City of Birmingham
A Walkable Community

MEMORANDUM

Planning Division

DATE: **March 31, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Jana L. Ecker, Planning Director**

SUBJECT: **Public Hearing for Special Land Use Permit Amendment and Final Site Plan Review at 250 N. Old Woodward – Emagine Palladium and Ironwood Grill**

On March 25, 2015, the Planning Board conducted a public hearing to discuss a request by the applicant to open the Emagine Palladium Theatre, along with the Ironwood Grill., in the former Palladium Theatre space at 250 N. Old Woodward. Both the theatre and the restaurant were proposing to serve alcoholic liquors, and thus in accordance with the Zoning Ordinance, they are required to operate under a valid Special Land Use Permit. The existing Class C liquor license owner is The Palladium of Birmingham, LLC (owner of the Palladium Building), which is assigning the license to CH Birmingham, LLC a/k/a Emagine Palladium and Ironwood Grill Inside Emagine Palladium which will own and operate the theatre and restaurant previously proposed and approved. The Planning Board voted to recommend approval of the Final Site Plan and Special Land Use Permit Amendment to the City Commission with the following conditions:

1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;
2. Meet all City Department requests, subject to administrative approval;
3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;
4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;
5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band; and
6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area.

On May 18, 2015, the City Commission approved the Final Site Plan and Special Land Use Permit to allow the operation of the Emagine Palladium Theatre and Ironwood Grill restaurant, operating under one Class C Liquor License, with the same conditions noted by the Planning Board. In accordance with this approval, the City Commission passed a resolution approving the Special Land Use Permit Amendment. In accordance with the terms of the SLUP Resolution, Emagine Palladium and Ironwood Grill were required to obtain the prior approval of the City Commission upon change in ownership or name of the establishment.

In or around December 2016, Emagine Palladium and Ironwood Grill changed the name and concept of the eating establishment serving alcoholic liquors. Ironwood Grill was converted into Four Story Burger, a new, casual restaurant concept serving alcoholic liquors. A SLUP Amendment was not requested to permit this change, and the City Commission thus did not provide approval of the name change nor update the provisions of the SLUP to allow for the operation of Four Story Burger.

Accordingly, the City Commission set a public hearing for April 13, 2017 on the SLUP for Emagine Palladium and Ironwood Grill to review the SLUP at 250 N. Old Woodward due to the failure of Emagine to comply with the terms of the SLUP. The applicant has since submitted an application for a SLUP Amendment and Final Site Plan approval.

On March 22, 2017, the Planning Board considered the SLUP Amendment application and Final Site Plan for 250 N. Old Woodward to request approval for the name change to the establishment that occurred in December 2016. The Planning Board unanimously recommended approval of the Final Site Plan and SLUP Amendment application for Emagine Palladium and Four Story Burger with the following condition:

1. The applicant will be required to execute an amended contract with the City outlining the details of the proposed theatre and restaurant operations that must be fully executed upon approval of the SLUP Amendment.

A copy of the staff report that was considered by the Planning Board is attached for your review and consideration, as are the plans for the proposed changes to the establishment and the revised SLUP resolution and contract.

SUGGESTED ACTION:

To approve the Special Land Use Permit Amendment and Final Site Plan Review for 250 N. Old Woodward, Emagine Palladium Theatre and Ironwood Grill restaurant to allow the establishment to change their name to Emagine Palladium Theatre and Four Story Burger.

Planning Board Minutes
March 11, 2015

SPECIAL LAND USE PERMIT ("SLUP")
FINAL SITE PLAN REVIEW
250 N. Old Woodward Ave.
Emagine Palladium Theatre, and Ironwood Grill
Application to allow a movie theatre, restaurant and bar serving alcoholic liquors in a portion of the former Palladium Theatre space

Ms. Ecker explained that the subject site is located at 250 N. Old Woodward Ave., on the south side of the existing Palladium building, in a portion of the former Palladium Theatre space. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District.

