

NOTICE OF MEETING

VILLAGE OF FOX POINT PLAN COMMISSION *Amended

SCHWEMER HALL - MUNICIPAL BLDG.
7200 N. SANTA MONICA BLVD
FOX POINT, WI 53217

MONDAY
March 6, 2023
5:45 P.M.

NOTE: *THE PLAN COMMISSION WILL BE MEETING IN PERSON AT VILLAGE HALL, WITH A REMOTE ATTENDANCE OPTION, PER THE HYBRID MEETING PROCEDURES FURTHER DESCRIBED IN SECTION 19-32 D. OF THE VILLAGE CODE. THIS MEETING IS OPEN TO ALL CITIZENS IN PERSON AT VILLAGE HALL, OR THROUGH THE ZOOM PARTICIPANT INFORMATION SHOWN BELOW, SUBJECT TO THE FOLLOWING: NO ASSURANCE IS PROVIDED TO THOSE PLAN COMMISSION MEMBERS AND CITIZENS INTENDING TO ATTEND REMOTELY THAT THE TECHNOLOGY WILL PERFORM SUFFICIENTLY TO ALLOW FOR THEIR PARTICIPATION AND THE MEETING WILL PROCEED REGARDLESS. PUBLIC OFFICIALS AND CITIZENS WISHING TO ENSURE THEY CAN PARTICIPATE ARE ENCOURAGED TO ATTEND IN PERSON. CITIZENS ARE ENCOURAGED TO SUBMIT ANY COMMENTS IN WRITING IN ADVANCE OF THE MEETING TO THE VILLAGE MANAGER AT sbotcher@villageoffoxpoint.com

Zoom Participant Information
<https://us02web.zoom.us/j/87086203633>
Dial: (312) 626-6799
Meeting ID: 870 8620 3633

AGENDA

1. Roll Call.
2. Approval of the minutes of the January 3, 2023 Plan Commission/Building Board meeting.
3. Review and Recommendation Re: Conditional Use Permit for 8667 N Port Washington Road – Paris Nails & Spa, LLC dba The Nail Bar

The Plan Commission will discuss and make a recommendation to the Village Board regarding the conditional use permit for Paris Nails & Spa, LLC dba The Nail Bar to operate a nail salon.

4. Review and Recommendation Re: Conditional Use Permit for 8793 N Port Washington Road – T-Mobile Central, LLC dba T-Mobile

The Plan Commission will discuss and make a recommendation to the Village Board regarding

the conditional use permit for T-Mobile Central, LLC dba T-Mobile to operate a retail cellular store.

5. Consideration and possible action by Plan Commission on the application of Creation and Preservation Partners, Inc to add a Cultural Overlay District zoning designation to property located at 7254 and 7328 North Beach Drive (Mary Nohl House)

The Plan Commission will discuss and may make a recommendation to the Village Board regarding the application of Creation and Preservation Partners, Inc. to add a Cultural Overlay zoning designation to property located at 7254 and 7328 North Beach Drive (Mary Nohl House)

6. Adjourn.

NEXT PLAN COMMISSION MEETING:

MONDAY, April 3, 2023

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request these services, contact the Village Clerk at 351-8900. It is possible that members of, and possibly a quorum of members of, other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

**VILLAGE OF FOX POINT
PLAN COMMISSION MEETING MINUTES
January 3, 2023**

A meeting of the Fox Point Plan Commission was held by a combination of in-person and virtual attendance via telephonic and video conferencing on Tuesday, January 3, 2023. President Frazer called the meeting to order at 5:45 p.m. and noted there was a quorum of Plan Commission members present.

The Plan Commission roll call was taken by Village Assistant Manager Kevin Ausman:

Plan Commission:	President Douglas H. Frazer, Chairman (via Zoom)
	Eric Fonstad, Commissioner (via Zoom)
	Robert Smith, Commissioner
	John Crichton, Commissioner
	Russ Yale, Commissioner (via Zoom)
	Jay Craig, Commissioner
	William Langhoff, Commissioner

Staff present included Village Assistant Manager Kevin Ausman, and Village Deputy Clerk-Treasurer Nathan Schafer.

Notice of the meeting was provided to the North Shore Now as necessary, and to all others as required by State open meetings laws and posted on the official bulletin board at 7200 N Santa Monica Boulevard, as well as the village website at www.villageoffoxpoint.com, as per 2015 Wisconsin Act 79 and as described in Village Ordinance Chapter 116-2, 116-2(C).

Approval of the Minutes of the November 7, 2022 Plan Commission Meeting

On motion of Chairman Frazer, seconded by Commissioner Fonstad, and carried unanimously by roll call vote, the Commission approved the minutes of the November 7, 2022 Plan Commission meeting, approved with amendments.

Review and Recommendation RE: a minor modification to the existing wireless facility located at 8615 N Port Washington Road

Presentation done by the applicant, Tony Phillips of Kendall Communications, representing GPD and Dish Wireless.

On motion of Chairman Frazer, seconded by Commissioner Fonstad, and carried unanimously by roll call vote, the Commission recommended the Village Board approve the minor modification to the existing wireless facility located at 8615 N Port Washington Road.

Review and Recommendation RE: Chapter 745-7(3)(h) Fence/Arbor Ordinance

On motion of Commissioner Fonstad, seconded by Chairman Frazer, the Commission recommended the Village Board change the ordinance regarding increasing the height of arbors from 8'7" to 10 feet, subject to the board finding:

- 1. The Ordinance change meets the standards of the village*
- 2. The Village Attorney finds that those standards are applicable.*

**VILLAGE OF FOX POINT
PLAN COMMISSION MEETING MINUTES
January 3, 2023**

Motion carried unanimously by roll call vote.

Adjourn

On motion of Chairman Frazer, seconded by Commissioner Fonstad and carried unanimously by roll call vote, the Plan Commission meeting adjourned at 6:07p.m.

Respectfully Submitted,

Nathan L. Schafer
Deputy Village Clerk Treasurer



VILLAGE OF FOX POINT

APPLICATION FOR CONDITIONAL USE PERMIT

Section 1

Name of Business The Nail Bar	Phone # 678 709 9221	Name of former tenant (if known) Hac Ho
Fox Point Business Address 8667 N Port Washington Rd Fox Point WI 53217		
Email tranfinancial@yahoo.com	Contact Person Lehong Tran	

If the business is a corporation, complete the following section. If not, skip to next section.

Section 2

Legal name of corporation Paris Nails & Spa LLC	Corporate email
Corporate headquarters address 5430 W Hayes Ave West Allis WI 53219	Corporate phone # 678 709 9221
Name and addresses of all corporate officers Son O 5430 W Hayes Ave West Allis WI 53219-2226	
Name of corporate agent Son O	Address of corporate agent 5430 W Hayes Ave W Allis 53219

If applicant(s) is an individual or partnership, please complete the following section.

Section 3

List the name, home address, business address, and phone numbers of all applicants and owners.			
Name	Home address	Business address	Phone #

All applicants must complete the following section.

Section 4

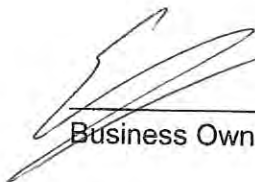
Applicant's specific interest in site Purchased existing nail salon, formerly Diamond Nail, operated by Hac Ho
Describe in detail the business activity that will take place on site including products & services Nail salon: Artificial nail extension, maintenance, nail art & design, manicure, pedicure

Describe all owned fixtures, furniture, and equipment to be used on site 6 pedicure spas , 5 table stations , 1 reception desk		
Describe all leased fixtures, furniture, and equipment to be used on site None		
Describe any alterations planned for the site and estimated cost of renovation None		
Person responsible for obtaining building permit (if required) N/A		
Square footage of site 662 sqft	# of employees 3	# of parking spaces to be used 6-10
Days & hours of operation M-Sat 9:30 am - 7pm Sun closed	Proposed date of occupancy As soon as approved	

Attach a site plan to this application (see Directions for Conditional Use Permit). Site plan must include a layout of the inside of the store.

This application must be fully completed to be considered by the Village.

Fee: \$300.00 (non-refundable)


Business Owner Signature

SUN O
Printed Name

01/05/2023
Date

NOTICE

PLEASE BE ADVISED: Chapter 67, Article III of the Village of Fox Point Village Code is attached hereto and incorporated herein. Pursuant to this Ordinance, the Village of Fox Point Village Board has determined that whenever the services of the Village Attorney, Village Engineer, Village Forester or any other of the Village's professional staff (internal or independently contracted) results in a charge to the Village for that professional's time and services and such service is not a service supplied to the Village as a whole, the Village Treasurer shall charge the property owner for the fees incurred by the Village. Also be advised that pursuant to the Village of Fox Point Municipal Code certain other fees, costs and charges are the responsibility of the property owner making application to the Village.

I, the undersigned, have been advised that, pursuant to the Village Fox Point Village Code, if the Village Attorney, Village Engineer, Village Forester or any other Village professional (internal or independently contracted) provides services to the Village as a result of my activities, whether at my request or at the request of the Village, I shall be responsible for the fees incurred by the Village. Also I have been advised that pursuant to the Village of Fox Point Village code certain other fees, costs and charges are my responsibility.

Dated this 01 day of 25, 2023.


Signature of Property Owner

The Nail Bar

SON O
Name of Property Owner - PRINTED

Mailing Address of Property Owner:

5430 W Hayes Ave
West Allis WI 53219

Tax Key No. of Property:

Address of Property:

8667 N Port Washington Rd

Fox Point, WI 53217

For Village Use Only:

- ☐ Original kept on file with Village Clerk.
- ☐ Copy provided to Property Owner.

Signature: _____

FOR OFFICE USE ONLY

Has sufficient site plan been submitted? (If not, what is needed?) _____

What is the category of proposed use? _____

Does the parking meet code requirements? _____

Is there proper exterior lighting? _____

Are there any existing code violations? _____

Additional Comments? _____

Letter of Consent received from owner? _____

Comments/Date

Date application/materials received: _____

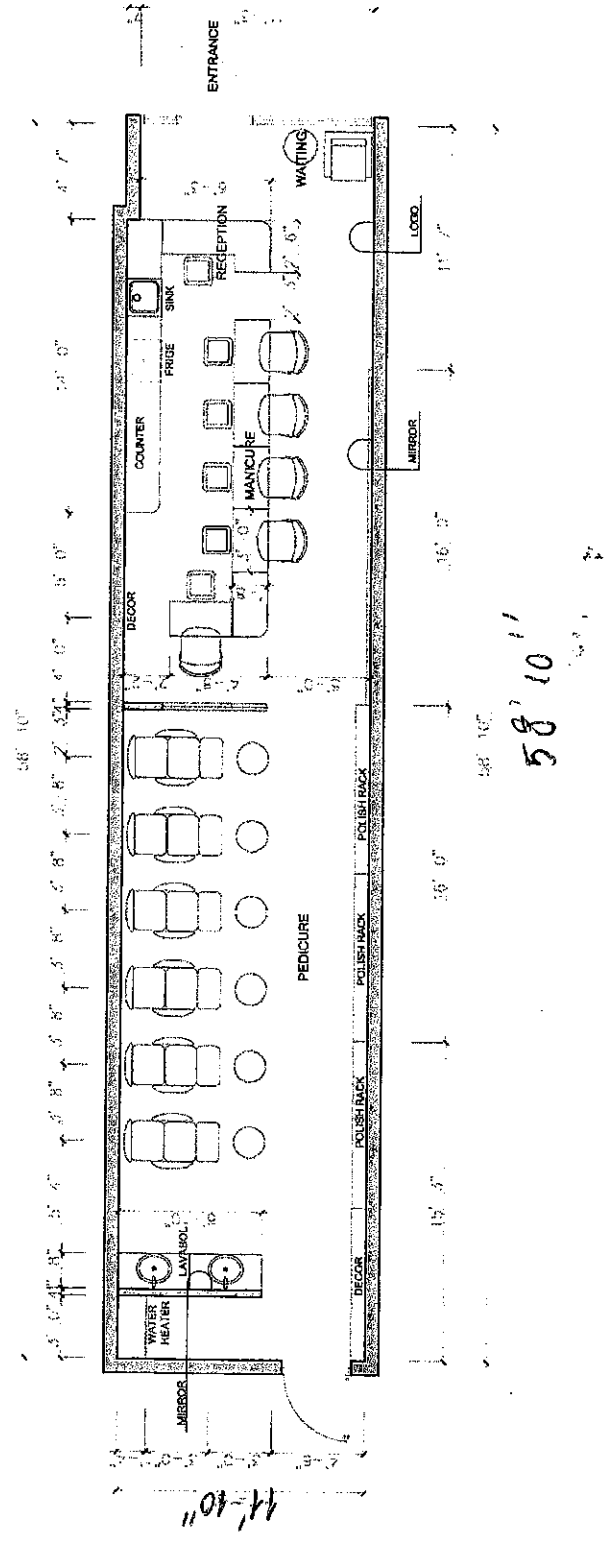
Fee Paid: _____ Receipt No. _____

I. LAYOUT



UNIKPLACE
DO IT DIFFERENTLY

The Nail Bar



Midland Management, LLC

555 W. Brown Deer Road, Suite 220, Milwaukee, Wisconsin 53217

January 30, 2023

Village Plan Commission
Village of Fox Point
7200 N. Santa Monica Boulevard
Fox Point, WI 53217

Plan Commission Members:

The purpose of this correspondence is to provide evidence of our intention to lease store space at the Riverpoint Village Shopping Center, Fox Point, Wisconsin, to Paris Nails & Spa, LLC, and to provide our approval of the anticipated existence of the store at the Center.

