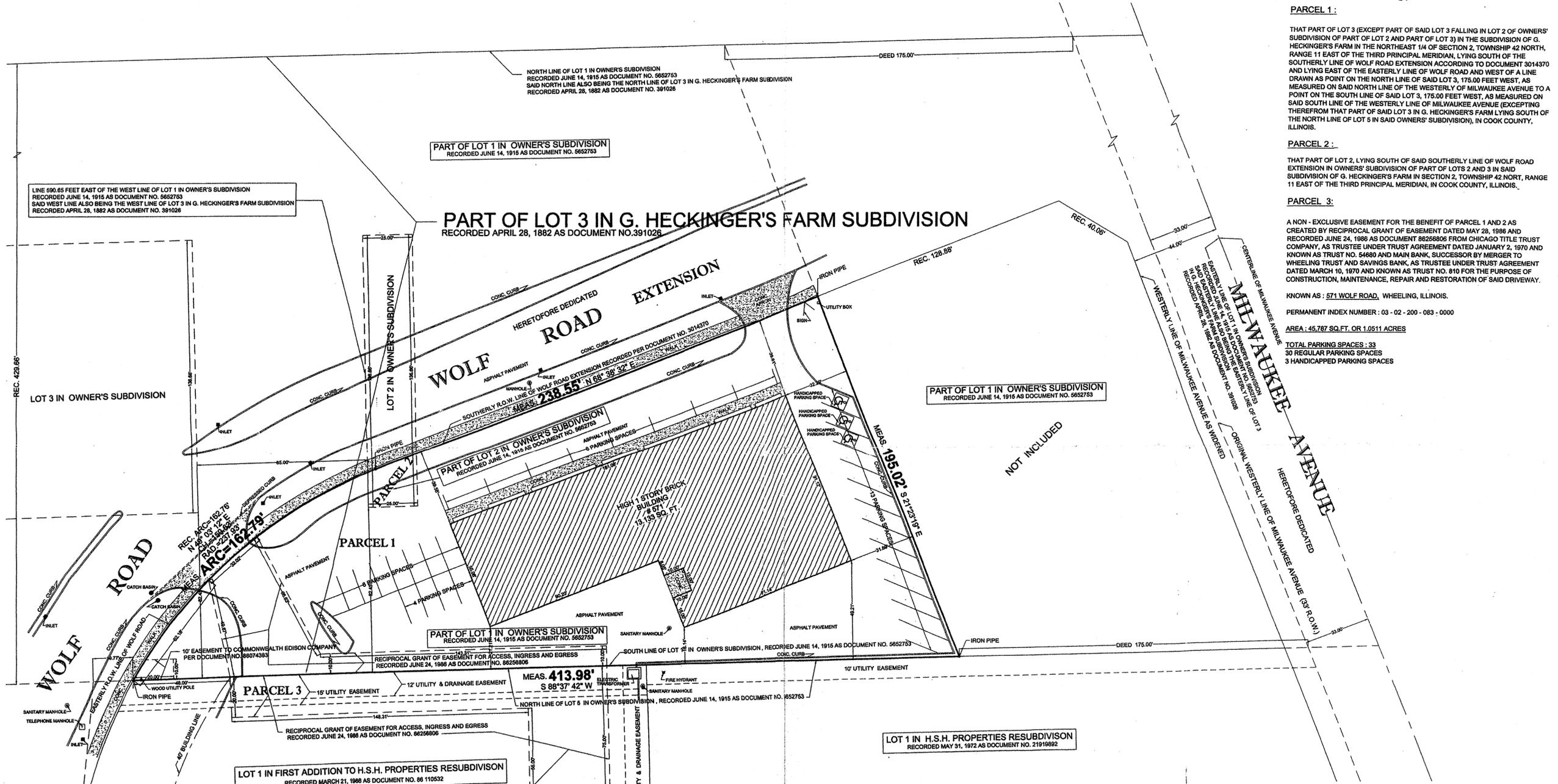
A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AND 2 AS CREATED BY RECIPROCAL GRANT OF EASEMENT DATED MAY 28, 1986 AND RECORDED JUNE 24, 1986 AS DOCUMENT 86256806 FROM CHICAGO TITLE TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 2, 1970 AND KNOWN AS TRUST NO. 54680 AND MAIN BANK, SUCCESSOR BY MERGER TO WHEELING TRUST AND SAVINGS BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 10, 1970 AND KNOWN AS TRUST NO. 810 FOR THE PURPOSE OF CONSTRUCTION, MAINTENANCE, REPAIR AND RESTORATION OF SAID DRIVEWAY.

