

Legal Department

DATE: 10/31/2019

MEMO:

TO: Mayor Julie Moore Wolfe & Decatur City Council Members

FROM: Scot Wrighton, City Manager

SUBJECT: Resolution Authorizing City Manager to Purchase Property Located at 855 N. Fairview Ave., Decatur, IL

SUMMARY RECOMMENDATION: Adopt a resolution authorizing acquisition of a site for a fire station.

BACKGROUND:

The city's fire station architect/planner, Dewberry, recommended that the city upgrade and modernize 4 of its 7 stations, and replace/relocate the other 3. The 4 upgrades/modernizations have been completed. Stations 3, 5 and 7 were slated for replacement. Station #5 (on Mound Road) is nearly finished and will be substantially complete by year's end. The city has not yet acquired new sites for stations 3 and 7.

The staff examined several possible replacement sites for station 3, and determined that the proposed site (on the east side of Fairview Plaza where the former Kroger gas pumps were located) would provide the best access to neighborhoods on the west side of the city. Staff has also secured preliminary approval from IDOT for the necessary curb and median cuts to service the proposed site. It is recommended that the City Council approve the acquisition of the site.

ATTACHMENTS:

Description	Type
Resolution Authorizing City Manager to Purchase Property Located at 855 N Fairview Ave	Resolution Letter

RESOLUTION NO. R2019-_____

**RESOLUTION AUTHORIZING CITY MANAGER
TO PURCHASE PROPERTY LOCATED AT
855 NORTH FAIRVIEW AVENUE, DECATUR, ILLINOIS**

WHEREAS, the City of Decatur, Illinois has need to build a fire station facility to replace an aging structure; and,

WHEREAS, the location of 855 North Fairview Avenue, Decatur, Illinois will be a desirable location for a fire station to be built.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ILLINOIS:

Section 1. That the City Manager, or his authorized designee, is authorized to enter into the Contract of Sale, attached hereto and marked Exhibit A for the purchase of the property located at 855 North Fairview Avenue, Decatur, Illinois.

Section 2. That the City Manager or his authorized designee, is authorized to execute any and all documents necessary to purchase the property located at 855 North Fairview Avenue Decatur, Illinois.

PRESENTED and ADOPTED this 4th day of November, 2019.

JULIE MOORE WOLFE, MAYOR

Attest:

CITY CLERK

EXHIBIT A

CONTRACT OF SALE

HIS CONTRACT OF SALE ("Contract") is by and between FAIRVIEW PARK PLAZA, LLC, an Illinois limited liability company ("Seller"), and the CITY OF DECATUR, an Illinois municipal corporation ("Buyer").

WITNESSETH:

Seller agrees to sell and Buyer agrees to purchase on the terms and conditions hereinafter set forth, the real estate situated in Macon County, Illinois, described on Exhibit A attached hereto (the "Premises").

1. Purchase Price. The purchase price for the Property is One Dollar (\$1.00) with purchase price for the property to be paid at closing, subject to closing adjustments.

2. Representations. Seller represents that a No Further Remediation ("NFR") order has been received for the Premises from the Illinois Environmental Protection Agency, a copy of which will be provided to the Buyer and except for the NFR, Seller has not made and does not make any representations, warranties or guarantees of any kind concerning the Premises or its condition or suitability for Buyer's proposed use, whether express or implied, oral or written. Buyer agrees that it is purchasing the Premises "as is" with all faults and defects and based solely on Buyer's inspection, testing and investigation of the Property. Buyer acknowledges that the disclaimers, agreements and other statements set forth in this section are an integral portion of this Contract and that Seller would not agree to sell the Premises to Buyer for the purchase price without the disclaimers, agreements and other statements set forth in this Paragraph 2 and that the disclaimers, agreements and other statements in this Paragraph 2 shall survive the closing of the sale under this Contract.

3. Conditions Precedent.

3.1 Seller's obligations under this Contract are subject to the following conditions:

(a) The establishment of on-premise zoning regulations and ordinances allowing for:

(i) the approval of a commercial subdivision of the parcel of which the

Premises is part thereof;

(ii) construction and operation of a City of Decatur fire station on the Premises;

(iii) the approval of a new ingress/egress for southbound traffic along Fairview Avenue as shown by the approach drawn in red on the attached drawing.

