

ORDINANCE NO. 18-33

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND 811 MAIN ST APTS LLC

WHEREAS, the Village of East Dundee ("Village") approved a "Development Agreement By And Between The Village Of East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC (Summit School Apartments)" on July 9, 2018 ("Agreement") by and between the Village and 811 Main St Apts LLC, an Illinois limited liability company ("Developer"); and

WHEREAS, the Village owns a portion of the real property commonly known as Summit School, 611 East Main Street, East Dundee, Illinois ("Adjacent Property"), which is adjacent to the "Subject Property," as defined in the Agreement; and

WHEREAS, the Village desires to allow the Developer to use and occupy two (2) classroom spaces owned by the Village within the Adjacent Property ("Licensed Premises") for construction office purposes during the construction of the "Project," as defined in the Agreement on the terms and conditions set forth in the "First Amendment To Development Agreement By And Between The Village Of East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC (Summit School Apartments)" attached hereto as EXHIBIT A and made part hereof ("Amendment"); and

WHEREAS, the Developer desires to use and occupy the Licensed Premises on the terms set forth in the Amendment; and

WHEREAS, the President and Board of Trustees finds that the public's health, safety and welfare are best served by the Village entering into the Amendment;

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

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

SECTION 2: Approval. The Amendment is hereby approved, and the President and Clerk of the Village are hereby authorized and directed to execute and deliver such other instruments, including the Amendment, as may be necessary or convenient to consummate said property transaction, and as may be necessary or convenient to carry out the terms of the Amendment.

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

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

SECTION 5: Repeal. That all ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

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

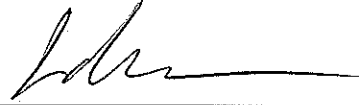
PASSED this 10th day of September, 2018 pursuant to a roll call vote as follows:

AYES: Trustees Selep, Wood, Hall and Andresen

NAYES: Trustee Lynam

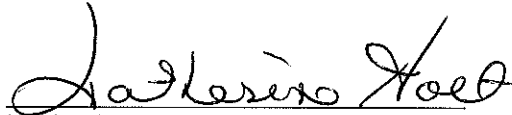
ABSENT: Trustee Mahony

APPROVED by me this 10th day of September, 2018.



Lael Miller, Village President

ATTEST:



Katherine Holt, Village Clerk

Published in pamphlet form this 11th day of September, 2018, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on September 11, 2018.

EXHIBIT A

**First Amendment To Development Agreement By And Between The Village Of
East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC
(Summit School Apartments)**

(attached)

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN
THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS
AND 811 MAIN ST APTS LLC
(SUMMIT SCHOOL APARTMENTS)**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND 811 MAIN ST APTS LLC (SUMMIT SCHOOL APARTMENTS) ("Amendment") is entered into this 10th day of Sep, 2018 ("Effective Date"), by and between the Village of East Dundee, Illinois, an Illinois municipal corporation ("Village"), and 811 Main St Apts LLC, an Illinois limited liability company ("Developer").

PREAMBLES

WHEREAS, the Village and the Developer entered into a "Development Agreement By And Between The Village Of East Dundee, Cook And Kane Counties, Illinois And 811 Main St Apts LLC (Summit School Apartments)" on July 9, 2018 ("Agreement"), regarding the conveyance and development of the "Subject Property" as defined in the Agreement; and

WHEREAS, the Village owns a portion of the real property commonly known as Summit School, 611 East Main Street, East Dundee, Illinois, as legally described and depicted in **EXHIBIT A**, attached hereto and made a part hereof ("Adjacent Property"), which is adjacent to the Subject Property; and

WHEREAS, the Village desires to allow the Developer to use and occupy two (2) classroom spaces owned by the Village within the Adjacent Property ("Licensed Premises") for construction office purposes during the construction of the "Project," as defined in the Agreement, on the terms and conditions set forth in this Amendment; and

WHEREAS, the Developer desires to use and occupy the Licensed Premises on the terms and conditions set forth in this Amendment; and

WHEREAS, it is in the best interests of the Village and the Developer to amend the Agreement to allow the Developer to use the Licensed Premises on the terms set forth in this Amendment;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Village and the Developer, the parties hereto agree as follows:

Section 1. Incorporation of Recitals

The parties agree that all of the recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

Section 2. Amendment to Agreement

The Agreement is hereby amended as follows:


(a) By adding the following new Section 2(o), which shall read in its entirety as follows:

(o) The Developer shall enter into and comply with the "License Agreement For The Use And Occupancy Of A Portion Of The Summit School, 611 East Main Street, East Dundee, Illinois," attached hereto as **EXHIBIT E** and made a part hereof ("License Agreement").