The applicant, Emagine Palladium Theatre and Ironwood Grill, is seeking approval of the transfer of ownership of one of the Class C liquor licenses that has long been associated with the Palladium Building to allow the owner to operate the Emagine Palladium Theatre and Ironwood Grill under Chapter 10, Alcoholic Liquors, of the City Code. This license was formerly used at Buca di Beppo and is being transferred from 270 N. Old Woodward to 250 N. Old Woodward. This Class C liquor license is proposed to be held by CH Birmingham, LLC.

The applicant has indicated that dancing and entertainment will be offered at special events only. The applicant has also indicated that the additional bar permit is to allow the use of a "floating bar," which will be set up in certain areas of the establishment as needed for special events. Finally, the applicant has advised that the specific purpose permit is to allow the showing of movies and the service of food outside the normal operating hours for the service of alcohol (such as special midnight release showings that could go past 2 a.m., thus the theater would be open past 2 a.m., but alcohol service would cease at 2 a.m.). No outdoor dining permit is requested, nor required.

Emagine Palladium Theatre and Ironwood Grill will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP and then obtain approval from the City Commission for the Final Site Plan and SLUP, and for the transfer of ownership of the existing liquor license.

Ms. Ecker advised that the proposed theatre and restaurant space is approximately 31,000 sq. ft. in size, and is proposing to operate five movie screens are proposed with a total of 590 seats. The former Palladium Theatre had 12 screens and 2200 seats. Emagine Palladium Theatre and Ironwood Grill propose to operate under a new neighborhood theatre membership model, where patrons must purchase a yearly membership. Under this model, only members can buy movie tickets, and all individual seats will be reserved for a specific date and time. The applicant does intend to provide guest memberships to visitors staying at the Townsend Hotel. All theatre seating will be luxury recliners and luxury rockers in the digital projection auditoriums.

Ironwood Grill is proposed to be open to the public (with no membership requirement). The restaurant will provide an upscale casual dining experience and offer 198 seats, including 17 seats at the bar, with an exhibition style brick pizza oven kitchen and an open air dining

experience overlooking Hamilton St. Ironwood Grill will offer award winning BBQ specialties and wood-fired Neapolitan style pizzas, a variety of freshly prepared dishes and an extensive selection of craft beer, wine and cocktails. A private banquet room is also proposed with a private bar that will be available for rental.

Design Review
The applicant is proposing several design changes to the existing building. The changes proposed are to the design of the marquis itself, signage changes and the removal of decorative metal elements and fixed windows at the new fourth floor. The applicant is proposing to remove the art deco metal design element from the top of the marquis as well as the changeable channel letter boards that were previously used to list movies being shown in the former Palladium Theatre. In addition, 40 ft. of the fourth floor fixed curtain wall windows are proposed to be replaced with a retractable Nanawall folding window system to provide an open air dining experience in the portion of the Ironwood Grill overlooking Hamilton St. above the existing marquis.

Three new name letter signs and three graphic elements are proposed to be mounted to the existing marquis sign. The sign drawings as submitted do not meet all required sign standards. The applicant has agreed to comply with the sign requirements. Details are needed from the petitioner with regard to the balcony railing, the spandrel glass and signage. This evening the board will consider only the packet that has been submitted and reviewed.

Discussion followed as to whether the membership requirement causes the operation to be a private social club rather than a movie theatre and how that may affect the Liquor License.

Mr. Paul Glance, CEO of Imagine Entertainment, Inc., talked about the project. They have substantially reduced the seat count which is consistent with their goal of serving the local community as a neighborhood theatre. They believe that by creating an economic barrier to entry they will to some degree ensure they are serving the demographic that they endeavor to serve. They are considering a $400 membership fee which would include a $250 gift card that could be used at the theatre. Thereafter the membership would be $150/year. He wants the theatre to be a place where there will be civility and good behavior.

Mr. Glance advised that on occasions when there is a special midnight showing, the theatre may stay open until 2 a.m.

Ms. Whipple-Boyce asked if it is possible to see what is going on in other floors in order to understand how this application fits into the site as a whole. Ms. Lazar said the new concept of requiring membership comes across to her as being very exclusionary and she is uncomfortable with it. Mr. Glance replied the venue is so small that they can't serve a region. The best they can do is to serve a community. He noted they are not selling movies anymore; they are selling an out-of-home entertainment experience. If they don't pick up their game to better serve the market, he thinks they will be relegated to the economic junk heap.