(b) Buyer and Seller agreeing to any limited or shared common area and exclusive/non-exclusive points of ingress/egress as described on Exhibit B attached hereto.

3.2 Buyer's obligations under this Contract are subject to the following conditions:

(a) Buyer may, at its expense and option, obtain such title reports and surveys as to the Premises as Buyer may desire. Buyer shall advise Seller in writing within 30 days after the effective date of this agreement concerning any defect in the condition of title disclosed by such reports or surveys and rendering the title unmarketable. In the event of such notice, the conveyance to Buyer shall be delayed pending Seller's efforts to resolve the same. In event Seller is unable or unwilling to cure such defects within a reasonable time after notice thereof, Buyer or Seller may elect to cancel and terminate this agreement and the rights and obligations of the parties hereunder; and in such event, Seller shall refund to Buyer all sums paid hereunder if Buyer shall so elect. Failure to notify Seller of any objectionable title defect as above said shall constitute a waiver thereof. Title may be subject only to the following exceptions:

- (i) Easements, restrictions and reservations of record on the date hereof;
- (ii) Building and use restrictions;
- (iii) Special assessments levied for local improvements;
- (iv) Zoning regulations and ordinances affecting the Premises; and,
- (v) The lien of current general real estate taxes.

3.3 Both Seller and Buyer agree:

(a) To comply with the requirements of the Real Estate Settlement Procedures Act;

(b) At any time after the date hereof, architects and engineers of Buyer shall have reasonable access to the Premises for the purpose of measurement and preparation of design plans for Buyer, provided such access cannot unreasonably interfere with the usual business of Seller performed on the Premises. Buyer shall indemnify and hold Seller harmless from and against all losses, costs, damages and liabilities arising out of Buyer or any of its employees, agents or contractors entering the Premises.

3.4 Closing. The time and place of settlement on the date of closing shall be fixed by mutual agreement of the parties not more than 120 days after the effective date of this Contract. As used in this Contract, "Effective Date of this Contract" means the date that both parties have executed this Contract and received a fully executed original of this Contract.

(a) At the settlement Buyer shall deliver to Seller or cause to be paid:

(i) All documents as Seller's counsel may reasonably require.

(ii) An amount equal to the cost of recording any release of indenture of mortgage or trust deed; and,

(iii) An amount equal to the cost of Illinois revenue stamps if required to be affixed to Seller's quitclaim deed.

(iv) An amount equal to any and all costs associated with the transfer of ownership to Premises including but not limited to any real estate taxes unpaid and due after the date of closing prorated to the date of closing, based upon the last ascertainable real estate taxes on the Premises; the fee charged by the Title Company for closing the sale; the fee for recording the deed; the cost of an survey; and the cost of the title commitment and policy.

(b) Seller shall deliver to Buyer:

(i) Its executed quitclaim deed to the Premises, containing only those exceptions listed in subparagraphs (i) through (v), inclusive, of paragraph 3.2 (a) above.

(ii) A sufficient release of any indenture of mortgage or trust which may be a lien on the Premises; and,

(iii) Such other documents as Buyer's counsel may reasonably require.

3.5 Buyer shall have the right to take possession of the Premises on completion of the transaction on the date of closing.

3.6 While this Contract is in effect, Seller shall (i) not enter into or amend any contracts, options, leases, easements or other agreements adversely affecting the Property, and (ii) not take any action which would adversely affect the ownership or condition of the Property.

4. Title Commitment. Buyer shall obtain a current title commitment for an owner's title insurance policy for the Property. Buyer shall pay all title examination fees or other expenses charged by the Title Company for the purpose of issuing such title commitment.

5. Seller's Closing Obligations. At the closing, Seller shall deliver to Buyer a quitclaim deed, conveying the Premises in fee simple, subject to 2019 real estate taxes and assessments and subsequent years not yet due and payable, all easements, agreements, restrictions and other matters of record. Such deed shall also include provisions requiring the Buyer, its successors and assigns, for a period of twenty (20) years from date of closing, to utilize the Premises to house a fire station or similar public safety uses agreed to in writing by the Seller. The promise made to use land to house a fire station or similar public safety uses agreed to in writing by the Seller shall survive the date of closing and such promise shall be specifically enforceable by the Seller and its successors under the terms of this agreement.