Paris Nails will occupy the space previously occupied by Diamond Nails at 8667 N Port Washington Road.

If there should be any questions pertaining to this matter or if any additional information should be needed about the leasing of this space to The Fresh Market, please don't hesitate to contact me at 414-928-3974 or ssanders@midlandmgtllc.com.

Thank you.

Sincerely,



Sheila S. Sanders
Asset Manager
Midland Management, LLC
Managing Agent for North Shore Centers Partners

VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 1.058544

Jan 30, 2023

8667 N Port Washington Road

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	300.00
10-44540 OTHER PERMIT	

Total:	300.00
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CHECK	Check No: 2214	300.00
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* Payor: Tran Financial Network, LLC

Total Applied:	300.00
----------------	--------

Change Tendered:	.00
------------------	-----

01/30/2023 2:47 PM



**VILLAGE OF FOX POINT
APPLICATION FOR CONDITIONAL USE PERMIT**

Section 1

Name of Business T-Mobile	Phone # 414-371-5600	Name of former tenant (if known) Jimmy Johns
Fox Point Business Address 8793 North Port Washington Rd, Fox Point, WI 53217		
Email tice.hamblet1@t-mobile.com		Contact Person Tice Hamblet, 425-268-1833

If the business is a corporation, complete the following section. If not, skip to next section.

Section 2

Legal name of corporation T-Mobile Central LLC	Corporate email https://www.t-mobile.com/contact-us
Corporate headquarters address 12920 SE 38th St. Bellevue, WA 98006	Corporate phone # 1-800-937-8997
Name and addresses of all corporate officers Address Same as above, contact link above provides information to reach Corporate Officers.	
Name of corporate agent Tice Hamblet	Address of corporate agent 12920 SE 38th St., Bellevue, WA 98006

If applicant(s) is an individual or partnership, please complete the following section.

Section 3

List the name, home address, business address, and phone numbers of all applicants and owners.			
Name	Home address	Business address	Phone #

All applicants must complete the following section.

Section 4

Applicant's specific interest in site Project Mgr. Owner's Authorized Representative
Describe in detail the business activity that will take place on site including products & services T-Mobile sells mobile phones, phone accessories, and service plans for their cellular network. T-Mobile is closing a store nearby in Brown Deer once this location is built, and the staff will move over to operate in a similar fashion.

Describe all owned fixtures, furniture, and equipment to be used on site Merchandising Fixtures for Displaying Phones/Accessories for Sale, Digital Displays, Point of Sale systems, Security Alarms/Cameras, Safes, Office furniture, new lighting		
Describe all leased fixtures, furniture, and equipment to be used on site NONE		
Describe any alterations planned for the site and estimated cost of renovation \$175,000 interior tenant improvements including new restroom, framing/drywall for break room & storage room, new lighting, finishes and alterations to the HVAC System		
Person responsible for obtaining building permit (if required)		
Square footage of site 1,605	# of employees 3-8 depends on peak bus hours	# of parking spaces to be used 3-8
Days & hours of operation 10 AM to 8 PM, M-Sat, 11 AM - 6 PM Sun		Proposed date of occupancy 60 days after permit release hopefully no later than Mid May

Attach a site plan to this application (see Directions for Conditional Use Permit). Site plan must include a layout of the inside of the store.

This application must be fully completed to be considered by the Village.

Fee: \$300.00 (non-refundable)

<u>Tice Hamblet</u>	<u>Tice Hamblet, Authorized Rep for T-Mobile</u>	<u>2-1-2023</u>
Business Owner Signature	Printed Name	Date

C

B

A

4

3

2

1

T Mobile®

12920 SE 38th STREET
BELLEVUE, WA 98006
www.T-Mobile.com

COPYRIGHT NOTICE:
THESE DRAWINGS AND SPECIFICATIONS ARE COPYRIGHTED AND SUBJECT TO
COPYRIGHT PROTECTION AS AN ARCHITECTURAL WORK UNDER SEC. 102 OF
THE COPYRIGHT ACT, 17 U.S.C. AS AMENDED JANUARY 2003. THE PROTECTION
INCLUDES, WITHOUT LIMITATION, THE OVERALL FORM, ARRANGEMENT AND
COMPOSITION OF SPACES AND ELEMENTS OF THE DESIGN, UNDER SUCH
PROTECTION UNAUTHORIZED USE OF THESE DRAWINGS AND SPECIFICATIONS
MAY RESULT IN CEASEMENT OF CONSTRUCTION, BUILDING SEIZURE, AND/OR
MONETARY LIABILITY.

ARCHITECT:

Design
Forum
Architects Inc.

2056 Byers Road
Mansfield, Ohio 45342
844.804.7700

ChangeUp



01/30/2023

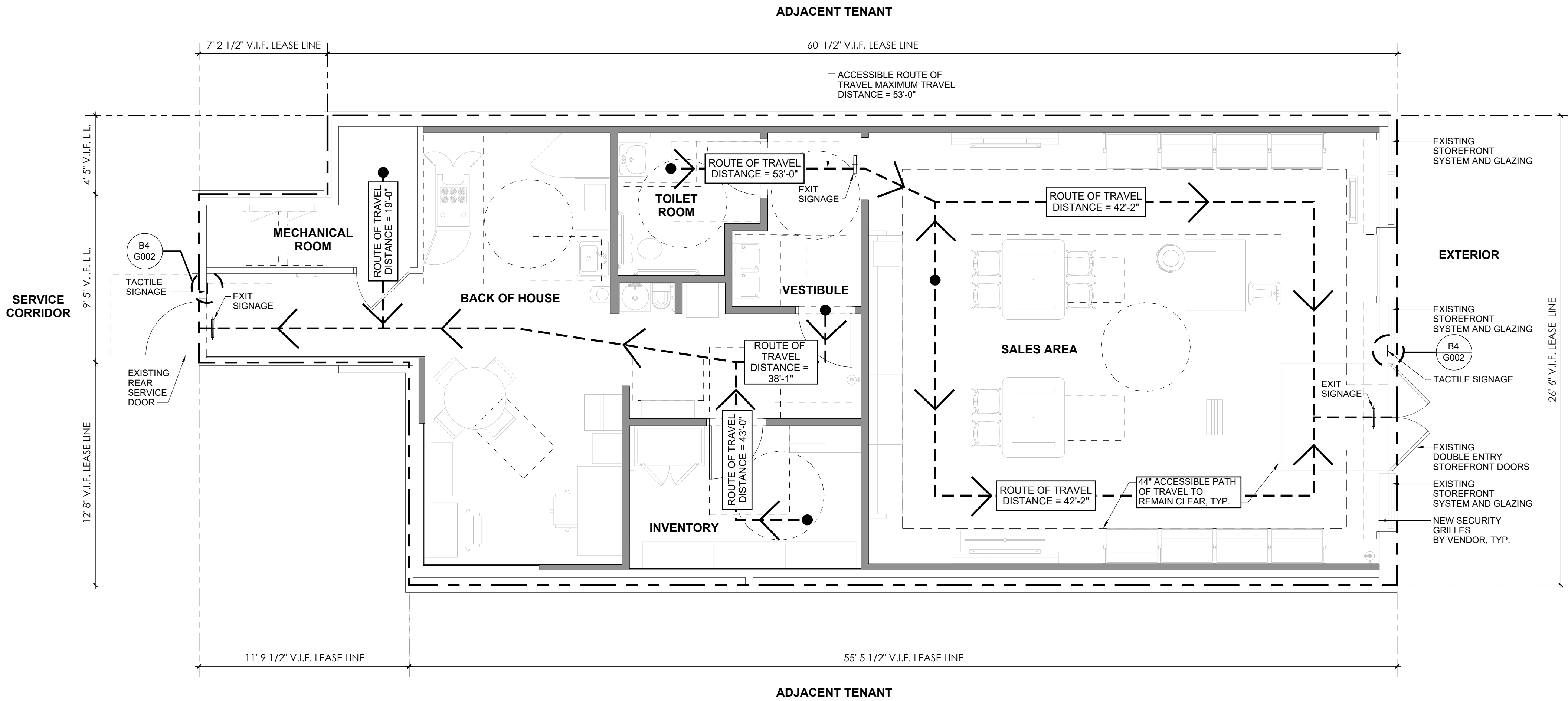
CONSULTING ENGINEER:

Design
Forum
Engineering

2056 Byers Road
Mansfield, Ohio 45342
844.804.7700

ChangeUp

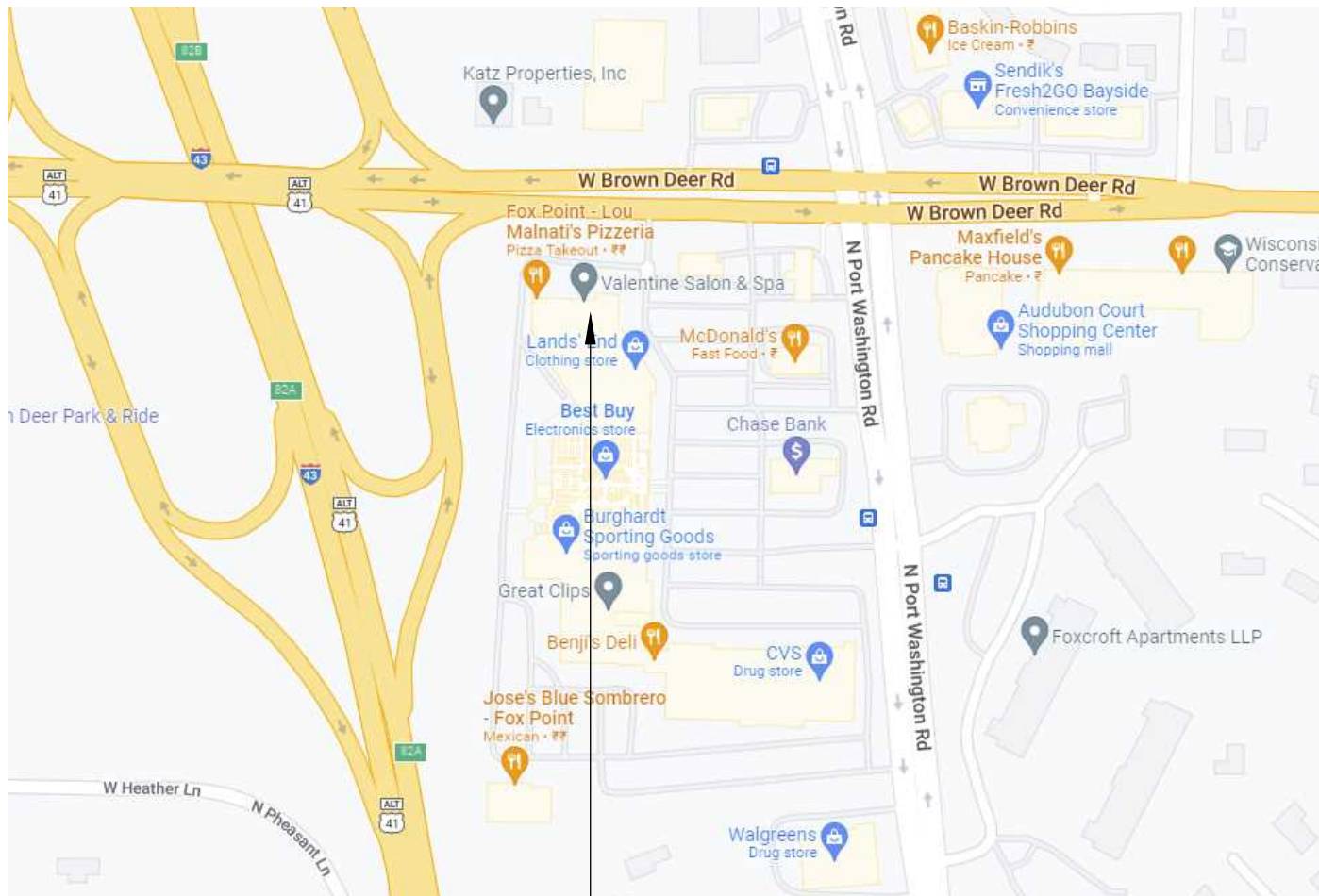
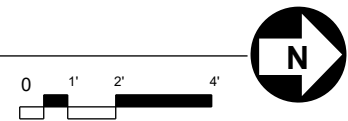
N PORT WASHINGTON RD AND W BROWN
DEER RD
8793 NORTH PORT WASHINGTON ROAD
FOX POINT, WI 53217



B3

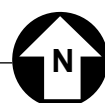
EGRESS PLAN

1/4" = 1'-0"