There was no input from the public at 8:50 p.m.

Motion by Mr. DeWeese

Seconded by Ms. Whipple-Boyce to postpone the Final Site Plan and SLUP for 250 N. Old Woodward Ave, Emagine Palladium Theatre and Ironwood Grill to March 25, 2015, pending receipt of:
1. Detailed elevation drawings to illustrate the design of the proposed safety barrier or the panel that may be attached to the safety barrier;
2. Specification sheets and color selection for all proposed materials, which materials shall not include the use of spandrel glass or glass railings; and
3. Detailed signage drawings with dimensions to show the amount of proposed signage, as well as a section view to show the mounting details and projection information, as well as material and lighting specifications.

Also, staff getting the necessary information about the impact of this being a membership type organization and how it affects Planning and City Code.

No one from the public wished to speak about the motion at 8:54 p.m.

Motion carried, 6-0.

VOICE VOTE
Yeas: DeWeese, Whipple-Boyce, Clein, Jeffares, Lazar, Share
Nays: None
Absent: Boyle, Koseck, Williams

Planning Board Minutes
March 25, 2015

SPECIAL LAND USE PERMIT ("SLUP")
FINAL SITE PLAN REVIEW
250 N. Old Woodward Ave.
Emagine Palladium Theatre, and Ironwood Grill (postponed from March 11, 2015)
Application to allow a movie theatre, restaurant and bar serving alcoholic liquors in a portion of the former Palladium Theatre space

Ms. Ecker recalled that on March 11, 2015 the applicant appeared before the Planning Board. The Planning Board postponed the matter and requested additional information on the proposed membership theatre concept, an updated and ordinance compliant sign package with all required details, and design and material details on the proposed exterior changes on the fourth floor of the south elevation where open air dining is proposed. At this time the applicant has provided a detailed elevation of the fourth floor of the south elevation where open air dining is proposed. The applicant has removed all previously proposed spandrel glass and replaced it with metal panels, which are permitted.

Design Review
The applicant is proposing several design changes to the existing building. The changes proposed are to the design of the marquis itself, signage changes, and the removal of decorative metal elements and fixed windows at the new fourth floor. The applicant is proposing to remove the art deco metal design element from the top of the marquis as well as the changeable channel letter boards that were previously used to list movies being shown in the former Palladium Theatre. In addition, 40 ft. of the fourth floor fixed curtain wall windows are proposed to be replaced with a retractable Nanawall folding window system to provide an open air dining experience in the portion of the Ironwood Grill overlooking Hamilton St. above the existing marquis.

Ms. Ecker advised that an updated sign package has been received. However, Article 3 of the Zoning Ordinance provides that only one sign is permitted per entry for each business whose primary square footage is on the first story. ***As the primary square footage for both the Emagine Theatre and the Ironwood Grill is on the fourth story, the applicant will be required to obtain a variance from the Board of Zoning Appeals for all exterior entry signage.*** Further, the Planning Board must determine if a sign band is architecturally feasible above the theatre entry doors between the first and second floors. As the marquis is located in the area generally reserved for a sign band, the Planning Board may wish to approve it as an alternative design for the placement of signage.

In response to the chairman, Ms. Ecker advised there is currently nothing in the ordinance that prohibits a membership based theatre.

Mr. Paul Glantz, CEO of Emagine Entertainment, Inc., talked about their plans. They have now resolved to take a slightly different tact with respect to their membership concept. The approach now will be that customers can purchase a seat license that will allow preferential booking rights on Friday, Saturday, Sunday and certain holidays. Other than that, the venue

will be open to the public. They do not intend to impose a two-drink maximum restriction. Also, they plan to use low light surveillance cameras to monitor behavior.

Mr. Jason Gekiere, Tower Construction, Construction Manager for the project, explained that a small glass petition that sticks up provides an added level of protection within the curtain wall system. Mr. Michael Southen with Signature Associates, Consultant to Emagine Theatre, described the detail on the partition.