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

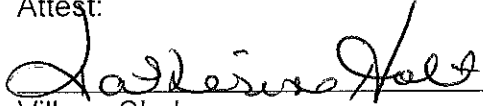
VILLAGE:

Village of East Dundee, an Illinois municipal corporation

By: 

President

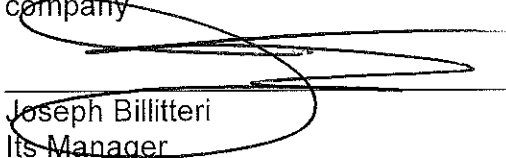
Attest:



Village Clerk

DEVELOPER:

811 Main St Apts LLC, an Illinois limited liability company

By: 

Joseph Billitteri
Its Manager

Attest:

(b) By adding the following new Section 3(f), which shall read in its entirety as follows:

(f) Enter into and comply with the License Agreement.

Section 3. Continuing Effect

All parts of the Agreement not amended herein shall remain in full force and effect. In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.

Section 4. Effective Date

The Effective Date of this Amendment shall be the date on which the last of the parties executes this Amendment.

[THIS SPACE INTENTIONALLY LEFT BLANK]

EXHIBIT E

**License Agreement For The Use And Occupancy Of A Portion Of The Summit
School, 611 East Main Street, East Dundee, Illinois**

(attached)

**LICENSE AGREEMENT FOR THE USE AND OCCUPANCY OF A PORTION OF THE
SUMMIT SCHOOL, 611 EAST MAIN STREET, EAST DUNDEE, ILLINOIS**

This **LICENSE AGREEMENT FOR THE USE AND OCCUPANCY OF A
PORTION OF THE SUMMIT SCHOOL, 611 EAST MAIN STREET, EAST DUNDEE,
ILLINOIS** ("Agreement") is entered into this 10th day of Sep, 2018 ("Effective
Date") by and between the Village of East Dundee, an Illinois home rule municipal
corporation ("Village") and 811 Main St Apts LLC, an Illinois limited liability company
("Licensee"). The Village and the Licensee are sometimes individually referred to herein
as a "Party" and collectively referred to as the "Parties."

WITNESSETH

WHEREAS, the Village owns a portion of the real property commonly known as
Summit School, 611 East Main Street, East Dundee, Illinois, as legally described and
depicted in **EXHIBIT A** attached hereto and made a part hereof ("Subject Property");
and

WHEREAS, the Village desires to allow the Licensee to use and occupy two (2)
classroom spaces owned by the Village within the Subject Property, as depicted in
EXHIBIT B attached hereto and made a part hereof ("Licensed Premises"), on the
terms and conditions set forth in this Agreement; and

WHEREAS, the Licensee desires to use and occupy the Licensed Premises on
the terms and conditions set forth in this Agreement; and

WHEREAS, it is in the best interests of the Parties to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants,
representations and promises contained herein, and other good and valuable
consideration, the receipt and sufficiency of which is hereby acknowledged by the

Parties, the Parties hereto agree as follows:

SECTION 1: INCORPORATION OF PREAMBLES

The preambles hereto, as set forth above, are incorporated herein by reference and are made part hereof.

SECTION 2: LICENSE AND LIMITATIONS

2.1 Grant of License. The Village hereby grants to the Licensee a revocable license ("License") to occupy and use, subject to all of the terms, conditions and restrictions contained herein, the Licensed Premises as a construction office. The Licensee shall pay the Village a one-time License fee of Ten and No/100 Dollars (\$10.00).