KNOWN AS: 571 WOLF ROAD, WHEELING, ILLINOIS.

PERMANENT INDEX NUMBER: 03-02-200-083-0000

AREA: 45,787 SQ. FT. OR 1.0511 ACRES

TOTAL PARKING SPACES: 33  
 30 REGULAR PARKING SPACES  
 3 HANDICAPPED PARKING SPACES



ORDERED BY: ROSENBLUM & VANDENBERG ASSOCIATES, P.C.	
SCALE: 1" = 20'	
DATE: FEBRUARY 6, 2001	
FILE No.:	
2001 - 6557	
DATE	REVISION
2/28/01	ADDED PARCEL 3 LEGAL DESCRIPTION

THE SUBJECT PROPERTY IS NOT IN A FLOOD HAZARD AREA, AS ESTABLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, AS SHOWN ON FLOOD INSURANCE MAP.

FLOOD ZONE: "C" - AREAS OF MINIMAL FLOODING

COMMUNITY PANEL NO.: 170173 0005 C

EFFECTIVE DATE: OCTOBER 18, 1983

- THE UNDERSIGNED CERTIFIES TO:
- CHICAGO TITLE INSURANCE COMPANY
  - FIRST NATIONAL BANK OF MORTON GROVE
  - WOLF ROAD, L.L.C.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH "MINIMUM STANDARDS DETAIL REQUIREMENTS FOR ALTA / ACSM LAND TITLE SURVEYS" JOINTLY ESTABLISHED AND ADOPTED BY ALTA, ACSM AND NSPS IN 1986, AND INCLUDES ITEMS 1, 2, 3, 4, 5, 7(a), 7(b), 8, 9, 10, 11 AND 15 OF TABLE A THEREOF PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA, NSPS AND ACSM AND IN EFFECT ON THE DATE OF THIS CERTIFICATION. UNDERSIGNED FURTHER CERTIFIES THAT THE SURVEY MEASUREMENTS WERE MADE IN ACCORDANCE WITH THE "MINIMUM ANGLE, DISTANCE, AND CLOSURE REQUIREMENTS FOR SURVEY MEASUREMENTS WHICH CONTROL LAND BOUNDARIES FOR ALTA / ACSM LAND TITLE SURVEYS".

NILES, ILLINOIS, FEBRUARY 6, A.D. 2001.

*Roy G. Laviniczak*  
 ROY G. LAVINICZAK, REGISTERED ILLINOIS LAND SURVEYOR NO. 35-2290

**VILLAGE OF WHEELING  
LEGISLATIVE COVER MEMORANDUM**

**AGENDA ITEM NO(S) #13.F**  
(To be inserted by Deputy Clerk)

**DATE OF BOARD MEETING:** August 15, 2016

**TITLE OF ITEM SUBMITTED:** An Ordinance Authorizing a First Amendment to a Redevelopment Agreement between the Village of Wheeling and Arbor IV, Inc. Regarding the Arbor Courts Apartments Comprising a Part of the Crossroads (Central Business District) TIF District

**SUBMITTED BY:** James V. Ferolo-Klein Thorpe and Jenkins

**BASIC DESCRIPTION OF ITEM:** The attached ordinance authorizes the Village President to execute a First Amendment to the Arbor Court Redevelopment Agreement that extends the time for the Developer to apply for zoning approvals and submit proof of financing to the Village from July 18, 2016 to October 31, 2016.

**EXHIBIT(S) ATTACHED:** Ordinance, First Amendment, Board Memorandum

**RECOMMENDATION:** Approval

**SUBMITTED FOR BOARD APPROVAL:** Village Manager



20 N. Wacker Drive, Ste 1660  
Chicago, Illinois 60606-2903  
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10  
Orland Park, Illinois 60462-5353  
T 708 349 3888 F 708 349 1506

**CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION**

**MEMORANDUM**

To: Board of Trustees and Village Manager, Village of Wheeling  
From: James V. Ferolo-Klein, Thorpe and Jenkins, Ltd.  
Re: Arbor Court  
Date: July 28, 2016

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**EXECUTIVE SUMMARY**

The attached First Amendment to the Arbor Court Redevelopment Agreement extends the time line to submit plans, the application for zoning approval, and proof of financing from July 18, 2016 to October 31, 2016. Project completion is due within 120 days of the receipt of all necessary Village approvals and permits.