With respect to limiting the number of drinks that can be served to patrons, Mr. DeWeese thought the City could write the agreement to say if they start having problems the SLUP would come back up for review. Mr. Williams stated he is in favor of the project. A little elitism will ease the traffic flow in that neighborhood. Mr. Koseck encouraged the petitioner to take another look at the sign. He thought it could be better. Mr. DeWeese had the concern that the City Attorney should look at the membership concept before it goes to the City Commission.

At 8 p.m. no one from the audience wished to discuss this matter.

Motion by Mr. DeWeese
Seconded by Mr. Williams that the Planning Board recommends approval of the applicant's request for a Final Site Plan and a SLUP approval to permit Emagine Palladium Theatre and Ironwood Grill to operate at 250 N. Old Woodward Ave. with the following conditions:

1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;
2. Meet all City Department requests, subject to administrative approval;
3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;
4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;
5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band; and
6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area.

No comments were heard from members of the public at 8:03 p.m.

Motion carried, 6-0.

ROLLCALL VOTE
Yeas: DeWeese, Williams, Clein, Jeffares, Koseck, Share
Nays: None
Abstain: Whipple-Boyce
Absent: Boyle, Lazar

City Commission Minutes
May 18, 2015

05-110-15

PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT AMENDMENT FOR 250 NORTH OLD WOODWARD

Mayor Sherman opened the Public Hearing to approve the Final Site Plan and Special Land Use Permit (SLUP) Amendment – 250 N. Old Woodward – Emagine Palladium Theatre and Ironwood Grill restaurant at 7:34 PM.

Planning Director Ecker explained that all liquor license establishments are subject to a SLUP review. The three licenses at this address are being transferred from the former owner to the Jonah family, then to the new operators of each of the new establishments using those licenses. This is to transfer one of the licenses to the Jonah family, then to Emaine Palladium and Ironwood Grill. She explained the layout of the Emagine theater and the Ironwood Grill.

In response to a question from Mayor Pro Tem Hoff, Ms. Ecker explained that there is nothing in the zoning ordinance that restricts the hours of operation to 2:00 AM. The applicant wanted to confirm that there would be no issue if they run past 2:00 AM in the case of special features or premiers.

Mr. Paul Glantz, Emagine Entertainment, explained that there will be no advertising of the film outside of the building. He explained that most users use the internet or phone to look up show times. He explained the preferred seating model and noted that this will be a family environment.

In response to a question from Mayor Sherman regarding the dance permit endorsement, Mr. Glantz explained that the facility has a banquet room. It would be a rare circumstance that there would be dancing.

The Commission received a communication in support of the project from Victor Doherty, 1573 South Eton.

The Mayor closed the Public Hearing at 8:12 PM.

MOTION: Motion by Rinschler, seconded by Nickita:
To approve the Final Site Plan and Special Land Use Permit Amendment at 250 N. Old Woodward to allow the operation of the Emagine Palladium Theatre and Ironwood Grill restaurant, operating under one Class C Liquor License to be held by CH Birmingham, LLC:

WHEREAS, CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium have together filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate two food and drink establishments under common ownership, both serving alcoholic liquors, as required in Article 6, section 6.02(5) of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of N. Old Woodward along Hamilton Row;

WHEREAS, The land is zoned B-4, and is located within the Downtown Birmingham Overlay District, which permits food and drink establishments serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on March 25, 2015 reviewed the application for Final Site Plan and Special Land Use Permit and recommended approval with the following conditions:

1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;
2. Meet all City Department requests, subject to administrative approval;
3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;
4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;
5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band; and
6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on March 25, 2015;

WHEREAS, The Birmingham City Commission has reviewed CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that the CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium application for a Special Land Use Permit authorizing the operation of two food and drink establishments, under common ownership, serving alcoholic liquors with a Class C liquor license with a Direct Connect Endorsement, New Sunday Sales Permit (AM and PM), Dance Permit, Entertainment Permit, (1) New Add Bar Permit, Specific Purpose Permit (food and movies) at 250 N. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit

is granted subject to the following conditions:

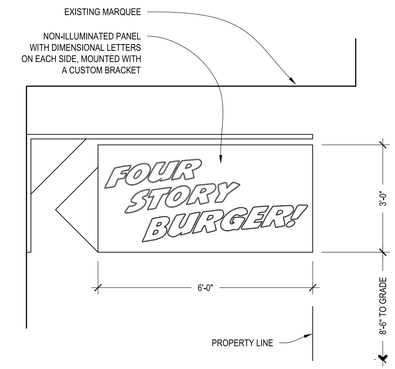
1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;
2. Meet all City Department requests, subject to administrative approval;
3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;
4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;
5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band;
6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area;
7. CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium shall abide by all provisions of the Birmingham City Code;
8. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest;
9. CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium shall provide for the removal of disposable materials resulting from the operations and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area; and
10. CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium shall enter into a contract with the City outlining the details of the operation of the proposed restaurants.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that CH Birmingham LLC dba Emagine Palladium and Ironwood Grill inside Emagine Palladium are recommended for operation of a theatre and restaurant, under common ownership, serving alcoholic liquors, with a Class C Liquor License with a Direct Connect Endorsement, New Sunday Sales Permit (AM and PM), Dance Permit, Entertainment Permit, (1) New Add Bar Permit, Specific Purpose Permit (food and movies) at 250 N. Old Woodward, Birmingham, Michigan, 48009, above all others, pursuant to Chapter 10, Alcoholic Liquors, of the Birmingham City Code, subject to final inspection.

VOTE:	Yeas,	7
	Nays,	None
	Absent,	None

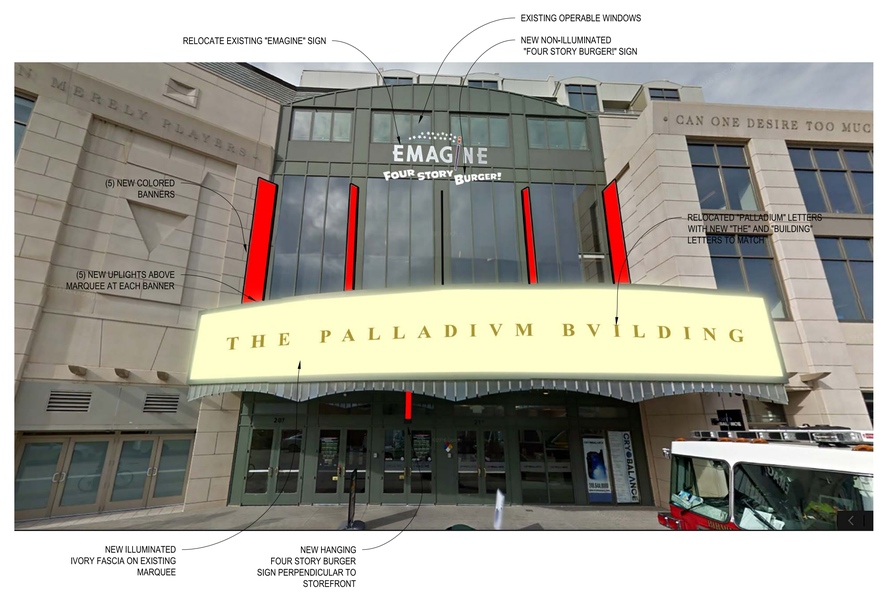


NEW SIGN

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

EXISTING ELEVATION

N.T.S.



PROPOSED ELEVATION

N.T.S.