2.2 Scope and Limitations of License. The License granted herein shall permit the Licensee to use and occupy the Licensed Premises for the uses set forth in Section 2.1 above, subject to the restrictions and requirements imposed by this Agreement, including, but not limited to, the following restrictions and requirements:

- A. At its sole cost and expense, the Licensee shall obtain all permits and shall make all necessary improvements (electrical, HVAC, etc.) to the Licensed Premises in order to bring the Licensed Premises in to compliance with all applicable Village building, fire and life safety codes ("Improvements"). It shall be the Licensee's responsibility to ensure that the Licensed Premises remains in compliance with the Village Code, the Village Zoning Ordinance, and all federal, State of Illinois, and other local laws, ordinances, regulations, rules and directives at all times that the Licensee occupies the Licensed Premises. All Improvements must be pre-approved by the Village Administrator. All Improvements shall be owned by the Village.
- B. At its sole cost and expense, the Licensee shall be responsible for all maintenance and upkeep of the Licensed Premises.
- C. Any maintenance to the Licensed Premises provided by the Village, in its sole discretion, shall be performed at a level approved by the Village Administrator. Any such maintenance shall be minor and have a minimal impact on Village operations.
- D. The Licensee shall refrain from using the Licensed Premises in any unreasonable, unsafe and/or illegal manner, and shall at all times use the Licensed Premises in full compliance with all applicable provisions of this Agreement, the Village Code, the Village Zoning Ordinance, and all federal, State of Illinois, and other local laws, ordinances, regulations, rules and directives.

- E. The footprint of the Licensed Premises within the Subject Property may be expanded at the request of the Licensee upon the approval of the Village Administrator, which approval may be granted or withheld in the Village Administrator's sole discretion. Any expansion of the Licensed Premises shall be incorporated into this Agreement by attaching an amended **Exhibit B** to this Agreement, which shall not require further approval by the corporate authorities of the Parties.

2.3 Term of License. This Agreement shall remain in effect until it is terminated by agreement of the Village and the Licensee, or until it is terminated as set forth in Section 3 below. The License is for the temporary permissive use of the Licensed Premises only and creates no tenancy, property and/or other interest in the Licensed Premises on the part of, or for the benefit of, the Licensee or any user of the Licensed Premises.

2.4 Non-Assignability of License. The License is personal and shall not be assigned and/or transferred to any other person or entity without the expressed written consent of the Village, which consent may be withheld in the Village's sole and absolute discretion.

SECTION 3: TERMINATION

3.1 Termination. This Agreement may be terminated by either Party by providing thirty (30) days written notice to the other Party. If this Agreement is terminated by a Party, the other Party shall have no obligation to reimburse the Party terminating this Agreement for the cost and expense of any Improvements. Upon termination the Licensee shall vacate the Licensed Premises.

3.2 Default. In the event that a Party fails to perform under this Agreement, the other Party shall notify the non-performing Party of the default, in writing, setting forth the nature of the default. The Party that has failed to perform shall have five (5) days after receipt of the notice to correct such failure or, in the event said correction cannot be accomplished within said five (5) day period, take substantial steps toward correcting the failure within said five (5) day period, with the correction to be made within fifteen (15) days of the aforementioned notice. If, after fifteen (15) days, the default has not been corrected, or if after five (5) days substantial steps have not been taken to correct the default, with the default being corrected within the aforementioned fifteen (15) day period, the Party serving the notice may then declare this Agreement terminated. If any legal action is instituted to enforce this Agreement or any part of this Agreement by the Village, the Village shall be entitled to recover reasonable attorney's fees and court costs if it prevails in the legal action.

SECTION 4: NOTICES

4.1 Delivery and Effective Date. Notice or other writings which either Party is required to, or may wish to, serve upon the other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(A) If to the Village:

Village Administrator
Village of East Dundee
120 Barrington Avenue
East Dundee, Illinois 60118

With an additional
copy to:

Gregory T. Smith
Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606

(B) If to the Licensee:

811 Main St. Apts. LLC
201 Penny Ave. Apt. 2d
East Dundee, IL 60018

With an additional
copy to:

RothMelei
454 West Virginia Street
Crystal Lake, Illinois 60014
Attn: Samuel S. Melei

or to such other address, or additional parties, as either Party may from time to time designate in a written notice to the other Party. Service by certified mail shall be deemed given on the third day following the mailing of said notice, and service by personal delivery shall be deemed given upon actual delivery.