The Redevelopment Agreement approved by the Board in April of 2016 authorizes the expenditure by the Village of \$300,000 of TIF funds to pay for the renovation of the Arbor Court apartment buildings and complex. The TIF funded renovations will follow private renovations by the owner at a cost of up to \$300,000. The TIF funded renovations will cover new windows, parking lot expansion, new railings and storm sewer improvements. All improvements will be completed per Village Code. The Developer will invest up to \$300,000 to complete the Private Improvements prior to the Village funding the TIF Improvements. The work will be done in phases as provided in the Redevelopment Agreement. In Phase I of the Private Improvements, the Developer will spend up to \$200,000 to cover the following work: new roofs, new sidewalks and tuck pointing. Once the Phase I Private Improvement work is completed, to the Village's satisfaction, the Village will fund up to \$200,000 to cover the Phase I TIF Improvements which include: parking lot expansion and new storm sewers. The Phase 2 Private Improvements include: new retaining walls, benches, awnings and bike racks. The Phase 2 TIF Improvements toward which the Village will pledge the remaining \$100,000 include new windows and railings. The Developer must obtain bids for the Private and TIF Improvements for the Village's approval prior to the work beginning.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO  
A REDEVELOPMENT AGREEMENT  
BETWEEN THE VILLAGE OF WHEELING AND  
ARBOR IV, INC. REGARDING THE  
ARBOR COURTS APARTMENTS COMPRISING A PART OF THE  
CROSSROADS (CENTRAL BUSINESS DISTRICT) TIF DISTRICT**

**BE IT ORDAINED**, by the President and Board of Trustees of the Village of Wheeling, Cook and Lake Counties, Illinois, as follows:

**SECTION 1:** The President and Board of Trustees of the Village of Wheeling (hereinafter referred to as the "VILLAGE") find as follows:

- A. The VILLAGE is a home rule municipality pursuant to Section 6 of Article VII of the Constitution of the State of Illinois.
- B. The VILLAGE is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (hereinafter referred to as the "ACT"), to finance redevelopment in accordance with the conditions and requirements set forth in the ACT.
- C. Pursuant to Ordinance Numbers 2157, 2158 and 2159, adopted May 20, 1985, as amended by Ordinance Number 3294, adopted May 18, 1998, Ordinance Number 3935, adopted January 10, 2005, and Ordinance Number 4267, adopted November 12, 2007, the VILLAGE approved a tax increment redevelopment plan and project (hereinafter referred to as the "TIF PLAN"), designated the tax increment redevelopment project area (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA"), and adopted tax increment financing relative to the VILLAGE's central business district tax increment financing district (hereinafter referred to as the "CROSSROADS TIF DISTRICT"); said CROSSROADS TIF DISTRICT being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2 attached hereto and made part hereof.
- D. Arbor IV, Inc. (hereinafter referred to as the "DEVELOPER") is the fee owner of certain real property located within the REDEVELOPMENT PROJECT AREA, (hereinafter referred to as the "DEVELOPER PARCEL").

- E. The DEVELOPER desires to rehabilitate and repair the Arbor Court Apartment Buildings within the Village with a combination of both private and public investments (the "Project").
- F. The VILLAGE and DEVELOPER entered into a REDEVELOPMENT AGREEMENT for the PROJECT on April 18, 2016.
- G. That attached hereto as EXHIBIT B and made part hereof is a FIRST AMENDMENT to REDEVELOPMENT AGREEMENT, between the DEVELOPER and the VILLAGE, that extends the time for completion of zoning approvals and the underlying PROJECT (hereinafter referred to as the "FIRST AMENDMENT").
- G. In accordance with the TIF ACT, it is in the best interest of the VILLAGE to approve the FIRST AMENDMENT.

**SECTION 2:** Based upon the foregoing, and pursuant to the TIF ACT, the FIRST AMENDMENT attached hereto as EXHIBIT B is hereby approved, and the President and Clerk of the VILLAGE be and they are hereby authorized and directed to execute a document in substantial conformity with said FIRST AMENDMENT, and they are further authorized and directed to execute and deliver such other instruments, including said FIRST AMENDMENT attached hereto as EXHIBIT B, as may be necessary or convenient to consummate said property transactions, and to carry out the terms of said FIRST AMENDMENT. The Village Manager is authorized to approve all final changes to the FIRST AMENDMENT, if necessary.