RONANDROMAN
architects et al.
275 E. Frank St. Birmingham MI 48009
o) 248.723.5790 f) 248.723.5795

Project:

EMAGINE PALLADIUM THEATER
FOUR STORY BURGER
209 Hamilton Row
Birmingham, Michigan 48009

Seal:

Issue Date:

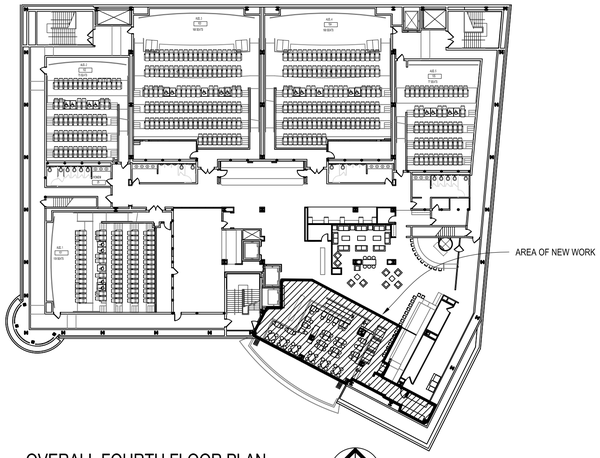
SLUP AMENDMENT	3/6/2017

Sheet Title:

EXTERIOR ELEVATIONS

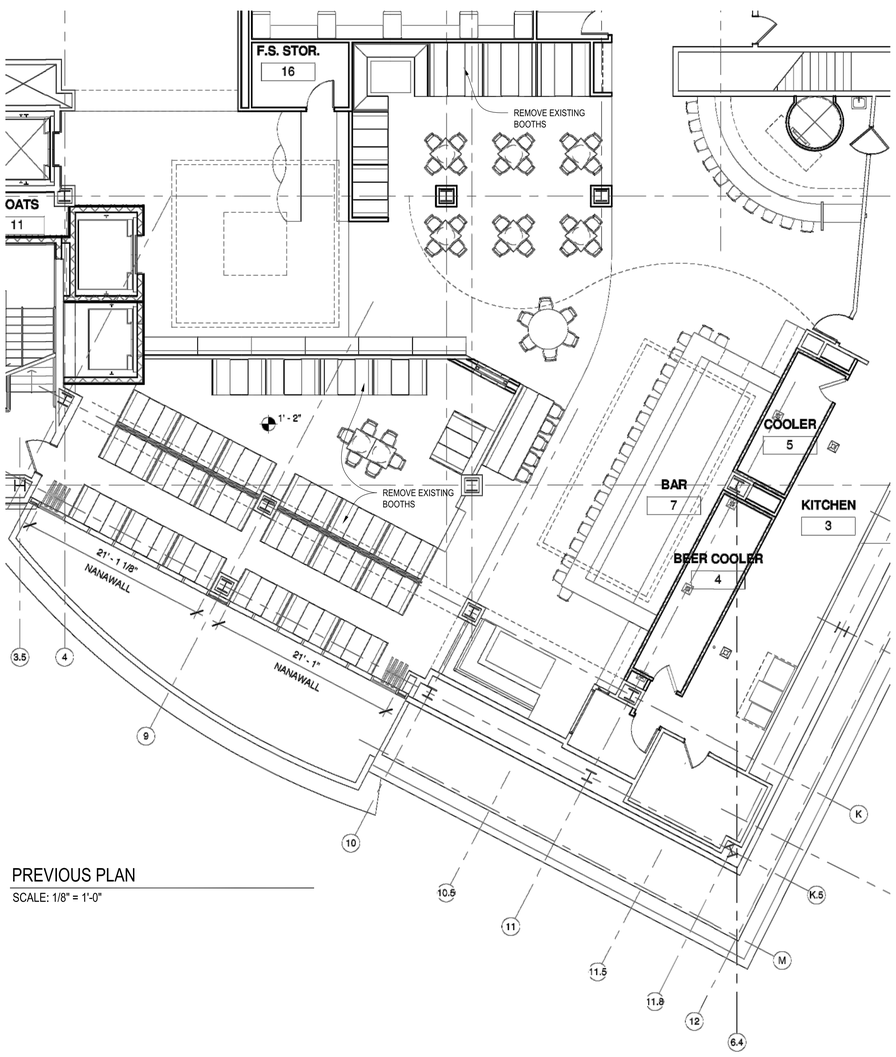
Sheet Number:

A-2

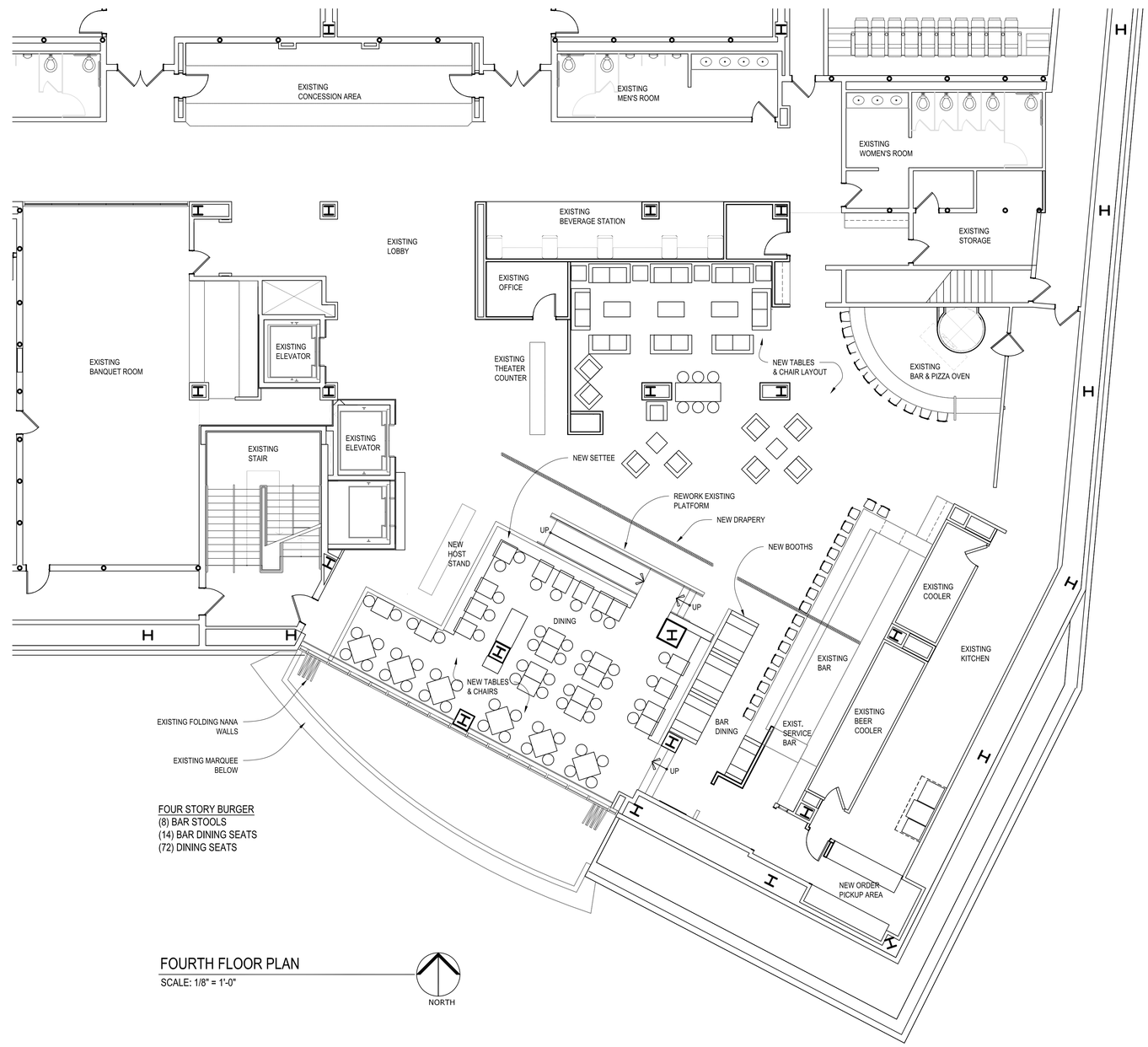


OVERALL FOURTH FLOOR PLAN
N.T.S.