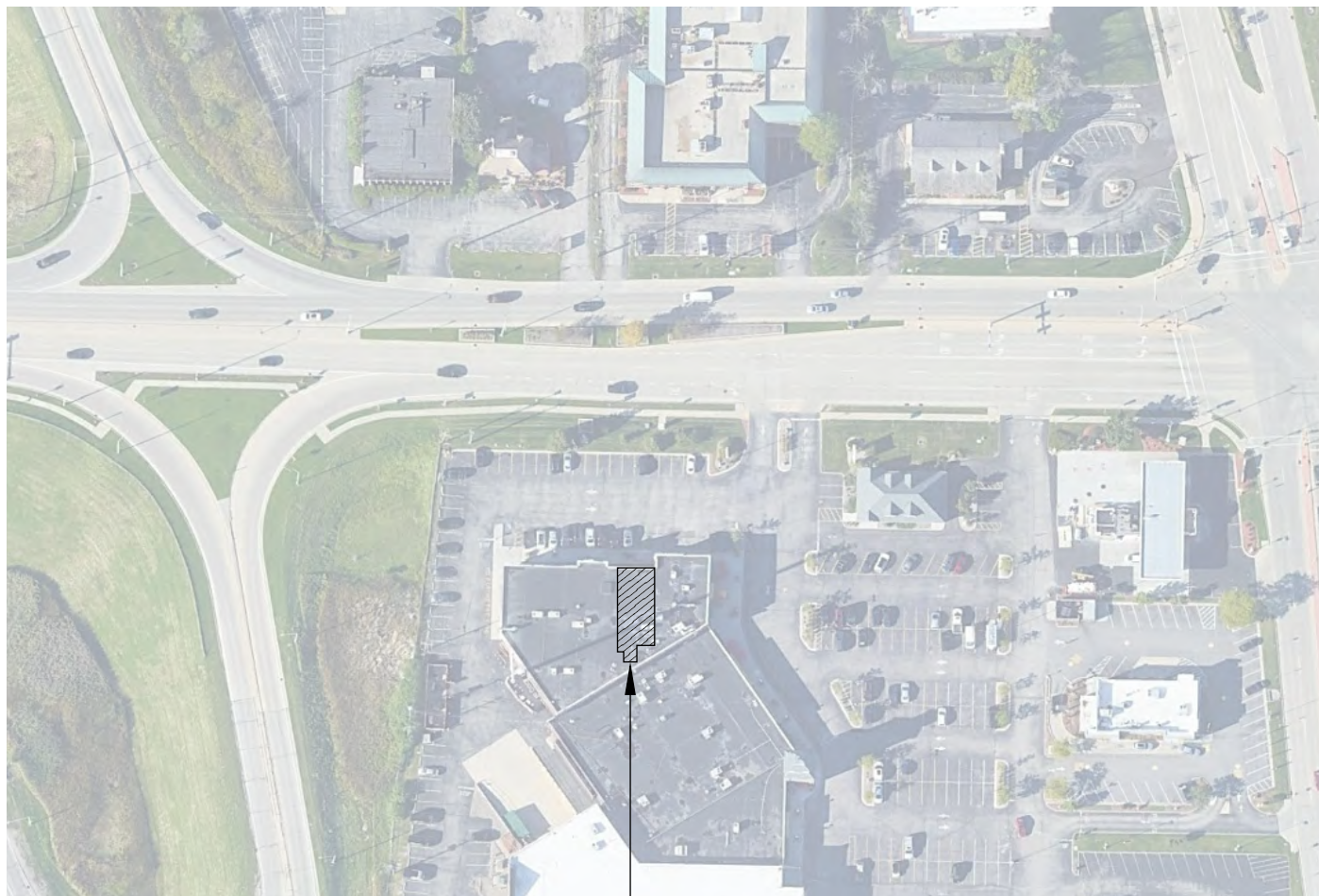
A4

VICINITY MAP
KAUKAUNA, WI

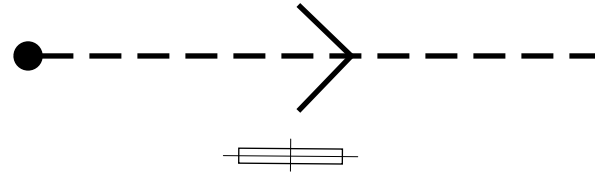


A3

KEY PLAN
LEVEL 1 OF 1



LEGEND



TRAVEL PATH

EXIT SIGNAGE

GENERAL NOTES

1. SEE SHEET G001 FOR CODE ANALYSIS.
2. SEE SHEET G002 FOR ACCESSIBILITY SIGNAGE.
3. ACCESSIBILITY ROUTE OF TRAVEL SLOPES NOT TO EXCEED RUNNING SLOPE OF 1:20 (5%) MAXIMUM AND CROSS SLOPE OF 1:50 (2%).
4. SITE ACCESSIBILITY PROVIDED BY LANDLORD.
5. PROVIDE WALL MOUNTED FIRE EXTINGUISHER(S) PER FIRE MARSHAL'S INSTRUCTION.
6. THIS SHEET IS FOR REFERENCE ONLY. NO CHANGE TO EXISTING EXIT ROUTES / EXIT DOORS.

##	DESCRIPTION	DATE
1	FIRE REVIEW COMMENT	01/30/2023

DATE: November 15, 2022
SCALE: AS NOTED
DRAWN BY: PLT
REVIEWED BY: DR
SAP NUMBER:

3SAA
CORPORATE NEW CD
RDC

SHEET TITLE:
KEY PLAN, VICINITY MAP AND
EGRESS PLAN

SHEET NUMBER:

G101

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ARCHITECT

**Design
Forum
Architects Inc**

2056 Byers Road
Miamisburg, Ohio 4534
844.804.7700

ChangeUp



01/30/202

CONSULTING ENGINEER

Design
Forum
Engineering

2056 Byers Road
Miamisburg, Ohio 45342
844.904.7700

ChangeUp

N PORT WASHINGTON RD AND W BROWN
DEER RD
8793 NORTH PORT WASHINGTON ROAD
FOX POINT, WI 53217

DATE:	November 15, 2021
SCALE:	AS NOTED
DRAWN BY:	PL
REVIEWED BY:	D
SAP NUMBER:	

3SAA
CORPORATE NEW C
RDC

SHEET TITLE:

**SITE PLAN
FOR REFERENCE ONLY**

SHEET NUMBER

G111



17" MIN.

22" MIN.

TOW AWAY SIGN

3-9/32"

80" MIN. SIGN HEIGHT

4'-0" N.T.S.

3'-0" N.T.S.

11 5/16"

12" DIA.

17" MIN.

VAN ACCESSIBLE

PARKING ONLY

HIGHWAY CODE

USE GALVANIZED BOLTS

BLUE BACKGROUND COLOR #15090

REFER FEDERAL STANDARD 5952

SYMBOL TO BE WHITE

MIN. 3" HIGHWAY LETTERS TO BE WHITE

REFLECTORIZED SIGN (STL & PORCELAIN) W/ BEADED TEXTURE. ADD "VAN ACCESSIBLE" SIGNAGE AS REQUIRED PER SITE PLAN.

WHERE APPLIES

4" Ø STL PIPE W/ CONC. FILL, PAINT.

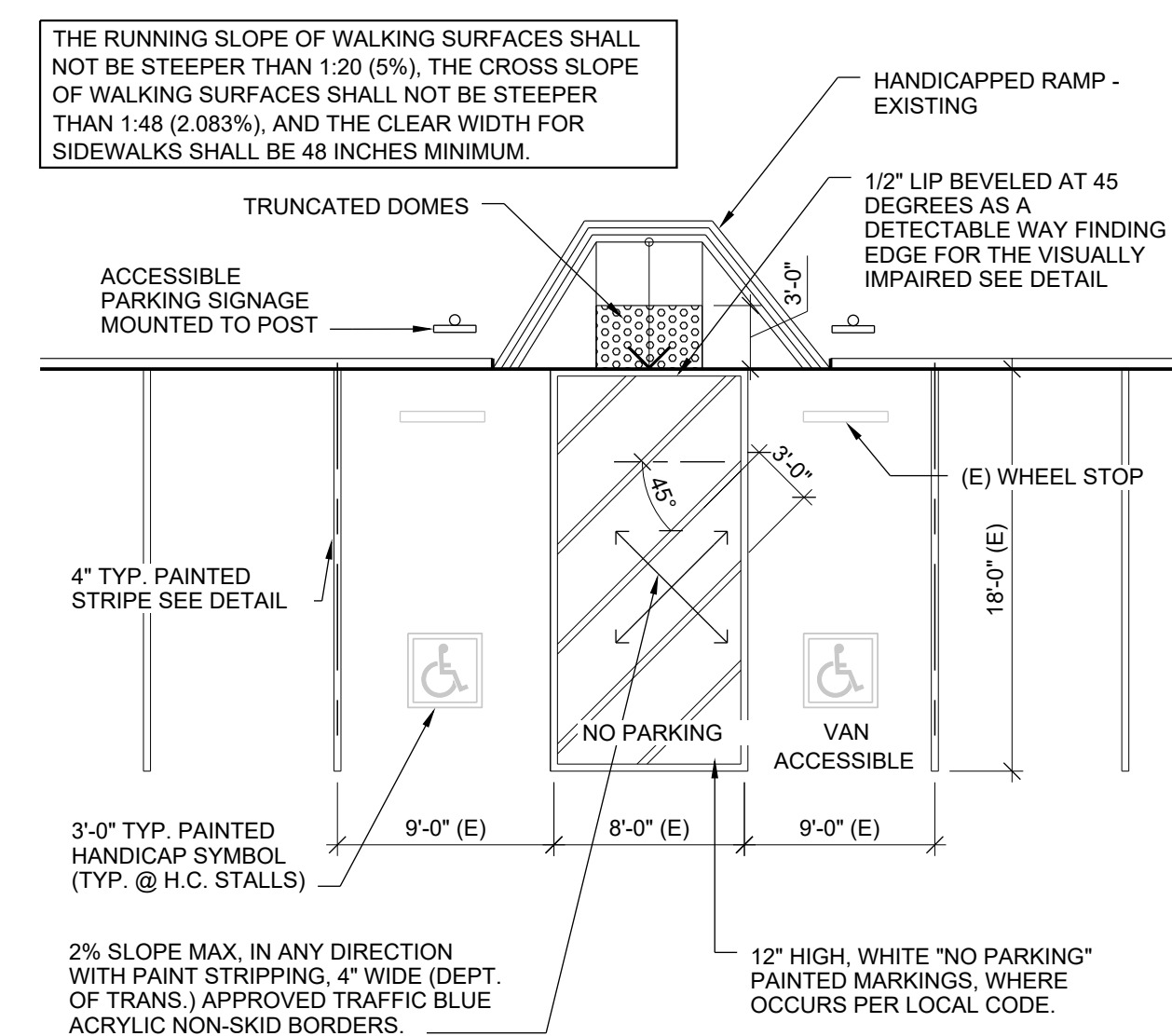
PLANTER OR PATCH AS REQUIRED. REFER LANDSCAPING UNDER A SEPARATE SUBMITTAL.

GALVANIZED STEEL POST SET IN CONCRETE FOOTING SLEEVE & BOLTED

NOTE:

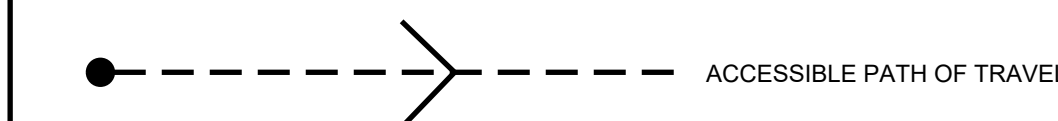
AREA OF SIGN TO BE A MINIMUM OF 70 SQ INCHES

B1 ACCESSIBLE PARKING AND SIGN DETAIL
N.T.S. FOR REFERENCE ONLY



A1 ACCESSIBLE PARKING AND RAMP DETAILS

LEGEND



GENERAL NOTES

SITE PLAN IS FOR REFERENCE ONLY - SCOPE OF ALTERATION / TENANT IMPROVEMENT DOES NOT INCLUDE ANY EXTERIOR WORK. NO SITE IMPROVEMENTS N.I.C.

1. MAXIMUM PERMITTED SLOPE OF ACCESSIBLE PARKING SPACES IS 2% IN ANY DIRECTION
2. WALKWAYS ALONG ACCESSIBLE ROUTES OF TRAVEL ARE AS FOLLOWS:
 - 2.1. CONTINUOUSLY ACCESSIBLE
 - 2.2. HAVE MAXIMUM 1/2" CHANGES IN ELEVATION
 - 2.3. ARE MINIMUM 48" IN WIDTH
 - 2.4. WHERE NECESSARY TO CHANGE ELEVATION AT A SLOPE NOT EXCEEDING 5%

A4 SITE PLAN
N.T.S.

N.T.S.



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ARCHITECT

**Design
Forum
Architects Inc**

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Miamisburg, Ohio 4534
844.804.7700

ChangeUp



CONSULTING ENGINEER

Design
Forum
Engineering

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Miamisburg, Ohio 45342
844.804.7700

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N PORT WASHINGTON RD AND W BROWN
DEER RD
8793 NORTH PORT WASHINGTON ROAD
FOX POINT, WI 53217



DATE:	November 15, 2021
SCALE:	AS NOTED
DRAWN BY:	PL
REVIEWED BY:	D
SAP NUMBER:	

3SAA
CORPORATE NEW C
RDC

SHEET TITLE

EXTERIOR STOREFRONT ELEVATION

SHEET NUMBER:

A211



EXISTING BUILDING ELEMENTS
AND FINISHES TO REMAIN.
G.C. TO PROTECT IN PLACE. —

 T.O. STOREFRONT
9'-3" A.F.F

 T.O. ENTRY DOOR
7'-0" A.F.F FINISH FLOOR
0'-0"

EXISTING
STOREFRONT
SYSTEM AND
GLAZING TYPE

EXISTING DOUBLE
STOREFRONT
ENTRY DOORS —

TACTILE EXIT SIGN
ON INTERIOR. SEE
B4 / G002. _____

— EXISTING
STOREFRONT
SYSTEM AND
GLAZING TYP.

EXISTING
STOREFRONT
SYSTEM AND
GLAZING TYP.