SECTION 5: MISCELLANEOUS PROVISIONS

5.1 Indemnification and Insurance. The Licensee covenants and agrees to indemnify, defend and hold harmless the Village and its elected officials, officers, agents, employees and volunteers from and against any and all claims, losses, lawsuits, actions, injuries, accidents, costs and/or expenses (including reasonable attorneys'

fees) for damages to person(s) or property arising out of or in relation to the acts or omissions of the Licensee or the Licensee's officers, agents, contractors, employees or volunteers, relating in any way to the use, maintenance or repair of the Licensed Premises. In the event of any claims, actions, suits, damages, costs, expenses and liabilities, the Village shall have the right to counsel of its choice and the right to direct its own defense. The Licensee shall maintain liability insurance coverage for the Licensed Premises from the commencement of the term of this Agreement until its termination. The Village shall have the right to approve the coverage, coverage limits and carrier of the liability insurance, which approval shall not be unreasonably withheld. The Licensee shall provide the Village with a certificate of insurance describing such insurance coverage within thirty (30) days after the commencement of the term of this Agreement, and shall update same, as necessary thereafter, during the term of this Agreement. Such insurance coverage shall name the Village, its elected officials, officers, agents, employees and volunteers as additional insureds, and shall provide that the insurance coverage provided by the Licensee shall be primary and non-contributory to any insurance coverage of the Village. Failure of the Licensee to provide such insurance certificate, within ten (10) business days after notice from the Village of the Licensee's failure to provide a current certificate of insurance, shall terminate this Agreement without further action by either Party.

5.2 Severability of Agreement. The terms and conditions set forth in this Agreement shall be severable. In the event that any of the provisions contained herein are declared by a court of competent jurisdiction to be inconsistent with federal, State of Illinois or local law, or otherwise unenforceable for any reason whatsoever, the remaining provisions shall remain in full force and effect as to the Parties.

5.3 No Waiver. Nothing contained in this Agreement shall constitute a waiver of any privileges, defenses or immunities which the Village may have under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*, with respect to any claim brought by a third party. The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, by any other Party, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

5.4 Choice of Law / Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, and any court proceedings between the Parties hereto shall be brought in Kane County, Illinois.

5.5 Force Majeure. If the performance by any Party hereunder is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances shall only include acts of God, war, strikes or similar acts of *force majeure*), the time for such performance shall be extended by the amount of time of such delay.

5.6 No Third Party Beneficiaries. This Agreement is not intended to benefit any person, entity or municipality not a Party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party hereto.


5.7 Counterparts. This Agreement may be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

5.8 Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior understanding or written or oral agreements between them regarding the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

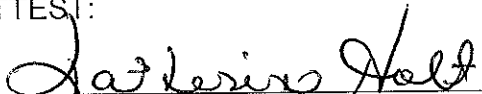
5.9 Effective Date. This Agreement shall be deemed dated and become effective on the date on which the last of the Parties executes this Agreement, which date shall be inserted on page 1 of this Agreement.

IN WITNESS WHEREOF, the Village, pursuant to authority granted by the adoption of a Motion/Resolution by its Board of Trustees, has caused this Agreement to be executed by its President and attested by its Clerk; and the Licensee, pursuant its authority, has caused this Agreement to be signed by its Supervisor and attested by its Clerk.

VILLAGE OF EAST DUNDEE


By: 
Lael Miller, President

ATTEST:


Katherine Holt, Village Clerk

Dated: September 10, 2018

811 MAIN ST. APTS. LLC

By: 
Joseph Billitteri, Manager

ATTEST:

Dated: September 11, 2018

EXHIBIT A

Legal Description and Depiction of the Subject Property

Legal Description:

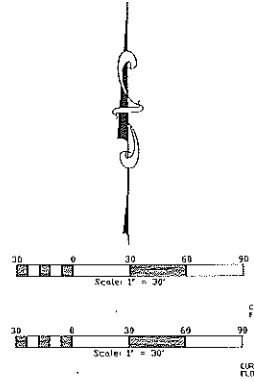
P.I.N.:

Common Address: 611 East Main Street, East Dundee, Illinois 60118

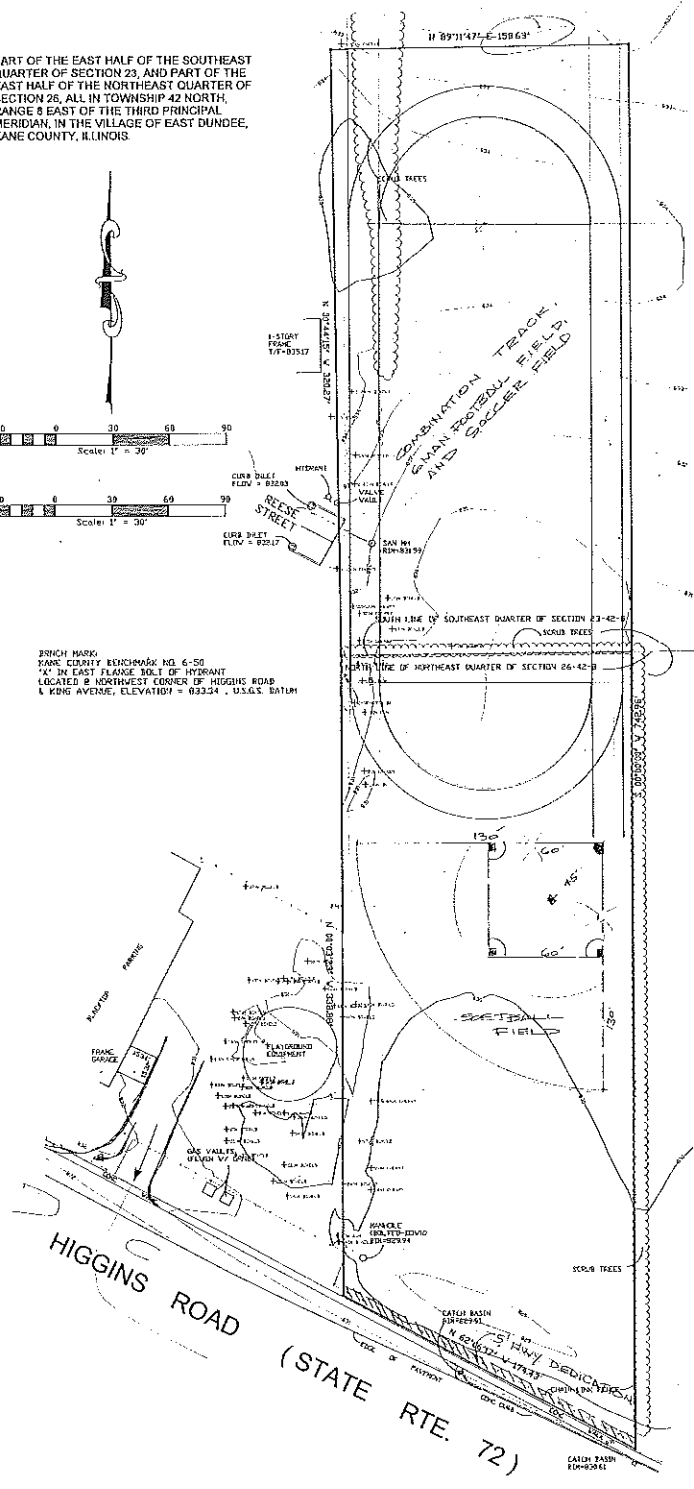
[Insert Map of Subject Property]

Alan J. Coulson, P.C.
PROFESSIONAL LAND SURVEYORS
PLAT OF SURVEY

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, AND PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 26, ALL IN TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.



BRICK MARK:
 YARD CERRY BENCHMARK NO. 6-50
 'X' IN EAST FLANGE SIDE OF HYDRANT
 LOCATED @ NORTHWEST CORNER OF HIGGINS ROAD
 & KING AVENUE, ELEVATION = 832.34, U.S.G.S. DATUM



Scale: 1"=30'
 Order: Summary Sheet
 Buyer: J. Z. L. O.
 Date: 1/11/02
 Job: 253, 263 P.
 City: Rock, P. 424-0-2

STATE OF ILLINOIS
 COUNTY OF KANE
 ALAN J. COULSON, P.C.
 Surveyor

This is to certify that the plat herein drawn correctly reflects the above described property.

Any discrepancy in measurement should be promptly reported to surveyor for explanation or correction.
 WE DO NOT CERTIFY AS TO LOCATION OF UNDERGROUND UTILITIES OR UNDERGROUND IMPROVEMENTS.

THIS SURVEY IS VALID ONLY WITH EMBOSSED SEAL.

ALAN J. COULSON, P.C.
 PROFESSIONAL LAND SURVEYORS,
 ILLINOIS - WISCONSIN
 205 W. MAIN ST.
 W. DUNDEE, ILL. 60118 PHONE 424-2011

Compare the description on this plat with deed. Refer to deed for easements and building lines.