**SECTION 3:** That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016, pursuant to a roll call vote as follows:

President Argiris	_____	Trustee Papantos	_____
Trustee Brady	_____	Trustee Vito	_____
Trustee Krueger	_____	Trustee Vogel	_____
Trustee Lang	_____		

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
 Dean S. Argiris  
 Village President

**ATTEST:**

\_\_\_\_\_  
 Elaine E. Simpson  
 Village Clerk

APPROVED AS TO FORM ONLY

\_\_\_\_\_  
 Village Attorney

Published by me in pamphlet form this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
 Village Clerk

## **EXHIBIT A-1**

### **Legal Description of CROSSROADS TIF DISTRICT**

That part of Sections 2, 11 and 12 in Township 42 North, Range 11 East of the Third Principal Meridian described as follows:

Beginning at the intersection point of the south right-of-way line of Strong Avenue and the east right-of-way line of First Street; thence southerly 262.70 feet to the south line of William Zelosky's Milwaukee Avenue Addition to Wheeling; thence westerly along said south line 401.57 feet more or less to a line 619.40 feet easterly of and parallel to the centerline of Wolf Road; thence southerly along said parallel line 817.78 feet more or less to a line 400 feet south of and parallel to the north line of Lot 15 in Uptadel's Sunnyside Addition to Wheeling; thence easterly along the last described parallel line 490.0 feet to a line 1109.40 feet east of and parallel to the centerline of Wolf Road; thence southerly along the last described parallel line 117.50 feet to the north right-of-way line of Deborah Lane; thence easterly along the north right-of-way line of Deborah Lane 33.67 feet; thence southerly 82.0 feet along the easternmost right-of-way line of Deborah Lane and its extension to the northwest corner of Lot 1 in McDonald's Subdivision; thence easterly 211.0 feet along the north line of Lot 1 to the northeast corner of said Lot 1; thence southerly along the east line of Lot 1 to the north right-of-way line of Dundee Road; thence westerly along the north right-of-way line of Dundee Road to a line 385 feet west of and parallel to the west right-of-way of Wheeling Avenue; thence southerly along last described parallel line 305.50 feet to a line 272.50 feet south of and parallel to the centerline of Dundee Road; thence westerly along last described parallel line 77.57 feet to a line 461.88 feet west of and parallel to the west line of Wheeling Avenue; thence south along said parallel line 112.50 feet to a line 385 feet south of and parallel to the centerline of Dundee Road; thence easterly along said parallel line 461.88 feet more or less to the west right-of-way line of Wheeling Avenue; thence northerly along the west right-of-way line of Wheeling Avenue to a line 183 feet south of and parallel to the centerline of Dundee Road; thence easterly along the last described parallel line 424.52 feet more or less to the east right-of-way of Wille Avenue; thence southerly along the east right-of-way line of Wille Avenue to the north right-of-way line of Center Avenue; thence easterly along the north right-of-way line of Center Avenue to a line 217.0 feet southwest of and parallel to the centerline of Milwaukee Avenue; thence southeasterly along said parallel line to a point in the southeast line of Lot 12 in L. McDuffee's Subdivision; thence southwesterly 374 feet more or less to a point on the east line of Lot 22 of Wille's Addition to Wheeling 31.65 feet south of the northeast corner of said Lot 22; thence southerly along the east line of Lots 22, 23, 24, 25, 26, 27, 28 and 29 to a point on a line parallel and 33 feet north of the centerline of Highland Avenue; thence easterly 87.60 feet along the north line of Highland Avenue to the southwest corner of Lot 1 in Petan's Subdivision; thenceforth 134 feet along the west line of Lot 1 to the northwest corner of Lot 1; thence easterly 699.64 feet along a line 134.0 feet north of and parallel to the north line of Highland Avenue; thence southeasterly 130.20 feet along the northeast line of Lot 11 in Pecan's Subdivision; thence southerly 61.55 feet along the east line and its extension of Lot II in Petan's Subdivision to a line parallel and 33 feet north of the south right-of-way line of Highland Avenue; thence east along said parallel line to the easterly line extended northerly of Lots 1, 2 and 3 in Ryan's Subdivision; thence southeasterly along previously described east line of Ryan's Subdivision 221.28 feet to the southeast corner of Lot 3 in Ryan's Subdivision; thence southeasterly 75.90 feet more or less to a point 158.32 feet east of the northwest corner of Lot 42 in Mors Farm