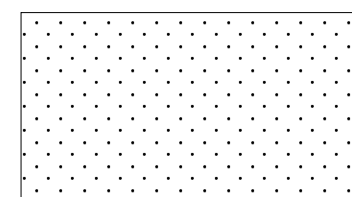
EXTERIOR ELEVATION

$$1/2'' = 1'-0''$$

FINISH SUMMARY

ALL EQUIPMENT, FINISHES, FIXTURES, FURNITURE, AND GRAPHICS TO BE INSTALLED PER MANUFACTURER'S
RECOMMENDATIONS. SEE A600 SERIES SHEETS FOR ALL SCHEDULES.

SHEET SYMBOLS



AREA OF WINDOW FILM



TEMPERED GLASS

GENERAL NOTES

1. G.C. TO VERIFY FIELD CONDITIONS AND DIMENSIONS AND NOTIFY ARCHITECTS IMMEDIATELY IF ANY DISCREPANCIES AFTER DEMOLITION AND PRIOR TO RECLADDING OR CONSTRUCTION. G.C. TO VERIFY FIELD ALL DIMENSIONS PRIOR TO ORDERING ANY MATERIALS.
2. G.C. TO VERIFY AND INSTALL BLOCKING FOR EXTERIOR SIGNAGE AS REQUIRED. COORDINATE WITH LANDLORD AND SIGNAGE VENDOR REGARDING LOCATION OF SIGNAGE AND EXISTING SHELL CONSTRUCTION/FINISH CONDITIONS.
3. SIGN MANUFACTURER TO REVIEW THE LANDLORD'S SIGN CRITERIA AND SUBMIT SHOP DRAWINGS FOR THE PROPOSED SIGN. THE LANDLORD AND ANY OTHER GOVERNING AUTHORITIES, THE SIGN MANUFACTURER SHALL SECURE ANY AND ALL PERMITS REQUIRED FOR THE INSTALLATION AND DISPLAY OF THE PROPOSED SIGNAGE.
4. SIGN MANUFACTURER'S SHOP DRAWINGS SHALL BE REVIEWED UNDER SEPARATE SUBMITTAL.
5. SIGNAGE AS SHOWN IN THESE DRAWINGS IS SCHEMATIC ONLY FOR ILLUSTRATION PURPOSES AND DOES NOT IMPLY OR DESCRIBE ANY MEANS, METHODS, OR DETAILS PERTAINING TO INSTALLATION OF SIGNAGE. IT SHALL BE SOLELY THE SIGN MANUFACTURER'S RESPONSIBILITY TO OBTAIN ALL NECESSARY PERMITS FOR THE SIGN UNDER SEPARATE PERMIT. ANY AND ALL STRUCTURAL CONSIDERATIONS SHALL BE COORDINATED BETWEEN THE SIGN MANUFACTURER, THE LANDLORD, AND HIS DESIGN PROFESSIONALS.
6. SUITE NUMBERS SHALL BE A MINIMUM OF 3" HIGH, 1/2" STROKE WIDE, AND A MINIMUM OF 1/8" THICK. SUITE NUMBERS SHALL BE PLACED FROM 10 FEET OR DRIVE. ALL EXTERIOR SUITE DOORS SHALL BE LABELED. POST 6" STREET NUMBERS AND 3" SUITE NUMBERS. COORDINATE WITH LANDLORD REPRESENTATIVE AND T-MOBILE CONSTRUCTION PM FOR FINAL PLACEMENT OF SUITE NUMBERS.
7. MATERIALS SHALL BE OF CLASS A RATING WITH A FLAME SPREAD INDEX OF 25 AND A SMOKE DEVELOPED INDEX OF 450.

Midland Management LLC

555 W Brown Deer Road, Suite 220, Milwaukee, WI 53217 ~ 262.643.4430

Thursday, February 2, 2023

To Whom It May Concern:

The purpose of this letter is to provide documentation of Owner's approval for the proposed new T-Mobile store to be located at 8793 North Point Washington Rd, Fox Point, WI 53217.

Should you have any questions, please feel free to contact me at 414.278.3972 or am@midlandmgtllc.com.

Regards,
MIDLAND MANAGEMENT LLC

Alisha E. Mir-Marwood

Alisha E. Mir-Marwood, CPM®
Asset Manager
Midland Management, LLC
As Agent for the Owner, North Shore Centers Partners, LLC

VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 1.058559

Feb 3, 2023

8793 N Port Washington Road

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	300.00
10-44540 OTHER PERMIT	

Total:	300.00
--------	--------

CHECK	Check No: 203365	300.00
Payor: State Permits Inc.		

Total Applied:	300.00
----------------	--------

Change Tendered:	.00
------------------	-----

02/03/2023 10:25 AM

STATE OF WISCONSIN

VILLAGE OF FOX POINT

MILWAUKEE COUNTY

NOTICE

PLEASE BE ADVISED: Chapter 67, Article III of the Village of Fox Point Village Code is attached hereto and incorporated herein. Pursuant to this Ordinance, the Village of Fox Point Village Board has determined that whenever the services of the Village Attorney, Village Engineer, Village Forester or any other of the Village's professional staff (internal or independently contracted) results in a charge to the Village for that professional's time and services and such service is not a service supplied to the Village as a whole, the Village Treasurer shall charge the property owner for the fees incurred by the Village. Also be advised that pursuant to the Village of Fox Point Municipal Code certain other fees, costs and charges are the responsibility of the property owner making application to the Village.

I, the undersigned, have been advised that, pursuant to the Village Fox Point Village Code, if the Village Attorney, Village Engineer, Village Forester or any other Village professional (internal or independently contracted) provides services to the Village as a result of my activities, whether at my request or at the request of the Village, I shall be responsible for the fees incurred by the Village. Also I have been advised that pursuant to the Village of Fox Point Village code certain other fees, costs and charges are my responsibility.

Dated this 2ND day of FEBRUARY, 2023


Signature of Property Owner

ANISHA MIR-NARWUD, MIDLAND MGMT LLC
AS AGENT FOR THE OWNER, NORTH SHORE
Name of Property Owner - PRINTED CENTERS PARTNERS LLC

Mailing Address of Property Owner:

MIDLAND MGMT LLC
555 W BROWN DEER RD #220
MILWAUKEE WI 53217

Tax Key No. of Property:

053 898 9001

Address of Property:

8793 N. POOT WASH RD,
Fox Point, WI 53217

For Village Use Only:

☐ Original kept on file with Village Clerk.

☐ Copy provided to Property Owner.

Signature: _____



PERMIT.COM

State Permits Inc.

319 Elaines Court - Dodgeville, WI
53533

(608) 999-9998 - www.permit.com

Project
#: **946752**

Date: **02/02/2023 1:54pm**

Store: **T Mobile #: SAP 3 SAA N Port Washington Rd and W Brown
Deer Rd**

Address: **8793 N Port Washington Rd.
Fox Point, WI, 53217**

Letter of Transmittal

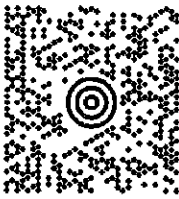
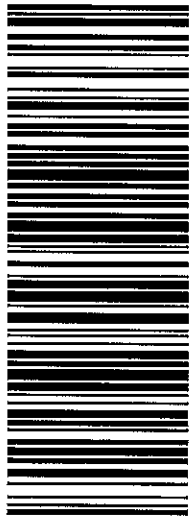
From:	To:
Katie Getz 319 Elaines Court Dodgeville WI 53533 608-407-9078 - katie@permit.com	Nathan Schafer Fox Point Building Dept 7200 N Santa Monica Blvd Fox Point, WI 53217

Transmitting Via:			
Items:	11x17 Site Plan Conditional Use Application Occupancy Application LandLord Application Check		
These Are Transmitted:	Plans, Application Plan Check Number: 0		
Check:	Check Number:	03365	
	Amount:	\$300	
	Payment To:	Village of Fox Point	
	Payment Description:		

Remarks:

Signature: _____

Katie Getz - 608-407-9078 - katie@permit.com

KATIE GETZ 6084079078 STATE PERMITS INC. 319 ELAINES COURT DODGEVILLE WI 53533		1 LBS DWT: 12,10,1	1 OF 1
SHIP TO: NATHAN SCHAFER 6084079078 FOX POINT BUILDING DEPT 7200 N SANTA MONICA BLVD FOX POINT WI 53217		WI 531 9-10 	
		UPS NEXT DAY AIR TRACKING #: 1Z 521 80F 01 9031 2066	
			
BILLING: P/P			
		XOL 23.01.06 NV4S 5.0A 01/2023*	

\$42.93

#946752

T Mobile (#SAP 3 SAA N Port Washington Rd and W Brown Deer Rd)

ChangeUp LLC



VILLAGE OF FOX POINT

MILWAUKEE COUNTY

WISCONSIN

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT WI 53217-3505
414-351-8900
FAX 414-351-8909
www.villageoffoxpoint.com

APPLICATION FOR CONDITIONAL USE PERMIT DIRECTIONS

GENERAL INFORMATION:

All new businesses locating in an area zoned D-Business must apply for a Conditional Use Permit under Section 745-18D of the Village Code. Certain exceptions apply, see Section 745-18C of the Village Code (located on the Village website).

Changes in ownership, changes in use, changes in operations, changes in permitted conditions, alterations, and relocations within the Village to businesses with existing Conditional Use Permits may necessitate obtaining an amended Conditional Use Permit.

TO APPLY FOR A PERMIT:

1. Complete all the information on the attached application. Please type or print. Attach additional pages if necessary. **Applications with incomplete information will not be accepted.**
2. All materials must be submitted on 8.5" x 11" paper. If larger scale plans are necessary for clarity, please bring to the Plan Commission meeting. (Note: All documents submitted will be in copied in black and white.)
3. A \$300 non-refundable fee must accompany this application.
4. A letter of approval from the owner of the property must accompany this application, unless the applicant is the owner. The letter should be:
 - on the owner's letterhead including the owner's original signature,
 - addressed to the Village, and
 - reference the proposed address and name of the business.

The Village will not entertain any requests without the written consent of the owners.

5. A signed Charge Back Form as described in Chapter 67, Article III of the Village Code must accompany this application.
6. The application and one set of the site plans and all related materials must be submitted by 4:00 pm on the second Wednesday prior to the Plan Commission meeting.
7. Completed applications will be submitted by staff to the Plan Commission for consideration. The Plan Commission meets on the first Monday of each month at 5:45 p.m. PLEASE NOTE: Applicants are required to attend the Plan Commission meeting to discuss their Application.
8. The Village Board will consider the Plan Commission's recommendation at the Board meeting on the second Tuesday of the month at 7:00 p.m. Applicants should also plan to attend the Village Board meeting.
9. The owner is responsible for obtaining other necessary permits and/or approvals, including but not limited to, the North Shore Fire Department's Plan Review and Submittal Requirements.

-APPLICATION FOR NEW BUILDING OR BUILDING ADDITION - SEE PAGE 2 OF DIRECTIONS-

NOTE: The following information must be submitted for Village approval when proposing a new building or building addition:

1. Description of the project
2. Landscape plan
3. Plat of survey
4. Parking plan (including parking computations) per Chapter 14 of the Fox Point Village Code
5. Drainage plan (including drainage computations)
6. Lighting plan (including photometrics)
7. Traffic plan
8. Proposed location and connection to the sanitary sewer and water mains
9. All elevations
10. Floor plans
11. Any additional information as determined by Village staff

VILLAGE OF FOX POINT
APPLICATION FOR CONDITIONAL USE PERMIT

FOR OFFICE USE ONLY

Has sufficient site plan been submitted? (If not, what is needed?) _____

What is the category of proposed use? _____

Does the parking meet code requirements? _____

Is there proper exterior lighting? _____

Are there any existing code violations? _____

Additional Comments? _____

Letter of Consent received from owner? _____

Comments/Date

Date application/materials received: _____

Fee Paid: _____ Receipt No. _____

Municipal LAW

& L I T I G A T I O N G R O U P

DALE W. ARENZ – 1935-2022
DONALD S. MOLTER, Jr. - Retired
JOHN P. MACY
H. STANLEY RIFFLE - Court Commissioner
ERIC J. LARSON
REMZY D. BITAR

730 N. GRAND AVENUE
WAUKESHA, WISCONSIN 53186
Telephone (262) 548-1340
Direct (262) 806-0215
Facsimile (262) 548-9211
Email: elarson@ammr.net

PAUL E. ALEXY
MATTEO REGINATO
LUKE A. MARTELL
SAMANTHA R. SCHMID
CHRISTOPHER R. SCHULTZ
LUCAS C. LOGIC
BENJAMIN T. CROCKETT
GREGORY M. PROCOPIO
ADAM J. MEYERS

STEPHEN J. CENTINARIO, JR.
MICHAEL J. MORSE
JAMES P. WALSH

February 28, 2023

Scott Botcher, Village Manager
Village of Fox Point
7200 N Santa Monica Blvd.
Fox Point, WI 53217

**Re: Mary Nohl House Cultural Overlay District Ordinance
Second Draft**

Dear Mr. Botcher:

Upon further consideration in light of the evidence and argument received in the public hearing, I have prepared a second draft of the Cultural Overlay District Overlay ordinance for the above-referenced matter. I have had an opportunity to carefully consider this matter.

Enclosed please find a second draft of the ordinance. I believe you will find the enclosed to be self-explanatory. I recommend including this in the Plan Commission packet, for discussion and possible recommendation to the Village Board.

If you should have any questions or concerns regarding these matters, please do not hesitate to contact me.

Very truly yours,
MUNICIPAL LAW & LITIGATION GROUP, S.C.