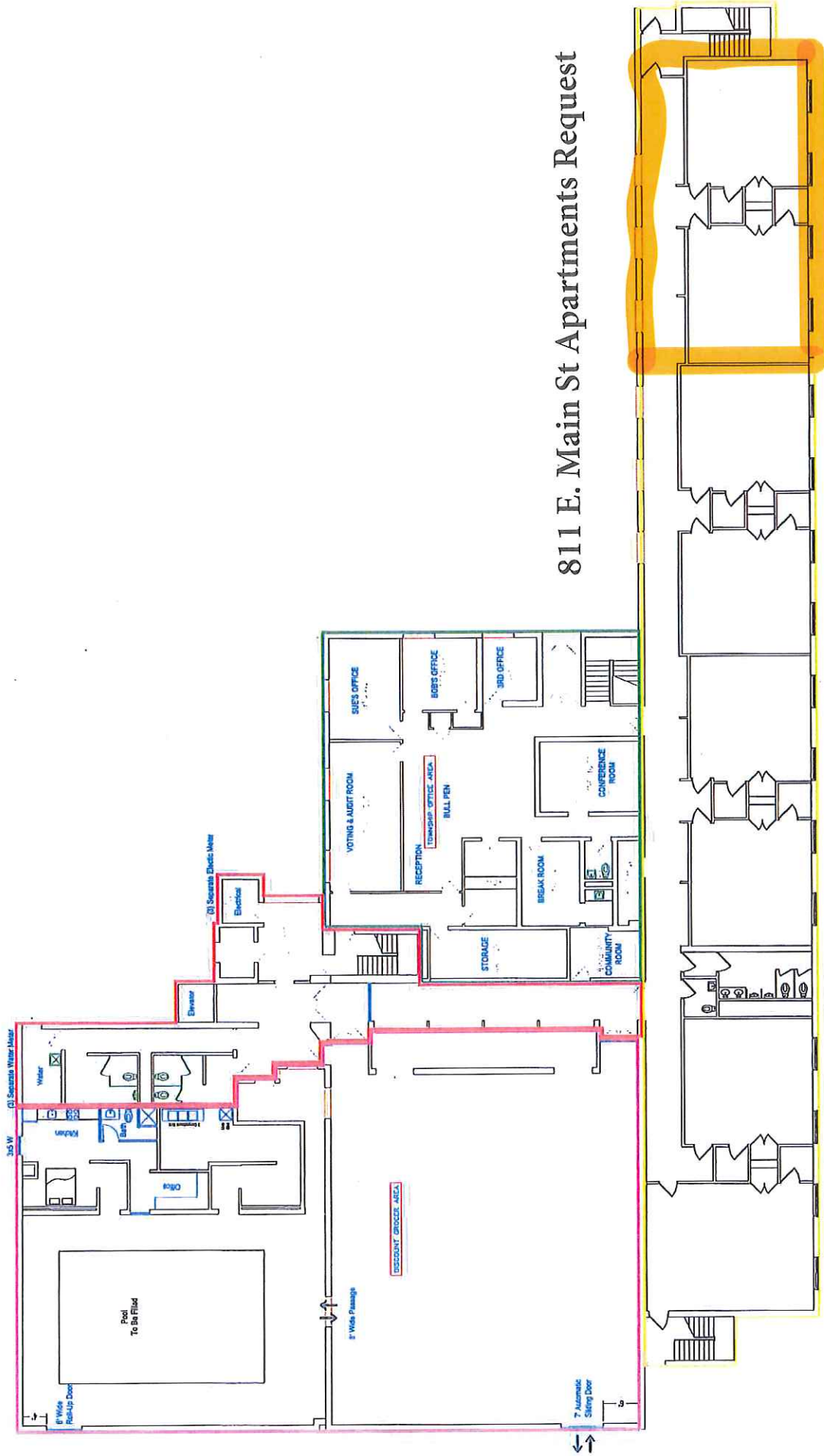
EXHIBIT B

Depiction of the Licensed Premises

(attached)