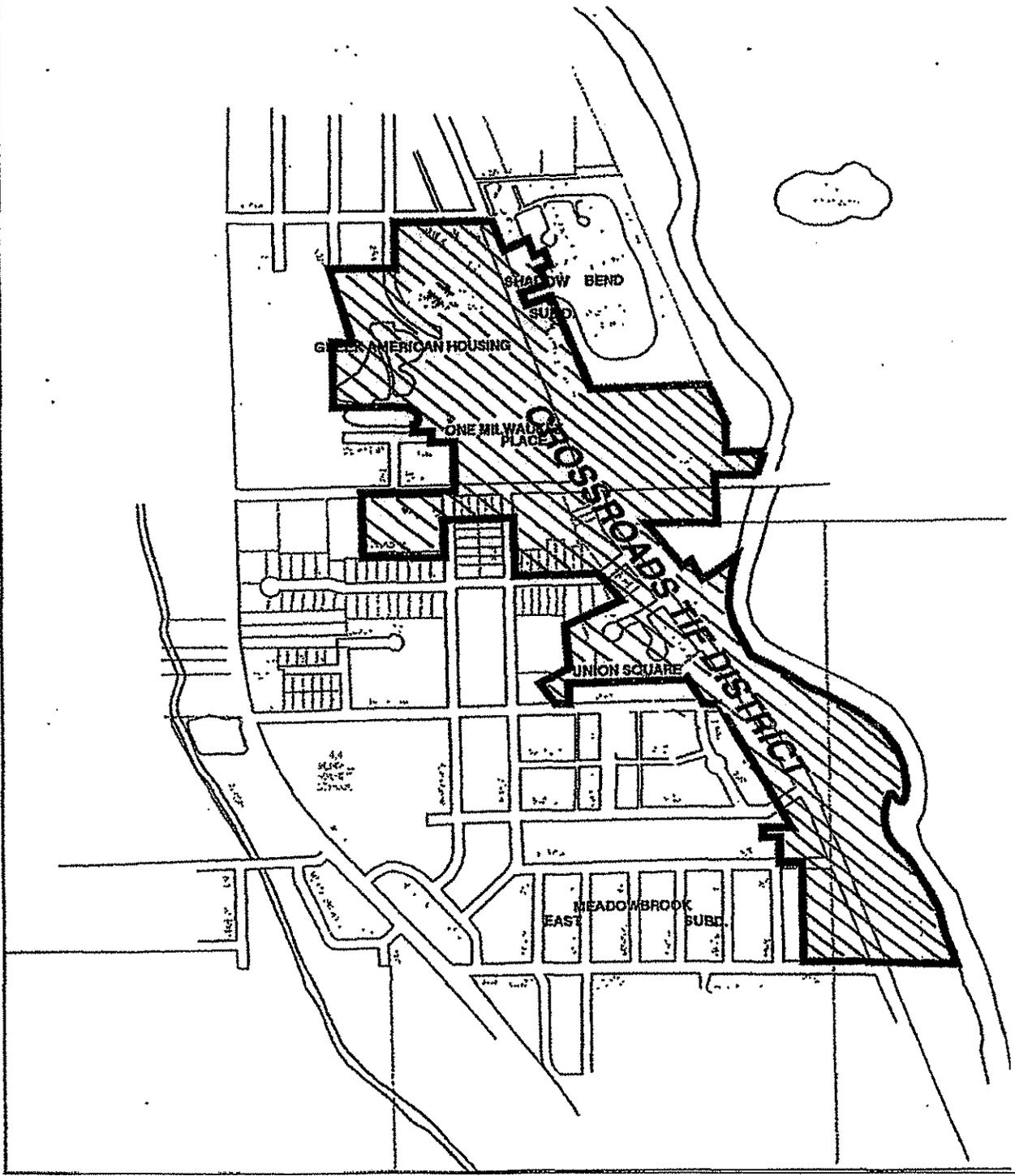
Syndicate Subdivision, Unit No. I; thence southeasterly along the east lines of Lots 42, 41, 40, 39, and 38 in Mors Farm Syndicate Unit No. 1 to the north right-of-way line of Mors Avenue; thence southerly to the northeast corner of Lot 34 in Mors Farm Syndicate Unit No. 1; thence southeasterly along the east line of said Lot 34 to its southeast corner; thence westerly along the south line of Lot 34 and its extension west to the easterly line of Lot 1 in Kay Miller's Resubdivision of Lot 78 and parts of Lots 35, 79 and 80 and vacation of Park Avenue in Mor's Farm Syndicate Subdivision Unit No. I, also part of Lot 12 in subdivision of Section 12, 42, 11; thence southerly along the east line of Lot I to its southeast corner; thence easterly along the north line of Lot 17 and 18 in Meadowbrook Unit No. 3 to the northeast corner of said Lot 18; thence southerly 143.0 feet along the east line of Lot 18 and its extension south to the centerline of East Jeffery Avenue; thence easterly along the center line of East Jeffery Avenue to a line 110 feet east of and parallel with the east right-of-way line of Park Avenue; thence southerly along said parallel line to the north right-of-way line of Manchester Drive; thence easterly along the north right-of-way line of Manchester Drive to the centerline of Milwaukee Avenue; thence southeasterly along the centerline of Milwaukee Avenue to the south line of the east half of the northwest 1/4 of Section 12, 42, 11; thence easterly along said south line to the west bank of the Des Plaines River; thence northerly and westerly along the west bank of the Des Plaines River to the northwest line and its extension of Lot 24 in County Clerk's Subdivision of parts of Sections 1, 2, 11 and 12-42-11; thence southwesterly along said northwest line to a point on said line 4.82 feet northeasterly of the northwest corner of Lot 24; thence northwesterly 229.39 feet more or less to the north line and