Eric J. Larson

Eric J. Larson

EJL/BTC/em
Enclosures

cc: Kelly Meyer, Village Clerk
Kevin Ausman, Assistant Village Manager

ORDINANCE NO.

AN ORDINANCE TO ADD A CULTURAL OVERLAY DISTRICT ZONING
DESIGNATION TO OVERLAY THE EXISTING A-1 RESIDENCE DISTRICT
DESIGNATION OF PROPERTY LOCATED AT 7254 AND 7358 NORTH
BEACH DRIVE (a/k/a THE MARY NOHL HOUSE)

WHEREAS, a petition has been filed by Creation and Preservation Partners, Inc. ("Petitioner"), to add a cultural overlay designation to certain property located at 7254 and 7358 North Beach Drive in the Village of Fox Point, which includes the Mary Nohl House (hereinafter "Mary Nohl House"), as further described in Exhibit A attached hereto and incorporated herein by reference ("Subject Property"); and

WHEREAS, Petitioner is an affiliate of John Michael Kohler Arts Center, Inc ("JMKAC") and leases the Subject Property to JMKAC for JMKAC to use and operate the Subject Property for various purposes consistent with JMKAC's mission; and

WHEREAS, the Petitioner's stated intent in applying for the Cultural Overlay District designation are for the following purposes: (1) to preserve and protect the Mary Nohl House and a collection of her artwork, some of which is in the Mary Nohl House and some of which is located elsewhere on the Subject Property that includes paintings, sculptures, jewelry, drawings, and other assemblages (collectively the "Collection"); (2) for the exhibition, examination and study by smaller groups of invited scholars, collectors, historians, educators, and others; and (3) to encourage interested parties and larger groups to visit the Art Preserve of JMKAC located at 3636 Lower Falls Road in Sheboygan, Wisconsin which houses the vast majority of Mary Nohl's work; and

WHEREAS, the Petitioner has supplied all required data pursuant to Section 745-22 of the Village of Fox Point Village Code and the matter was properly referred to the Village Plan Commission for study and investigation; and

WHEREAS, the Village Board conducted a public hearing on the matter jointly with the Village Plan Commission on January 31, 2023 and February 6, 2023, with the hearing held open for receipt of written submittals until February 20, 2023 at 11:59 p.m., pursuant to Section 745-22(D) of the Village Code, upon due notice as required by Section 745-22(D)(2) of the Fox Point Village Code and Sections 61.35, 62.23(7)(d)(2) and 62.23(7)(de) of the Wisconsin Statutes; and

WHEREAS, an extensive record of written submissions and oral evidence was received in the matter, with the written submissions being attached hereto and incorporated herein as Exhibit B; and

WHEREAS, Section 745-22(E) of the Village Code identifies certain issues that must be considered and satisfied as a basis for approval, which includes all of the following:

- (1) That the proposed development is consistent with the spirit and intent of this chapter; is in conformity with the general character of the Village, and would not be contrary to the general welfare and economic prosperity of the Village or the immediate neighborhood.

- (2) That the project appears economically sound and that there are or adequate arrangements have been made to reasonably assure the continued maintenance of the development.
- (3) That the contemplated use will not:
 - a. Cause material depreciation in property values in the immediate neighborhood, nor
 - b. Materially adversely affect the use and enjoyment of property in the immediate neighborhood.
- (4) The setbacks will be maintained along any boundary street of the project area as required by the basic zoning district.
- (5) That no building will be permitted closer to the side or rear boundary line of the project area than required by the applicable side or rear yard requirements of the adjoining zoning district abutting along a side or rear property line of the project.
- (6) That no building shall exceed the height limitation of the basic zoning district.
- (7) That the project will not create traffic beyond the capacity of the street system to reasonably serve it, and that there will be adequate off-street parking based upon the need generated by the proposed project.
- (8) That the care and maintenance of the grounds and buildings comprising such project will be assured by the establishment of an appropriate management organization, or by the Village with the cost to be charged as a special assessment, and that the Village shall have the right to perform such maintenance work as it feels reasonably necessary to properly maintain the building and grounds, if this is not otherwise taken care of, and to levy the cost thereof as a special assessment. Any such special assessment shall be due and payable and collectible as all other special assessments, even though the property may be exempt from general real estate taxes, in whole or in part.

WHEREAS, a legal question has arisen in consideration of this matter, of whether the governing body acts in a legislative capacity or in a quasi-judicial capacity, which affects the standards to be applied in considering the matter, and the Village Board being duly advised determines as follows:

- (1) The petitioner's legal counsel Attorney Deborah Tomczyk contends that its petition for a cultural overlay designation seeks a special zoning permission and therefore seeks a "conditional use" as defined in State law, that must be considered in a quasi-judicial capacity and must be granted if the standards of the ordinance and applicable conditions are satisfied; and the legal representative of a group of Fox Point residents, Attorney John Wirth, disagrees, contending whether to grant the requested cultural overlay designation requires enactment of legislation, which is an entirely legislative matter; and

- (2) The recent Wisconsin Court of Appeals decision, *Miller v. Zoning Board of Appeals of Village of Lyndon Station*, 404 Wis.2d 539, (WI. Ct. App. 2022), concluded that rezonings of land are always legislative decisions because a rezoning involves amending the zoning ordinance, and an amendment to a zoning ordinance is legislation; and
- (3) The Wisconsin Supreme Court accepted the appeal of the Lyndon Station case on December 22, 2022, and the matter is now pending before the Wisconsin Supreme Court, so whether that bright line test announced by the Court of Appeals survives the appeal is uncertain at this time; and
- (4) Wisconsin Statutes Section 62.23(7)(de)1.a. defines a conditional use as “a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance;” and
- (5) Consideration of a conditional use permit as defined by the foregoing statute must be based upon substantial evidence received at a public hearing, and the statute says the municipality “shall grant” the use if the standards and conditions are met; and
- (6) The Cultural Overlay District of the Village Code is unlike a basic zoning district, because it is superimposed over the existing zoning designation; in this case meaning the applicable property is currently zoned A-1 Residential, and that will not change regardless of whether the petition is granted; and the Cultural Overlay District ordinance includes numerous standards that must be met for the overlay district designation to be approved, so some fact-based analysis must take place in a quasi-judicial role to determine whether the standards are met before the use can be approved; and
- (7) Attorney Wirth has acknowledged the quasi-judicial role in this matter, saying that quasi-judicial consideration of the proposed use is step two, but it arises only after step one which is a legislative determination of whether to grant the Cultural Overlay District designation; however, the Village would not grant the designation in the abstract, but only in consideration of the particular property and proposed use, making the two steps contemplated by Attorney Wirth intertwined and inseparable; and
- (8) In light of the foregoing the Village Board recognized the merits of the competing perspectives, but determined in its discretion that the best path forward is to ensure the intent of the ordinance is met based upon the evidence received, and therefore chose in its discretion to proceed as follows. This matter proceeded as a rezoning pursuant to Wisconsin Statutes Sections 61.35 and 62.23, by legislative consideration of an ordinance; but to inform this decision, the process followed a quasi-judicial discernment of whether the substantial evidence received at the public hearing satisfies all standards of the Village Code Section 745-22 (Cultural Overlay District). To best ensure the standards of the ordinance were properly considered, the Village Board analyzed the matter as a special zoning permission pursuant to Wisconsin Statutes Section 62.23(7)(de), as reflected in the decision matrix attached hereto and incorporated herein as Exhibit C. While the Village Board recognizes it may have legislative authority to do otherwise, the Village Board elects to follow the conclusions reached in weighing the evidence against the standards of the ordinance as shown in Exhibit C. By this process, the Board finds the legislative authority of the

Village Board could be, and was in fact, exercised reasonably and appropriately based upon close consideration of the evidence received, ensuring preservation of the intent of the Village zoning code; and

WHEREAS, upon conclusion of the joint public hearing, the Plan Commission duly considered the application, and the information received at the public hearing, and in making its recommendation to the Village Board gave consideration to, and satisfied itself concerning all of the issues identified in Section 745-22(E) of the Village Code; and

WHEREAS, upon careful consideration of the recommendation from the Plan Commission, the Village Board in making its determination, gave consideration to, and satisfied itself concerning all of the issues identified in Section 745-22(E) of the Village Code, as reflected in Exhibit C; and

WHEREAS, the Petitioner is the owner of the Subject Property, and has requested the cultural overlay designation for the Subject Property, and therefore this is not a “down zoning” ordinance per Section 66.10015(3) Wis. Stats.; and

WHEREAS, following the conclusion of the public hearing, Attorney Wirth submitted terms he said were agreed upon with the Petitioner (attached hereto as Exhibit D), and the Petitioner’s counsel Attorney Tomczyk agreed generally while noting two unresolved issues between them; and such legal counsel seek the Village Board’s approval of the agreed upon conditions if the Cultural Overlay District designation is approved; and

WHEREAS, the Village Board of the Village of Fox Point having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such Cultural Overlay District designation on the health, safety and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the surrounding properties as to noise, dust, smoke and odor, and others, hereby determine that the Cultural Overlay District designation will not violate the spirit or intent of the Zoning Code for the Village of Fox Point, will not be contrary to the public health, safety or general welfare of the Village of Fox Point, will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhood, and will be consistent with the Village of Fox Point Comprehensive Plan, as long as the operation is conducted pursuant to the following conditions and in strict compliance with the same,

NOW, THEREFORE, the Village Board of the Village of Fox Point, Milwaukee County, Wisconsin, does hereby ordain as follows:

SECTION 1: The Subject Property is hereby conditionally granted a Cultural Overlay District designation onto the existing A-1 Residence District designation, and the Zoning Map of the Village of Fox Point is hereby conditionally amended to add the Cultural Overlay District designation onto the Subject Property to overlay the existing A-1 Residence District designation, if the conditions stated in Section 2 of this Ordinance are met.

SECTION 2: The above Cultural Overlay District designation and zoning map amendment is conditioned upon the following conditions, which must be met or this ordinance is null and void:

1. Presentation Compliance. The Subject Property must be used in substantial conformity with the plans and narrative presented with the Cultural Overlay District application (including, without limitation, the December 9, 2022 letter from Petitioner to the Village Board of Fox Point together with its enclosures), as amended by Petitioner as reflected in Exhibit D (the Petition as amended being the "Proposal" as used herein), and in substantial conformity with the presentation at the public hearing of January 31, 2023 and February 6, 2023, including the comments made by the Village Board during the public hearings and in their meetings following the public hearings.
2. Land Use. The Subject Property may be used, as described in the Proposal, as modified herein and with the Overlay Agreement described below..
3. Overlay Agreement. The Petitioner and JMKAC shall be required to enter into a separate agreement with the Village to ensure there is ongoing compliance with the Cultural Overlay District requirements and conditions imposed, the Village of Fox Point Zoning Code, and the assurances made in the Petitioner's Proposal. The Agreement shall require the Petitioner and/or JMKAC to make an annual payment in lieu of taxes [PILOT] in the event the Subject Property becomes tax exempt in an amount to recover the taxes that otherwise would be owed if the property were not exempt, in a form approved by the Village. The Agreement shall incorporate the terms agreed upon between Attorney Tomczyk and Attorney Wirth, as described in attached Exhibit D, except as stated otherwise herein. The agreement shall incorporate the terms of this ordinance. This agreement shall be recorded with the Milwaukee County Register of Deeds and shall run with the land indefinitely.
4. Additional Building and Occupancy. An additional building of not more than 3,000 square feet may be developed in the future on the Subject Property and occupied from time to time by an artist-residence and/or caretaker in order to create and maintain a creative, inspirational, residential and secure environment on the Subject Property. Such building shall be subject to all applicable permitting and approval procedures of the Village Code and other applicable laws.
5. Subject Property. This Cultural Overlay Designation is dependent upon the two parcels that comprise the Subject Property being held and used together in common ownership. Such lots shall not be sold separately. The Overlay Agreement shall restrict the Subject Property accordingly.
6. Professional Fees. Petitioner shall, on demand, reimburse the Village for all costs and expenses of any type that the Village incurs in connection with this Cultural Overlay District Proposal, including the cost of professional services incurred by the Village (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions in this Cultural Overlay District ordinance and the Overlay Agreement due to a violation of these conditions.
7. Payment of Charges. Any unpaid bills owed to the Village by the Petitioner for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other

fees owed to the Village; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of billing by the Village, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this Cultural Overlay District ordinance that is subject to all remedies available to the Village, including possible cause for termination of the Cultural Overlay District ordinance designation.

SECTION 3. The Village Engineer is hereby authorized and directed to note the Cultural Overlay District designation of the Subject Property on the Official Zoning Map of the Village of Fox Point upon satisfaction of all conditions in Section 2 of this ordinance.

SECTION 4. The Petitioner is hereby put on notice that the Village of Fox Point may rezone the lands or portions thereof subject to this ordinance to remove the Cultural Overlay District designation if the conditions of this ordinance are not fully complied with.

SECTION 5. SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 6. EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after its passage and publication and subject to the conditions stated in Section 2, and this ordinance is null and void and original district zoning shall be in effect with no further notice if said conditions are not complied with on the terms and conditions stated herein.

Passed and adopted this _____ day of _____, 20__.

VILLAGE OF FOX POINT

Douglas H. Frazier, Village President

ATTEST:

Kelly Meyer, Village Clerk/Treasurer

Published and posted this _____ day of _____, 20__.

Dated this ____ day of _____, 20____.

CREATION AND PRESERVATION PARTNERS, INC.