6. Seller shall not be liable for environmental defects to the Premises.

7. Default. If the conditions precedent of this Contract are satisfied or waived by Buyer and Seller, and if Seller fails to consummate this Contract for any reason other than the default of Buyer, then Buyer may enforce specific performance or seek other legal remedies. If Buyer shall default in the performance of its obligations under this Contract, then Seller may enforce specific performance or seek other legal remedies.

8. Assignment Neither the Seller nor Buyer may assign this Agreement or their interest in the Premises without the prior written consent of the other. The terms of this agreement and deed conveying ownership in the Premises shall be binding on the parties, their respective successors, personal representatives, heirs and assigns.

9. Miscellaneous.

(a) Any notice which either party may be required to give hereunder or which either party is permitted or may desire to give to the other party shall be in writing and given either personally or by mailing the same by registered or certified mail, return receipt requested, to the party to whom notice is directed at the address of such party as follows:

Seller: Fairview Park Plaza
101 S. Main St., Suite 800
Decatur, IL 62523

Buyer: City of Decatur
City Manager
#1 Gary K. Anderson Plaza
Decatur, IL 62523

Any notice served by mail shall be deemed given on the day in which the same is postmarked and deposited in the United States mail, addressed as above provided with postage thereon fully prepaid. Either party may change the party or address to which any such notice is to be addressed by giving written notice to the other party of such change. Any time limitation provided for in this Contract shall begin on the date that the party actually receives such notice, or refuses to accept delivery, and the date of postmark of any return receipt indicating the date of delivery of such notice to the addressee shall be conclusive evidence of such receipt.

(b) This Contract constitutes the entire agreement between Seller and Buyer, and there are no other covenants, agreements, or conditions, either oral or written, between them concerning the Property other than those set forth in this Contract. No subsequent change, deletion or addition to this Contract shall be binding unless in writing and signed by both parties.

(c) The headings, captions, numbering systems, etc., are inserted only as a matter

of convenience and shall not be considered in interpreting the provisions of this Contract.

(d) All of the provisions of this Contract shall be binding upon the personal representatives, heirs, successors and permitted assigns of both parties.

(e) If any of the dates or time periods in this Contract fall or end on a Saturday, Sunday or U.S. bank holiday, then such date or time period shall be extended until the next business day other than a Saturday, Sunday or U.S. bank holiday.

DATED this _____ day of _____, 2019.

SELLER:

BUYER:

FAIRVIEW PARK PLAZA, LLC

CITY OF DECATUR

By: _____

BY: _____

Dated: _____

Dated: _____

ATTEST:

CITY CLERK

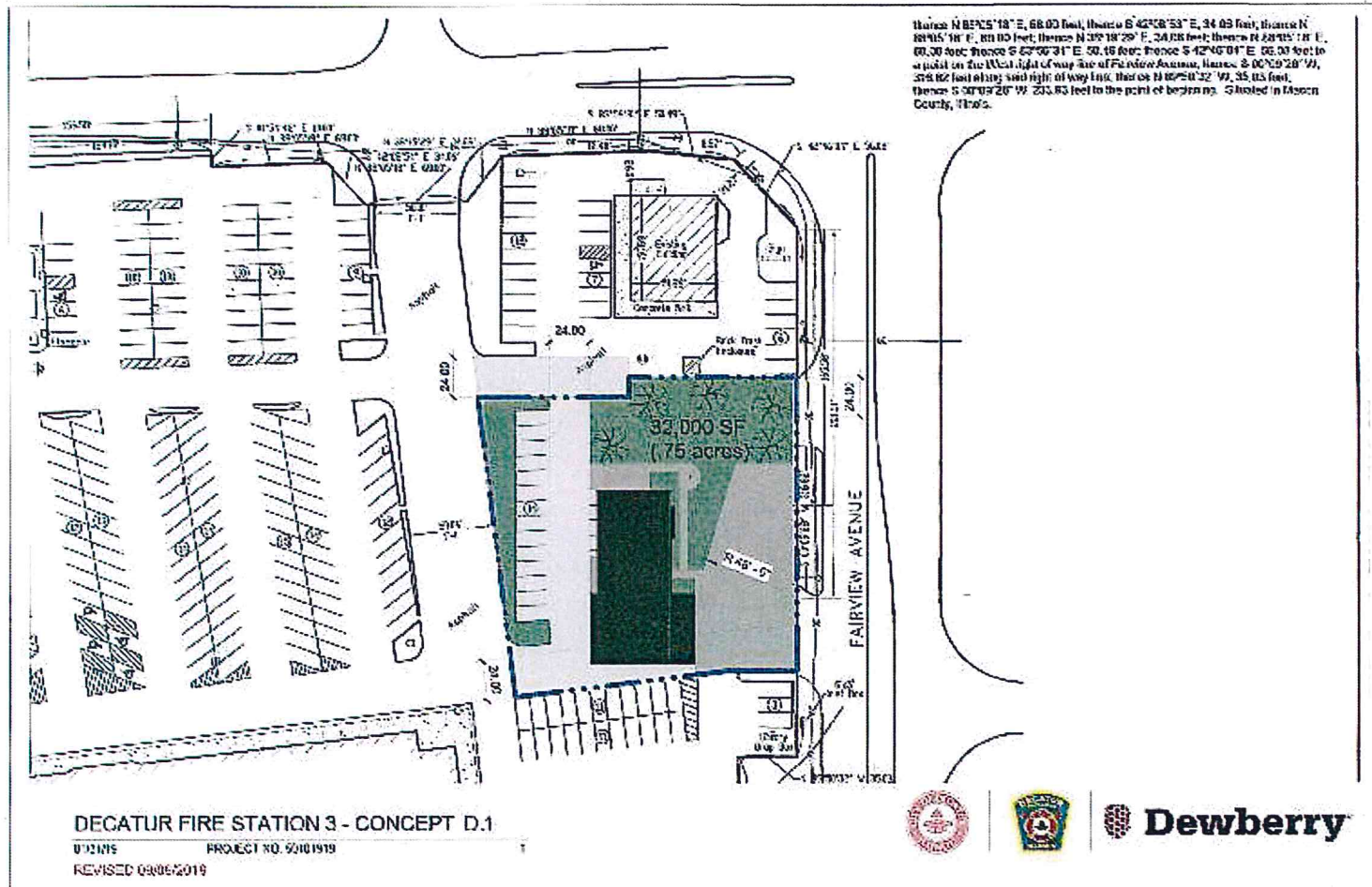
EXHIBIT A

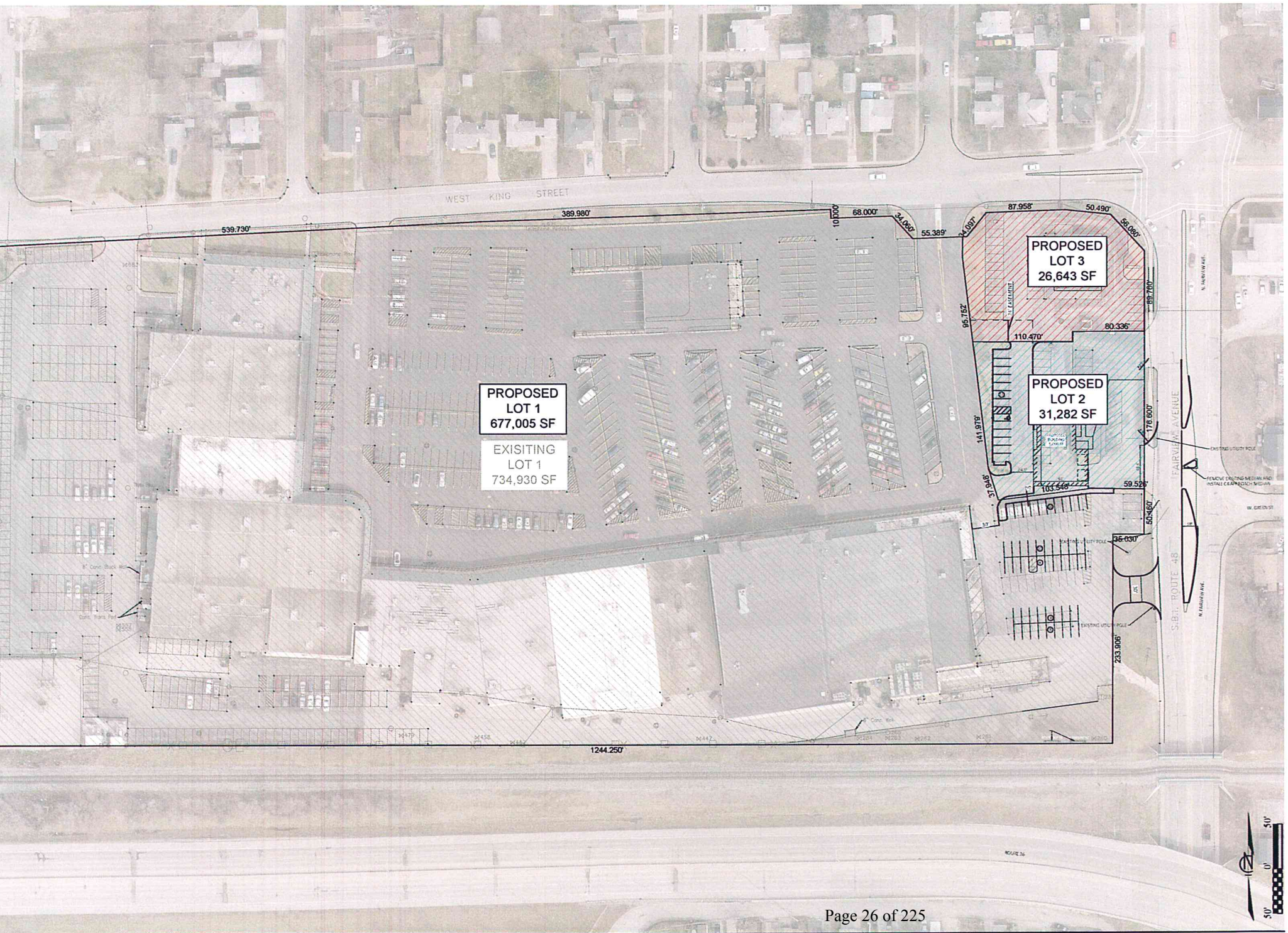
LEGAL DESCRIPTION OF PREMISES

Fairview Park Plaza. L.L.C.

Part of the Southwest 1/4, Southeast 1/4, Section 9, Township 16 North, Range 2 East of the 3rd P.M. and more particularly described as follows: Beginning at the point of intersection of the North right of way line of the Norfolk and Western Railroad (formerly Wabash Railroad) with the present West right of way line of S.B.I. Rt. 48 (Fairview Ave.), said point being approximately 59.2 feet North of and 80.2 feet West of the Southeast corner of said Southwest 1/4, Southeast 1/4, Section 9; thence North 90° W (Assumed Bearing) 1244.25 feet along said railroad right of way line to the West line of said Southwest 1/4, Southeast 1/4, Section 9; thence N 0° 21' 38" E, 557.88 feet along the West line of said Southwest 1/4, Southeast 1/4, Section 9 to its intersection with the South right of way line of King Street, thence North 87° 04' 20" E, 539.73 feet along said right of way line; thence N 88° 05' 18" E, 389.98 feet; thence S 01° 54' 42" E, 10.00 feet; thence N 88° 05' 18" E, 68.00 feet; thence S 42° 08' 53" E, 34.06 feet; thence N 88° 05' 18" E, 60.00 feet; thence N 38° 19' 29" E, 34.06 feet; thence N 88° 05' 18" E, 88.00 feet; thence S 88° 56' 31" E, 50.49 feet; thence S 42° 46' 04" E, 56.08 feet to a point on the West right Of way line of Fairview Avenue; thence S 00° 09' 28" W, 316.82 feet along said right of way line; thence N 89° 50' 32" W, 35.03 feet; thence S 00° 09' 28" W, 233.93 feet to the point of beginning. Situated in Macon County, Illinois.

EXHIBIT B





PROPOSED
LOT 1
677,005 SF

EXISTING
LOT 1
734,930 SF

PROPOSED
LOT 3
26,643 SF

PROPOSED
LOT 2
31,282 SF