its extension of Lot 11 in County Clerk's Subdivision; thence southwesterly 45 feet more or less along said north line of Lot 11 to the southeast corner of Lot 10 in County Clerk's Subdivision; thence northwesterly 70 feet to the northeast corner of Lot 2 in Forke's Torrens Subdivision; thence northeasterly along the extension of the northwest line of Lot 2 in Forke's Torrens Subdivision 16 feet more or less to the east right-of-way line extended of the public alley east of Milwaukee Avenue; thence northerly along the east right-of-way line of the public alley east of Milwaukee Avenue and its extension, to a line 100 feet south of and parallel to the centerline of Dundee Road; thence easterly along said parallel line to the west bank of the Des Plaines River; thence northerly along the west bank of the Des Plaines River to the south line of Lot 3 in Owner's Subdivision, also being the south line of Shadowbend Phase I and its extension; thence westerly to the southwest corner of Shadowbend Phase I; thence northerly 478.85 feet along the westerly line of Shadowbend Phase I; thence westerly along the western boundary of Shadowbend Phase I to the east right-of-way of Milwaukee Avenue; thence northwesterly along the easterly right-of-way line of Milwaukee Avenue 85.09 feet to the north line of Shadowbend Phase I; thence easterly along said northerly line to the southwest corner of Shadowbend Phase III; thence northerly along the western boundary of Shadowbend Phase III to the southernmost line of Shadowbend Phase II; thence westerly along said south line of Shadowbend Phase II to the easterly right-of-way line of Milwaukee Avenue; thence northwesterly along the easterly right-of-way of Milwaukee Avenue to the south right-of-way line of Strong Avenue extended easterly; thence westerly along said south right-of-way line of Strong Avenue and its extension to the east right-of-way line of First Street, being the point of beginning, all in Cook County, Illinois.