EXHIBIT A

Description of the Property

All that part of the Southeast 1/4 of Section 16, Town 8 North, Range 22 East, Village of Fox Point, County of Milwaukee, State of Wisconsin, described as follows:

Commencing at a point which is 1559.89 feet South 0° 42' West of and 577.55 feet South 89° 57' East of the center of said Section 16 said point being the point of intersection of the centerline of the Northerly and Southerly course of the public highway with the centerline of the Easterly and Westerly course of said public highway; thence North 84° 27' East along the centerline of said public highway, 225 feet to a point (which point is the point of commencement of the land to be described); thence North 84° 27' East along the centerline of said public highway and said centerline produced 432.48 feet to the shoreline of Lake Michigan; thence South 8° 59' West along the shore line of Lake Michigan, 154.96 feet to a point; thence South 84° 27' West 361.91 feet to a point; thence North 5° 31' West 150 feet to the point of commencement.

Address: 7328 North Beach Drive;

Tax Key No. 095-9968-000.

All that part of the Southeast 1/4 of Section 16, in Township 8 North, Range 22 East, in the Village of Fox Point, described as follows: Commencing at a point, which point of commencement is described as follows: Starting at the intersection of the center lines of a North and South road and the center line of an East and West road, said intersection being 1559.89 feet South 0 degrees 42 minutes West of and 577.55 feet South 89 degrees 57 minutes East of the center of said Section; thence South 5 degrees 31 minutes East along the center line of said road, 195.49 feet to a point; thence North 84 degrees 27 minutes East 25 feet to the East line of said North and South road; thence South 64 degrees 23 minutes East 197.52 feet to a point; thence North 25 degrees 47 minutes East 59.15 feet to a point (being the point of commencement above referred to); running thence North 5 degrees 31 minutes West 98.80 feet to a point; thence North 84 degrees 27 minutes East 361.91 feet to the shore of Lake Michigan; thence South 8 degrees 59 minutes West 100 feet to a point; thence South 84 degrees 27 minutes West 337.22 feet to the place of commencement.

Together with a Right of Way in common with others, as set forth in Warranty Deed executed by Amella Robert and D. E. Roberts, her husband to David E. Detienne and John M. Niven, dated April 2, 1925 and recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin on April 4, 1925, in Volume 1047 of Deeds at page 598, as Document No. 1342356, over the following-described lands in the Southeast 1/4 of Section 16, in Township 8 North, Range 22 East; commencing at a point (which point is described as follows: starting at the intersection of the center line of a North and South road with the center line of an East and West road, said intersection being 1559.89 feet South 0 degrees 42 minutes West of and 577.55 feet South 89 degrees 57 minutes East of the center line of said Section; thence South 5 degrees 31 minutes East along the center line of said road, 253.90 feet; thence North 84 degrees 27 minutes East 25 feet to the East line of said road); running thence North 5 degrees 31 minutes West 58.41 feet to a point; thence South 64 degrees 23 minutes East 197.52 feet to a point; thence North 25 degrees 47 minutes East 59.15 feet to a point; thence North 84 degrees 27 minutes East 30 feet to a point; thence South 5 degrees 31 minutes East 134.70 feet to a point; thence North 70 degrees 08 minutes West 90.80 feet to a point; thence North 64 degrees 23 minutes West 172.86 feet to the place of commencement.

Address: 7254 North Beach Drive;

Tax Key No. 095-9966-000.

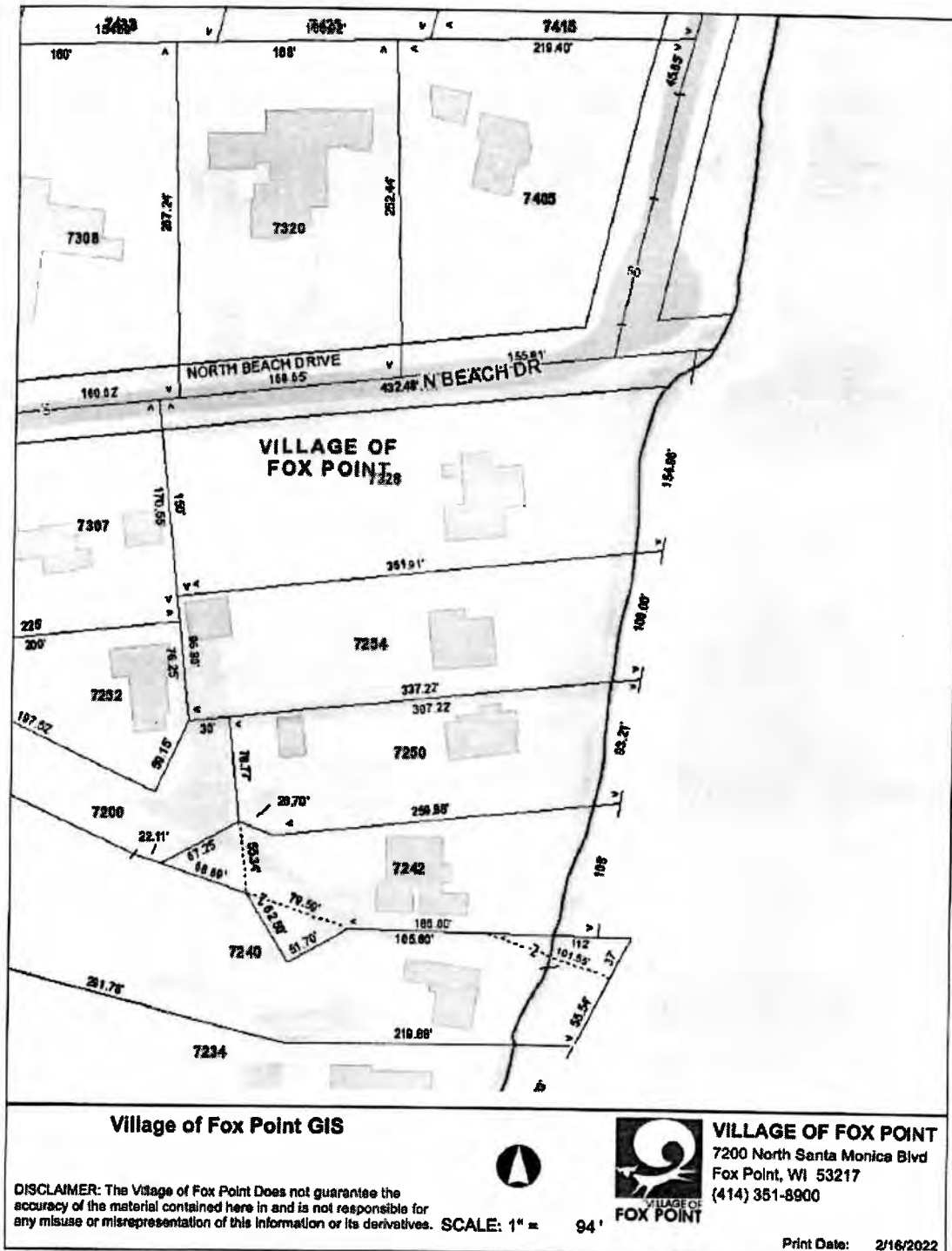


EXHIBIT B

(Attach Record of Written Submissions)

Exhibit C

Decision Matrix for Village Board Findings Village of Fox Point Cultural Overlay District Approval Process

The State of Wisconsin has preempted municipal authority regarding conditional use permits in a number of respects, effective November 29, 2017. Decisions concerning conditional use permits now must be based upon “substantial evidence,” which is defined as follows:

“‘Substantial evidence’ means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”¹

This new State Law defines the term “conditional use” broadly as follows:

“‘Conditional use’ means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city [or a Village], but does not include a variance.”

The Cultural Overlay District of the Village of Fox Point requires special zoning permission, and therefore arguably is subject to the foregoing statute.

Note two additional requirements of the new laws:

- If an applicant for a conditional use permit meets or agrees to meet all requirements and conditions specified in the ordinance, the conditional use permit must be granted.
- Any condition imposed must relate to the purpose of the ordinance and be based on substantial evidence.

This decision matrix is provided as a tool to work through the decision-making process in light of the new statutory requirements and applicable Village of Fox Point ordinances. As this statute has only been in effect since 2017, we will reserve the ability to proceed differently than outlined in this decision matrix if we find it is appropriate to do so.

Eric J. Larson

¹ §§60.62(4e)(a) 2. and 62.23(7)(de) 1. b., Wisconsin Statutes

Criteria	Applicant Provided Substantial Evidence ²		Opponents Provided Substantial Evidence ³		Village finds Standard is met ⁴	
1. 745-22(E)(1) That the proposed development is consistent with the spirit and intent of this chapter; is in conformity with the general character of the Village, and would not be contrary to the general welfare and economic prosperity of the Village or the immediate neighborhood.	Yes	No	Yes	No	Yes	No
2. 745-22(E)(2) That the project appears economically sound and that there are or adequate arrangements have been made to reasonably assure the continued maintenance of the development.	Yes	No	Yes	No	Yes	No
3. 745-22(E)(3) That the contemplated use will not: (a) Cause material depreciation in property values in the immediate neighborhood, nor	Yes	No	Yes	No	Yes	No
4. 745-22(E)(3) That the contemplated use will not: (b) Materially adversely affect the use and enjoyment of property in the immediate neighborhood.	Yes	No	Yes	No	Yes	No
5. 745-22(E)(4) The setbacks will be maintained along any boundary street of the project area as required by the basic zoning district.	Yes	No	Yes	No	Yes	No
6. 745-22(E)(5) That no building will be permitted closer to the side or rear boundary line of the project area than required by the applicable side or rear yard requirements of the adjoining zoning district abutting along a side or rear property line of the project.	Yes	No	Yes	No	Yes	No
7. 745-22(E)(6) That no building shall exceed the height limitation of the basic zoning district.	Yes	No	Yes	No	Yes	No
8. 745-22(E)(7) That the project will not create traffic beyond the capacity of the street system to reasonably serve it, and that there will be adequate off-street parking based upon the need generated by the proposed project.	Yes	No	Yes	No	Yes	No

² The Village Board finds that the applicant has provided substantial evidence to show that the applicant meets or agrees to meet this standard.

³ Opponents of the application have shown substantial evidence that the applicant will not meet this standard.

⁴ The Village Board finds, based upon substantial evidence presented, that the applicant meets or has agreed to meet this standard.

9. 745-22(E)(8) That the care and maintenance of the grounds and buildings comprising such project will be assured by the establishment of an appropriate management organization, or by the Village with the cost to be charged as a special assessment, and that the Village shall have the right to perform such maintenance work as it feels reasonably necessary to properly maintain the building and grounds, if this is not otherwise taken care of, and to levy the cost thereof as a special assessment. Any such special assessment shall be due and payable and collectible as all other special assessments, even though the property may be exempt from general real estate taxes, in whole or in part.	Yes	No	Yes	No	Yes	No
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Approval Conditions.

Section 745-22(F) of the Village of Fox Point Zoning Code states the following regarding conditions that may be imposed:

“The Village Board, after due consideration, including consideration of the report of the Plan Commission, may reject the project or approve the project as originally proposed or approve it subject to certain changes, modifications, provisions and conditions as the Board considers reasonably necessary.

Should additional conditions be imposed related to the purpose of the ordinance, based on substantial evidence, that are reasonable and to the extent practicable measurable or conditions be added concerning the permit’s duration, transfer or renewal?

YES	NO
-----	----

If yes, name the additional conditions:

Has the applicant agreed to meet all of the requirements and conditions specified by the Village of Fox Point Village?

YES	NO
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If the Village Board answer is “yes” proceed to the next section. If the Village Board answer is “no” the application must be denied.

Proposed motions:

A. **Motion to Approve:** I move to approve the application for a use in the Cultural Overlay District of the Village as presented, subject to the following: [Mark all that apply.]

- ☐ The Village of Fox Point Attorney (alternatively: _____) is directed to prepare necessary legal documents based upon this decision matrix and place it in final form consistent with the discussion of at the Village of Fox Point Village Board meeting.
- ☐ The legal documents shall be circulated to the members of the Village Board who will confirm in writing whether they find the final form to be as decided by the Village Board, and if there is any doubt in the mind of any member of the Village Board in that regard, the matter shall be brought back to a subsequent Village Board meeting for further consideration of the final form of the decision and order.
- ☐ This matter shall be placed upon an upcoming agenda to consider the final form of the legal documents, and for final action in the matter.
- ☐ The record of this determination is clear and is on the tape. The Village Clerk shall preserve the tape of the Village Board's discussion which along with this decision matrix shall serve as the final order in the matter.

B. **Motion to Deny:** I move to deny the Cultural Overlay District application as the applicant has failed to show by substantial evidence that the applicant meets or agrees to meet all of the requirements and conditions specified in the Village of Fox Point Zoning Ordinance or those imposed by the Village of Fox Point Village Board, and substantial evidence in the matter supports the decision to deny, subject to the following: [Mark all that apply.]

- ☐ The Village of Fox Point Attorney (alternatively: _____) is directed to draft a written decision for denial and place it in final form consistent with the discussion of the Village of Fox Point Village Board.
- ☐ The written decision shall be circulated to the members of the Village Board who will confirm in writing whether they find the final form to be as decided by the Village Board, and if there is any doubt in the mind of any member of the Village Board in that regard, the matter shall be brought back to a subsequent Village Board meeting for further consideration of the final form of the written denial.
- ☐ This matter shall be placed upon an upcoming agenda to consider the final form of the written denial, and for final action in the matter.
- ☐ The record of this determination is clear and is on the tape. The Village Clerk shall preserve the tape of the Village Board's discussion which along with this decision matrix shall serve as the final order in the matter.