EXHIBIT B

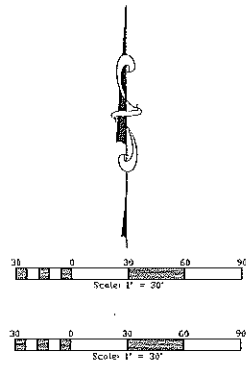
811 E. Main St Apartments Request



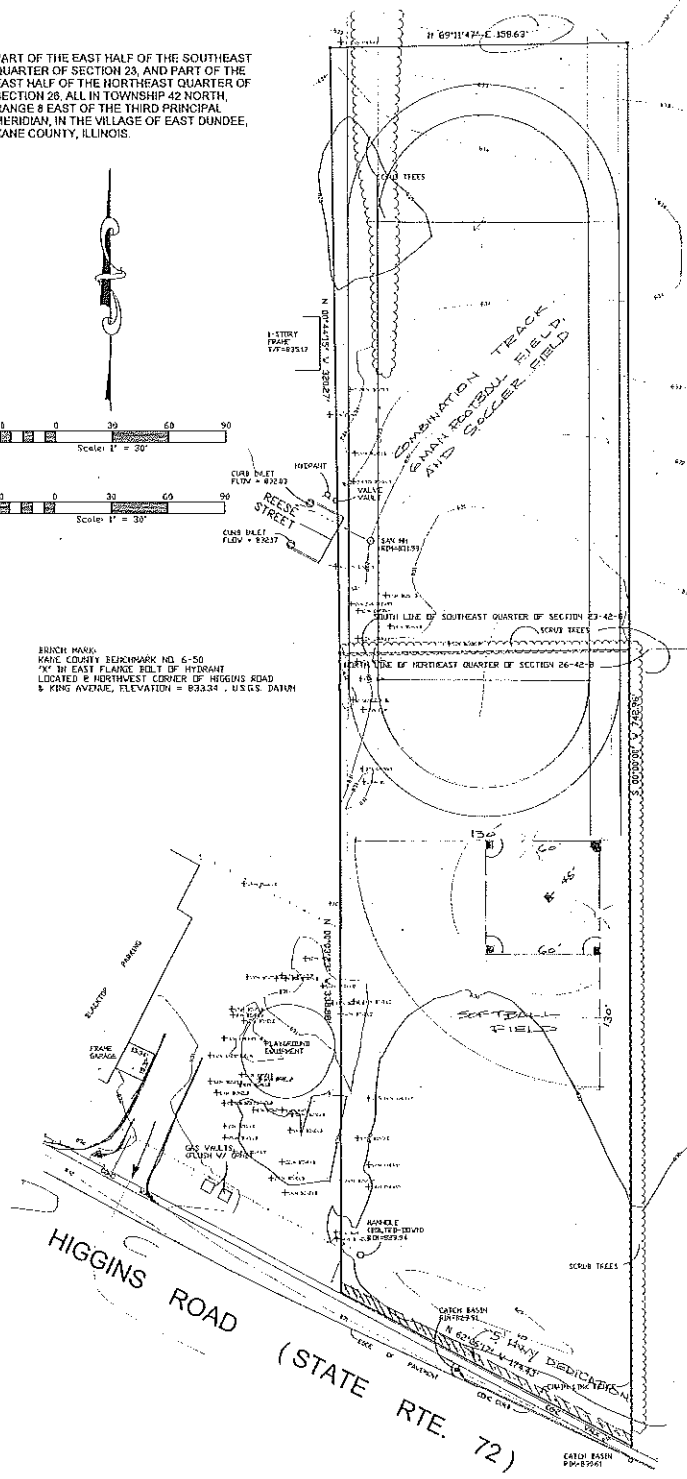
[Insert Map of Licensed Premises]

Alan J. Coulson, P.C.
PROFESSIONAL LAND SURVEYORS
PLAT OF SURVEY

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, AND PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 28, ALL IN TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.



BRANCH MARK:
 KANE COUNTY BENCHMARK NO. 6-50
 7'x7' IN EAST FLANGE BELT OF HYDRANT
 LOCATED @ NORTHWEST CORNER OF HIGGINS ROAD
 @ KING AVENUE, ELEVATION = 833.34, U.S.G.S. DATUM



Scale: 1" = 30'
 Order: Survey
 Date: 3-20-08
 Drawn: [Signature]
 Job: E 83, 803 R
 City: East Dundee

STATE OF ILLINOIS
 COUNTY OF KANE
 This is to certify that the plat herein drawn correctly
 indicates the above described property.
 [Signature]

THIS SURVEY IS VALID ONLY
 WITH ENGRAVED SEAL.

Any discrepancy in the statement should be promptly
 reported to surveyor for explanation or correction.
 WE DO NOT CARRY AS TO LOCATION OF UNDER-
 GROUND UTILITIES OR UNRECORDED IMPROVEMENTS.

ALAN J. COULSON, P.C.
 PROFESSIONAL LAND SURVEYORS
 ILLINOIS - WISCONSIN
 205 W. MAIN ST.
 W. DUNDEE, ILL. 60116 PHONE 418-2011

Compare the description on this plat with deed. Refer to deed for easements and building lines.