**Street Location:** The Crossroads (Central Business District) TIF District Redevelopment Project Area generally includes the property along both sides of Milwaukee Avenue, from Strong Avenue on the north to Manchester Drive on the south, with extensions eastward to the Des Plaines River and westward past First Street along Dundee Road.

**EXHIBIT A-2**

**Depiction of the CROSSROADS TIF DISTRICT**

(see attached)



**EXHIBIT B**

**FIRST AMENDMENT to REDEVELOPMENT AGREEMENT**

(see attached)

**EXECUTION COPY**

**FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT  
FOR THE ARBOR COURT APARTMENTS  
COMPRISING A PART OF THE CROSSROADS  
(CENTRAL BUSINESS DISTRICT) TIF DISTRICT  
OF THE VILLAGE OF WHEELING, ILLINOIS**

This First Amendment to Redevelopment Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date") by and between the Village of Wheeling, Illinois, an Illinois home rule municipal corporation (the "Village"), and Arbor IV, Inc., an Illinois limited liability company (the "Developer"). (The Village and the Developer are sometimes referred to herein individually as a "Party," and collectively as the "Parties.")

**WITNESSETH:**

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

**I. PRELIMINARY STATEMENTS**

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.
- B. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.
- C. Pursuant to Ordinance Numbers 2157, 2158 and 2159, adopted May 20, 1985, as amended by Ordinance Number 3294, adopted May 18, 1998,

Ordinance Number 3935, adopted January 10, 2005, and Ordinance Number 4267, adopted November 12, 2007, the Village approved a tax increment redevelopment plan and project (the "TIF Plan"), designated the tax increment redevelopment project area (the "Redevelopment Project Area"), and adopted tax increment financing relative to the Village's central business district tax increment financing district (the "Crossroads TIF District").

- D. The Developer is the fee owner of certain real property located within the Redevelopment Project Area (the "Property").
- E. The Property consists of two three story buildings and seven two story garden level buildings having 9 separate PIN numbers and 13 mailing addresses. The property consists of 78 residential rental units, 1, 2 and 3 bedrooms.
- F. The Village and the Developer, on April 18, 2016, entered into a Redevelopment Agreement ("Redevelopment Agreement") for the improvement of the Property with TIF assistance to complete a part of the improvements.
- G. The Agreement required that certain timelines be met including that all requisite zoning approvals be applied for on or before July 18, 2016. The Developer has been unable to meet this timeline and is requesting a ninety (90) day extension to do so.

II. **FIRST AMENDMENT-**

- 1. Section VI(D) of the Redevelopment Agreement is amended to read as follows:

On or before October 31, 2016, Developer shall have applied for (and made all submittal requirements in conformance with Village codes and ordinances) all (or such staged or partial permits as contemplated herein) requisite zoning approvals building permits, curb-cut permits and other necessary land use and construction approvals as shall be necessary or appropriate to construct the Project in accordance with the Village Code.

- 2. Section VI(E) of the Redevelopment Agreement is amended to read as follows:

As a prerequisite to obtaining any building permits for the Project or for any particular phase of the Project, the Developer, on or before

October 31, 2016, shall demonstrate to the Village's satisfaction that Developer has sufficient funds and financing plan to pay the costs of the Project. The Developer shall provide the Village with evidence of its financial condition, including financial statements for the most recent fiscal year, evidence of private equity and construction loan financing necessary to complete each Phase of the Private Improvements, UCC, tax and judgment searches, a certificate of insurance and other customary financial documents. To evidence that fact, Developer may obtain a term sheet, in form and content that is typical in the industry and is satisfactory to the Village, for construction financing for the Project or portion thereof, and shall furnish a complete copy of such terms sheet to the Village. The Village's approval shall not be unreasonably withheld.

The Village shall be named as a beneficiary on all performance, labor, and material bonds and completion guarantees relating to TIF Improvements being constructed by the Developer and/or improvements in any street right-of-way and/or required by Developer's lender or the Developer or any other entity (including the Village) providing labor and/or material relative to the Project or any portion thereof. Duplicate originals of said bonds and/or completion guarantees naming the Village as a beneficiary shall be provided to the Village within sixty (60) days of the Developer having obtained a commitment for financing as stated herein. Alternatively, Developer may in its discretion submit written evidence to the Village in a form and substance satisfactory to the Village, that Developer has access to sufficient funds to pay the cost of the Project, without obtaining third party financing. This proof may also be a personal financial statement of the Developer or its principals. The Village's approval shall not be unreasonably withheld. If Developer fails to meet any of the requirements of this subsection, the Village shall be relieved of its obligations under this Agreement (subject to the Village's compliance with the default and cure provisions set forth below).

**III. Redevelopment Agreement Original Terms**-All terms of the Redevelopment Agreement not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

**Village of Wheeling**,  
an Illinois home rule municipal corporation

By: \_\_\_\_\_  
Dean S. Argiris, Village President

**ATTEST:**

By: \_\_\_\_\_  
Elaine E. Simpson, Village Clerk

**Arbor IV LLC**,  
an Illinois limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, Its Managing Member

**ATTEST:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Illinois        )  
                                  ) SS  
County of Cook         )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Dean S. Argiris and Elaine E. Simpson, personally known to me to be the Village President and Village Clerk of the Village of Wheeling, and 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 severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

State of Illinois            )  
                                      ) SS  
County of Cook             )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and 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 severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public