Exhibit D

Document Number	AGREEMENT AND DEED RESTRICTION (Mary Nohl House)	
Name and Return Address		
Village of Fox Point Attn: Village Clerk 7200 N. Santa Monica Blvd. Fox Point, WI 53217		
0959968000 and 0959966000		
Parcel Identification Number (PIN)		Recording Area

THIS AGREEMENT AND DEED RESTRICTION ("Agreement") is made as of _____, 2023 between the VILLAGE OF FOX POINT, a Wisconsin municipal corporation (the "Village"), and CREATION AND PRESERVATION PARTNERS, INC., a Wisconsin non-stock corporation ("Owner").

RECITALS

A. Owner owns the real property commonly known as 7254 and 7328 North Beach Drive, Fox Point (the "Property"). The legal description for the Property is set forth on the attached Exhibit A.

B. Pursuant to Village Ordinance _____, Owner has applied for, and the Village Board of Trustees (the "Village Board") has granted, Owner's application (a) to rezone the Property to Cultural Overlay District, as described in Section 745-22 of the Village's Code of Ordinances (the "Code"); and (b) to conditionally approve use of the Property as a museum, as described in Section 745-22A(2)(b) of the Code, subject to the terms and conditions of this Agreement.

C. Owner and the Village enter into this Agreement pursuant to Section 745-22G of the Code.

D. This Agreement takes into account both (1) the residential character of the neighborhood surrounding the Property and (2) Owner's intent to preserve and protect the house on the property at 7328 North Beach Road (the "Mary Nohl House") and the art displayed on the Property (the "Collection") and to use the Property for the low impact uses described in this Agreement.

AGREEMENTS

In consideration of the foregoing, Owner and the Village agree:

1. Residential Uses. As used in this Section, a “Primary Resident” means an artist-in-residence or caretaker of the Mary Nohl House and/or Collection. No more than two Primary Residents, or one Primary Resident and his or her family (in either instance, the “Residents”), may reside at the Property at any time. Residents may use the Property for all residential purposes allowed under the Code and applicable law, and pursuant to any additional rules and regulations promulgated by Owner. Personal guests of the Residents shall be subject to the numeric limitations for General Visitors, as described below, but not the time limits. Notwithstanding the foregoing, the Village acknowledges that there may be periods when no Residents reside at the Property.

2. Not Open to Public. Subject to the terms of this Agreement, at no time shall the Mary Nohl House or the Property be open to the public.

3. Larger Groups Directed to the Art Preserve. The Property’s primary purpose is to preserve and protect the Mary Nohl House and the Collection now and into the future. Excessive traffic and visits to the Property would frustrate this purpose and threaten the Mary Nohl House, the Collection, and the Property’s “artist-built environment.” Accordingly, Owner and John Michael Kohler Arts Center, Inc. (“JMKAC”) have determined that larger groups interested in Mary Nohl’s art will be encouraged to visit JMKAC’s Art Preserve in Sheboygan, Wisconsin; therefore, the use of the Property is strictly limited as described in this Agreement.

4. Invited Visitors. Visitors to the Property shall be limited as follows:

(a) General Visitors. Owner may allow the following people at the Property (each being a “General Visitor”): art scholars, teachers, students, admirers, supporters, donors and unpaid personnel working on the Mary Nohl House and/or the Collection including, but not limited to college professors, graduate and undergraduate students, school children, curators, artists, writers, unpaid museum personnel, collectors, donors and others with affiliation and/or interest. No more than ten (10) General Visitors may be at the Property at any time, and no more than 20 General Visitors shall be allowed at the Property on any day.

(b) Village Residents. At all times when the Property is open for General Visitors, but subject to the prior scheduling of any other visits described in this Agreement, ten (10) advance reservations per week will be held for residents of the Village and their guests. Any Village resident may use up to four (4) available reservations in any one week (not more than 20 available reservations in any one year) by sending an email to _____ at least 30 days in advance. Any advance reservations not timely requested by Village residents may be used by other General Visitors consistent with this Agreement.

(c) School Groups. Owner may allow groups of students (each being a “School Group”) from local primary, intermediate and secondary schools to visit the Mary Nohl House and view the Collection provided that no more than two School Group visits may occur per month.

Visits by School Groups shall be free of charge. A School Group, including students, teachers and chaperones, shall not exceed 30 people, provided that School Groups from primary or intermediate age students shall be limited to not more than 20 people before the Auxiliary Building is built.

(d) Business Meetings. Owner may hold or allow up to one meeting per month at the Property of up to 30 people (each a “Business Meeting”) for the boards of directors, staff and/or employees of Owner and/or JMKAC, provided that up to a single vehicle (not to exceed a 12-person vehicle) of paid personnel may meet at the Property, subject to the time limits for General Visitors set forth below, and shall not constitute a “Business Meeting.”

(e) Special Events. Subject to the Village’s approval as described, Owner and/or JMKAC may hold up to two special events (each a “Special Event”) at the Property each calendar year. No Special Event shall exceed 60 people (including catering staff and other service providers who remain on site during the Special Event). Special Events may include, without limitation, fundraisers to secure funding needed to maintain and care for the Property and the Collection, educational symposiums to examine the Collection and other works of art created by Mary Nohl, community events to engage with invited visitors in constructive, positive ways, or for any other purposes consistent with the goals and purposes of Owner and/or JMKAC for the Mary Nohl House and the Collection. Special Events shall not include weddings, corporate events or similar for-profit events for individuals unrelated to Owner or JMKAC. At least 30 days before Owner desires approval of a Special Event, Owner or its designee shall deliver to the Village a Special Event proposal (an “Event Proposal”) in the form attached as Exhibit B. The Village shall review and in its reasonable discretion approve or deny such Event Proposal within 10 days following receipt of the Event Proposal.

(f) Exceptions. The following visitors shall not be subject to the numeric limits described in this Agreement: (i) building contractors, subcontractors and materials suppliers in connection with any construction, repair and replacement of improvements allowed pursuant to this Agreement (but excluding the creation, repair and replacement of art); (ii) plumbers, electricians and similar tradespeople visiting the Property to work on building systems, utilities, structural issues, and other non-art-related repairs and replacements; (iii) delivery people while delivering packages to the Property; (iv) mail and courier delivery people while delivering to the Property; (v) police, fire, ambulance and other safety personnel; and (vi) building inspectors.

(g) Frequency; No Simultaneous Uses.

(i) General Visitors shall not be present at the time of any School Group visit, Business Meeting or Special Event.

(ii) Only one School Group visit, Business Meeting or Special Event shall occur on any day.

(iii) At least four days per week, no General Visitors, School Groups, Business Meeting participants and Special Event participants shall be on the Property.

(h) Hours. Hours during which the Property may be used by General Visitors, School Groups, Business Meeting participants and Special Event participants on the three days per week on which they are allowed shall be limited to the following hours:

Day	General Visitors	Business Meetings & School Groups	Special Events
Monday	9:00 am – 9:00 pm	9:00 am – 7:00 pm	9:00 am – 9:00 pm
Tuesday	9:00 am – 9:00 pm	9:00 am – 7:00 pm	9:00 am – 9:00 pm
Wednesday	9:00 am – 9:00 pm	9:00 am – 7:00 pm	9:00 am – 9:00 pm
Thursday	9:00 am – 9:00 pm	9:00 am – 7:00 pm	9:00 am – 9:00 pm
Friday	9:00 am – 10:00 pm	9:00 am – 7:00 pm	9:00 am – 11:00 pm
Saturday	until 10:00 pm	until 7:00 pm	until 11:00 pm
Sunday	until 9:00 pm	until 7:00 pm	until 9:00 pm

In addition to the foregoing, no General Visitors, School Groups Business Meeting participants or Special Event participants shall arrive at or depart from the Property during the hours of 4:00-6:00 p.m. on weekdays.

5. Parking and Driveway Restrictions. To comply with the Code and to avoid, to the extent possible, managing the number of vehicles present in the vicinity of the Property, visitor parking shall be limited to the parking pad area on the Property depicted on the attached Exhibit C. Notwithstanding the foregoing, the new driveway described in Section 7(b), including its grass shoulders, may be used for parking during Special Events. No street parking shall be allowed and, despite the Village's Code that allows requests for street parking for special events, Owner shall not request street parking on Beach Drive or Beach Court. Owner shall be responsible for ensuring that its employees, visitors and guests do not park on Beach Drive or Beach Court. To the extent that additional parking is required by visitors to the Property, shuttle services will be used to transport visitors to and from the Property. No buses (which accommodate 20 or more passengers at any one time) shall be allowed on the Property. All shuttles and allowed smaller buses, when not in use, shall park in the designated parking area on the Property or legally offsite.

6. Noise Restrictions. In addition to any applicable provisions of the Code adopted from time-to-time, noise, music and sound amplifying devices used on the Property (e.g., microphones) shall at all times be kept at conversational levels and shall not be audible at the external property lines of the Property after 10:00 p.m. on Friday or Saturday or 8:00 p.m. on any other day.

7. Required Improvements and Landscaping. On or before September 1, 2026:

(a) Owner shall close the existing driveway to the Mary Nohl House for all but vehicles servicing the Mary Nohl House and/or the Collection.

(b) Owner shall construct a gated driveway and parking on the Property as shown on the attached Exhibit C. As set forth on Exhibit C, Owner has moved the new Beach Drive driveway as far east as reasonably possible without damaging the Collection in any way and

has angled such driveway northeasterly as it reaches Beach Drive. Such driveway is designed to keep headlights from shining into the home on the property located at 7320 North Beach Drive (“7320 NBD”). The west edge of the driveway will be at least 88 feet from the east edge of the driveway at 7320 NBD. If after construction the Village determines that headlights shine into the home at 7320 NBD, the Village may require Owner to install additional landscaping on the Property and/or on 7320 NBD to shield that home from the lights. The owner of 7320 NBD may decline to allow any additional landscaping on such owner’s property if such owner does not like the location or type of landscaping required by the Village. The new driveway shall not exceed 14 feet in width. To avoid traffic back-ups, gates shall be constructed in a manner that allows stacking of at least two vehicles on the Property and so that gates will automatically open without a person in a vehicle having to exit the vehicle. Owner shall ensure that allowed visitors are able to access the Property without backing up traffic onto Beach Drive. The gates shall be kept in good condition and repair and shall be replaced from time to time as necessary.

(c) The parking area shown on Exhibit C shall be screened with vegetation so that, at maturity of such vegetation, the parking area is not visible from any public street. Any trees planted shall have an initial caliper of no less than two inches at a height of three-and-one-half feet and a height of at least seven feet. Such vegetation shall be maintained and replaced as necessary to maintain such screening.

(d) Owner shall plant additional vegetation along Beach Drive to further screen the Mary Nohl House from public view but not endangering the Collection in any way and except as recommended by Village Police. Any trees planted shall have an initial caliper of no less than two inches at a height of three-and-one-half feet and a height of at least seven feet. Such vegetation shall be maintained and replaced as necessary to maintain such screening.

(e) The existing chain link perimeter fencing shall be replaced with a more decorative fence, the location and aesthetics of which shall be subject to approval of the Building Board, but which location and height may be the same as the existing fencing (or as otherwise approved by the Building Board) subject to the stacking requirements of this Agreement at driveway entrances. Such fence shall be kept in good condition and repair and shall be replaced from time to time as necessary.

Each of the foregoing shall be subject to all necessary zoning approvals and any required building permits. No School Group visits, Business Meetings or Special Events that would exceed the number of General Visitors allowed on the Property shall be held at the Property until these improvements are completed.

8. No Signage. No signs shall be installed on the Property except as approved by the Village staff for safety or security purposes or to implement the terms of this Agreement. Despite the Village Code that allows requests for signage, Owner shall not request approval of any advertising, property name or similar signs.

9. Portable Toilets. Portable toilets shall not be used on the Property except by contractors for the limited duration of construction and then shall be screened from roadways and adjacent properties.

10. Laws. Owner shall comply with all federal, state, county and local rules, codes, ordinances and regulations in the construction, operation and maintenance of the Property.

11. Building and Fire Inspection. Owner is required to keep the Property in compliance with all applicable federal, state and local laws, statutes, codes, ordinances, policies and guidelines as determined by the Building Inspector of the Village and Fire Inspectors of the North Shore Fire Department and, upon reasonable notice, to grant the Village's Building Inspector and the Fire Inspectors of the North Shore Fire Department access to the Property for the purpose of inspection.

12. Aesthetics and Maintenance. Owner is required to properly maintain the Property at all times and in full compliance with the Code and to seek all approvals required under the Code.

13. Other Future Improvements.

(a) The footprint of the Mary Nohl House is to be maintained as it is, with limited improvements and structural changes to the building.

(a) Owner has indicated that it might want to develop an additional building of not more than 3,000 square feet (the "Auxiliary Building") in the future on the Property that may include one or two dwelling units that may be used primarily as the residences and workspaces of the Residents. The Auxiliary Building shall not increase the levels of visitors but, instead, shall help ensure the preservation of the Mary Nohl House and the Collection. An Auxiliary Building generally consistent with the floor plan attached hereto as Exhibit D (not more than 3,000 square feet in area and consisting of two bedrooms, two bathrooms, a living room, kitchen and a studio/work space with kitchenette) may be constructed on the Property subject to Building Board approval as to location and aesthetics. If the Auxiliary Building when proposed will exceed that size or have a materially different floorplan, the Auxiliary Building shall constitute a material amendment or change as described in Section 745-22H of the Code. No School Group visits, Business Meetings or Special Events that would exceed the number of General Visitors allowed on the Property shall be held at the Property until the Auxiliary Building is completed.

(b) A small storage shed, not to exceed 15 feet by 15 feet, may be constructed on the Property subject to Building Board approval as to location and aesthetics. Any such storage shed shall contain architectural details consistent with, and shall be harmonious with, the Mary Nohl House.

(c) Any other structures on the Property are not approved by this Agreement and would constitute a material amendment or change as described in Section 745-22H of the Code.

14. PILOT Payment. As of the date of this Agreement, the Property is not tax exempt, but the Property is eligible for property tax exemption. As a condition of rezoning, Owner has offered to pay to the Village a payment in lieu of taxes. This offer was material to the Village's approval of the rezoning. As such, the following terms and conditions shall apply:

(a) Services.

(i) Services Typically Covered by Property Tax. The Village agrees to continue to furnish governmental services and benefits to the Property of the same type, and to the extent, as are furnished from time to time, without cost or charge (except by means of property tax and authorized fees and charges), to other similarly situated projects in the Village. Nothing in this Agreement shall be construed to give Owner or its successors and assigns a contractual right to specific governmental services, or to impose upon the Village any additional duties, it being the parties' intent that the Village provide public services to the Property subject to the same terms and conditions as apply to properties owned by citizens or the public generally. Moreover, Owner intends to have people live on site, making the use of schools and the technical college possible. Such services and benefits include but are not limited by specific enumeration in this Section, those typically covered by the property tax such as fire and police protection, and on public streets, snow removal, and street lighting, and use of the schools and technical college. The Village shall not have breached its obligations under this Agreement if it is prevented from providing benefits and/or services to the Property because of force majeure (e.g. war, flood, fire, labor dispute, supply shortage, act of God, natural disaster, disease, a pandemic, etc.), budgetary constraints, changes in services typically provided in the Village or other taxing authorities or because any person or entity shall assert a right which prevents delivery of such benefits and/or services.

(ii) Special Assessments; Special Charges and Fees. Notwithstanding paragraph (a)(i), or any future property tax exempt status of the Property, Owner understands that the Property will be subject to applicable special assessments, special charges, and special taxes as defined in Section 74.01 of the Wisconsin Statutes (and as also referred to in Wisconsin Statutes Chapter 66) and fees charged by the Village in the same manner that such special assessments, special charges, special taxes, and fees are charged for similar services and/or undertakings to residential development and property within the Village. This provision shall not affect the Village's powers, consistent with the law, to determine the services and benefits (other than those typically covered by the property tax) that shall be provided to the Property and/or similarly situated properties pursuant to this paragraph (a)(ii). Nothing contained in this paragraph shall preclude Owner or its successors and assigns from appealing, as provided by law, the imposition of such special assessments, special charges, special taxes, or fees by the Village.

(b) PILOT Payments.

(i) Calculations. The parties have determined that the Property will be receiving benefits equal to the amount that would be levied as the annual general property tax upon the real and personal property were it not exempt from taxation. In recognition of those services and benefits covered by paragraph (a)(i) of this Section, beginning in the year the Property or any portion of the Property becomes exempt from property tax, and so long as the Property or any

portion of the Property continues to be exempt, in whole or in part, under Section 70.11 of the Wisconsin Statutes ("Section 70.11"), or other statutory provision, Owner or its successors and assigns shall pay the Village an annual partial PILOT Payment for the Property or the portion of the Property which is exempt for each calendar year; provided, however, that the foregoing shall not apply with respect to any portion of the Property that becomes exempt by virtue of a conveyance to the Village. The method to be used in determining the PILOT shall be the Value for that tax year times the Village and School District Tax Rates only for the tax year. "Value" means the Village's Assessor's determination of the fair market value of the tax-exempt portion(s) of the Property on January 1 of each tax year. "Village and School District Tax Rate" means the net rate for the share of taxes due only to the Village and the Fox Point/Bayside School District and not the rate for any other taxing bodies reflected on the Village's tax bills from time to time specifically excluding the rate imposed by Milwaukee County, MATC or MMSD.

(ii) Payment Due Date. PILOT Payments for the year in which the Property or a portion thereof becomes exempt and subsequent years shall be due and payable: (1) in full on or before January 31 of the year following the calendar year for which the PILOT Payment was calculated; or (2) if Owner or its successor(s) or assign(s) elects to pay in installments, according to the following schedule: one-tenth of the PILOT Payment by the last day of each month for the first 10 months in the year following the calendar year for which the particular PILOT Payment was calculated. Owner or its successor(s) or assign(s) shall be deemed to have elected to pay the PILOT Payment in installments by making the first full installment payment on or before January 31 in the respective year in which the PILOT Payment is due.

(iii) Use. The Village and other taxing authorities may use and expend PILOT Payments under this Agreement in such manner and for such purposes as the Village desires.

(iv) Mandatory Payment for Services to Offset PILOT Payment. Notwithstanding anything herein to the contrary, if the State of Wisconsin enacts a mandatory payment for municipal services to be paid by owners of property exempt from general property tax or similarly situated owners of exempt property, PILOT Payments shall be reduced dollar for dollar by any such mandatory payment paid by Owner or its successors or assigns to the Village.

(c) Exempt Status. Nothing in this Agreement shall be construed as granting tax-exempt status to Owner or the Property. If Owner qualifies for tax-exempt status under Wisconsin law, it is Owner's obligation to apply for tax-exempt status. At such time that Owner is granted tax exempt status pursuant to Section 70.11, or other statutory provision, Owner shall then make PILOT Payments pursuant to this Agreement. No PILOT Payment under this Agreement is due from Owner until such time that all or any part of the Property is deemed to be exempt from payment of property taxes pursuant to Section 70.11, or other statutory provision. The Village Assessor's Office may review the Property's exempt status under Section 70.11, or other applicable statutory provision, from time to time with the respective January 1 dates being the reference dates for those exemption reviews. If the Village, as a result of those reviews or otherwise, determines that all or any portion of the Property no longer qualifies (or does not

qualify) for exemption from property tax: (1) the Village will provide notice of such determination to Owner or its successor(s) or assign(s); (2) this Agreement shall be suspended with respect to any years and, if applicable, with respect to any portions of the Property for which exemption no longer applies; (3) if PILOT Payments have been erroneously made for such tax years, Village shall promptly refund such PILOT Payments, or, at the option of the Village, offset such PILOT Payments against any property taxes due, or to become due, from Owner or its successor(s) or assign(s), in which case the Village will treat such offset as having been made under protest; and (4) the Property, or any portion of the Property which does not qualify for exemption, shall be placed on the property tax rolls for all years for which whole or partial exemption has been determined not to apply. If Owner or its successor(s) or assign(s) disagree with the Village's determination that the Property or any part of the Property no longer qualifies for tax exemption, Owner or its successor(s) or assign(s) may challenge such determination by following the procedure set forth in Section 74.35 of the Wisconsin Statutes or as otherwise provided by law. Notwithstanding any contrary provision of this Agreement, Owner acknowledges that it is or may be bound by the reporting requirement, in the Section 70.11 preamble, and that under Wis. Section 70.109 of the Wisconsin Statutes: exemptions are strictly construed; it is presumed that property is taxable; and the burden is on the person claiming exemption. Owner, on its behalf and that of its successors and assigns, also acknowledges that if it leases, or otherwise allows another person to use and/or occupy all or a portion of the Property, such use may affect the Property's exempt status. See, e.g., the preamble of Section 70.11, Wis. Stat. § 70.1105, and *Deutsches Land, Inc. v. Village of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999). For example, if Owner is exempt but only uses and occupies 90% of the Property for exempt purposes and leases the other 10% of the Property to a for-profit, nonexempt entity, and if the assessor applies a square footage, taxed in part analysis, the Property is to be taxed on a 10% basis and exempt on a 90% basis and the PILOT Payment would be paid on the 90% portion.

(d) Successors and Assigns. The terms and conditions of this Section shall inure to the benefit of and bind Owner, the Village and their respective successors and assigns.

(e) Term. This PILOT Agreement shall remain in effect in perpetuity absent the occurrence of any of the following potential termination condition(s) event(s). This Agreement shall terminate effective on the December 31 of the year immediately prior to the year during which the Village Assessor concludes that as of or prior to the determination date any of the following events has occurred: (i) enactment by the State of Wisconsin of a mandatory payment for municipal services by owners of property exempt from the general property tax or similarly situated owners of exempt property; and/or (ii) repeal by the State of Wisconsin of the property tax exemption for the Property and other similarly situated property.

15. Amendments. Compliance with this Agreement is required at all times. Except as provided below, no amendment to this Agreement shall be effective unless a written agreement is signed by both Owner and the Village. A request by Owner for an amendment shall first be submitted for approval to the Plan Commission, and if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Village Board; however, changes to Section 4 of this Agreement shall be deemed substantial. If an amendment is determined to be substantial, or if the Village Board determines in its discretion that a public hearing is advisable, a

public hearing shall be held prior to affirmative action by the Village Board on such recommendation.

16. Enforcement; Change in Circumstances.

(a) Certificate of Compliance. On or before the last day of February of each year, so long as this Agreement is in effect, Owner, by one of its duly authorized officers or representatives, shall file with the Village a certificate, in such form as shall be reasonably satisfactory to the Village, certifying that such representative has reviewed the provisions of this Agreement and that all obligations and duties of the Owner imposed by this Agreement are then being performed and complied with, or, if not, specifying any items of noncompliance.

(b) Inspections. The Village, by its duly authorized representatives, shall have the right with prior notice to enter upon and inspect the Property at reasonable times for the purpose of assuring continued compliance of Owner of the Property with this Agreement and for the purpose of determining compliance with applicable public health, safety and building code ordinances, rules and requirements. The presence of one or more such representatives on the Property for this purpose shall not be counted toward the daily limits on the number of people visiting the Property as set forth above.

(c) Remedies. In addition to other enforcement powers allowed under the Code and applicable law, including the right to assess fines and forfeitures and to seek injunctive relief, the Village shall have the following rights and remedies:

(i) The Village Board, after public hearing, may modify the permissible uses described in this Agreement under the following circumstances:

- [1] If Owner's use does not conform with the conditions of this Agreement or the conditional use permit; or
- [2] If there is a substantial change in the nature, character, extent or intensity of the use of the Property which causes the uses approved in this Agreement to be a substantial change under Section 745-22H of the Code.

(ii) If Owner breaches this Agreement, the Village Board may provide written notice outlining the breach in detail. If the breach is not remedied within 60 days (or such longer time as may reasonably be required), the Village Board may hold a public hearing to determine whether a material breach exists and whether a remedy is reasonable. If the Village Board finds that a material breach exists and cannot reasonably be remedied, or if the Village Board determines that the breach was willful or that there has been a pattern of breaches, the Village Board may terminate the conditional use permit and the rights described in this Agreement.

(d) Discontinuance of Use of the Property as a Museum. Nothing in this Agreement shall be deemed to require the continued operation of the Property as a museum;

provided, however, that if the museum ceases operating as a museum for 60 days or more, or upon the substantial destruction of the Mary Nohl House and/or the Collection such that the Property is no longer reasonably deemed an “artist-built environment.”, this Agreement may be terminated by Owner upon 30 days’ written notice to the Village or by the Village Board after public hearing.

17. Other Properties. Owner has represented to the Village that it will not in the future purchase, rent or use adjacent properties or other surrounding properties or apply to rezone or for a conditional use grant for any such properties. This representation was a material inducement to the Village to enter into this Agreement.

18. Miscellaneous Provisions.

(a) No promise, inducement or agreement not expressed in this Agreement regarding the use of the Property has been made by the Village to Owner or by the Owner to the Village except as described in this Agreement and the ordinance amending the zoning for the Property and the conditional use permit. This Agreement contains the entire agreement between the parties regarding such use. All prior discussions, oral or written, are merged into this Agreement.

(b) This Agreement binds and inures to the benefit of Owner, the Village and their respective assigns, legal representatives, and successors in interest. This Agreement runs with the land and any subsequent owner of the Property shall be deemed the Owner. Notwithstanding the foregoing, Owner may not transfer its rights and obligations under this Agreement without the prior written consent of the Village. Such written consent shall be approved by the Village Board after a public hearing.

(c) This Agreement has been, and shall be, construed to have been drafted by both the Village and Owner so that the rule of construing ambiguities against the drafter shall have no force and effect.

(d) If any material provision of this Agreement is held to be invalid by any court, the entirety of the conditional use grant and this Agreement shall be null and void.

(e) This Agreement shall in all respects be interpreted, enforced and governed under the internal laws of the State of Wisconsin. All disputes under this Agreement shall be filed with and heard by the Circuit Court for Milwaukee County, Wisconsin.

[SIGNATURE PAGES ATTACHED]

VILLAGE OF FOX POINT
SIGNATURE PAGE TO
AGREEMENT AND DEED RESTRICTION

VILLAGE OF FOX POINT

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)

The foregoing instrument was acknowledged before me on _____, 2023,
by _____ and _____,
as _____ and _____,
respectively, of Village of Fox Point.

Name: _____
Notary Public, State of Wisconsin
My commission _____

CREATION AND PRESERVATION
PARTNERS, INC.

Name: _____
 Notary Public, State of Wisconsin
 My commission _____

Drafted by:

Attachments:

Exhibit A – Legal Description
Exhibit B – Event Proposal
Exhibit C – Parking and Driveway
Exhibit D – Floor Plan

EXHIBIT A
Legal Description

EXHIBIT B
Event Proposal

EXHIBIT C
Parking and Driveway

EXHIBIT D
Floor Plan