NORTH



PREVIOUS PLAN
SCALE: 1/8" = 1'-0"



FOUR STORY BURGER
(8) BAR STOOLS
(14) BAR DINING SEATS
(72) DINING SEATS

FOURTH FLOOR PLAN
SCALE: 1/8" = 1'-0"

NORTH

RONANDROMAN
architects et al.
275 E. Frank St. Birmingham MI 48009
o) 248.723.5790 f) 248.723.5795

Project:

EMAGINE PALLADIUM THEATER
FOUR STORY BURGER
209 Hamilton Row
Birmingham, Michigan 48009

Seal:

Issue Date:

SLUP AMENDMENT	3/6/2017

Sheet Title:

FLOOR PLANS

Sheet Number:

A-1

SHOCKING SANDWICHES!

ALL OF OUR SANDWICHES ARE SERVED ON A LOCALLY BAKED **CRISPELLI'S BREAD & BUNS**

& INCLUDES OUR HOUSE-MADE BREAD & BUTTER PICKLES & A SPICY GARLIC DILL SPEAR

FOUR STORY BURGER!

CLASSIC BURGER

1/3 lb of Fresh Angus Beef topped with Mayo, Mustard, Butter-Glazed Onions, Cheddar Cheese, Lettuce & Tomato

$10

Make it a Double!
Add an Angus Burger $3

THE CLUCKING MENACE!

GRILLED CHICKEN

Butter-Grilled Chicken Breast, Shaved Ham, Swiss, Lettuce, Tomato, Red Onion & Our House-Made Horseradish Mustard

$12

IT CAME FROM BENEATH THE SEA!

GRILLED SALMON

Bay of Fundy Salmon Filet, Lettuce, Tomato, Red Onion & Green Goddess Dressing

$14

SANDWICH FROM ANOTHER DIMENSION!

GRILLED VEGGIES

Grilled Eggplant, Zucchini, Sautéed Mushrooms, Red Peppers, Onions, Baby Spinach, Feta Cheese & Sweet Red Pepper Aioli on Thick-Cut Crispelli's Texas Toast

$12

MELT!

GRILLED CHEESE

Cheddar, Swiss & Parmesan with Sweet Red Pepper Aioli on Thick-Cut Crispelli's Texas Toast

$8

Extras!

APPLEWOOD SMOKED BACON $2

FIRE-ROASTED JALAPEÑO PEPPERS $1

BRAZILIAN ONION & PEPPER SAUCE $2

SMASHED AVOCADO $2

SAUTÉED MUSHROOMS $1

CHILI & CHEESE $3

FRIED EGG (over-easy) $2

★★ ADD ★★
FRENCH FRIES $3

★★ ADD ★★
ONION RINGS $4

★★ ADD ★★
SIDE SALAD $4

Earth Shaking SIDES!

WATCH OUT!

FRENCH FRIES

1 lb of Fresh, Hand-Cut Fries
Add White Truffle Salt
& Shaved Parmesan $3

$6

ONION RINGS

Served in a Monstrous Tower

$8

SWEET POTATO TATER TOTS

Topped with Green Onions

$6

RED RIVER CHILI

Our House-Made Chili with
Roast Beef, Pork Sausage
& Ground Beef topped with
Cheddar Cheese & Sour Cream

$7

THAI-CHILI CAULIFLOWER

Roasted Cauliflower Tossed in a
Sweet & Spicy Thai-Chili Sauce
& topped with Green Onions

$6

FRESH PICKLES

1 Pint Jar of Our House-Made Pickles
Choice of Bread & Butter
or Spicy Garlic Dill

$7

SIDE SALAD

Small Salad with Mixed Greens,
Tomato, Cucumber, Red Onion,
Carrot, Cheddar Cheese & Bacon

$4

UNBELIEVABLE DESSERTS!

Annabel's FUDGY BROWNIE

House-Made Brownie Fingers
Add a Mini-Milkshake $3

$3

MALTS & MILKSHAKES

Locally-Made Custard
Choice of Chocolate or Vanilla

$5

ASK ABOUT MENU ITEMS THAT ARE COOKED TO ORDER.
CONSUMING UNDERCOOKED MEATS OR EGGS COULD INCREASE YOUR RISK OF FOODBORNE ILLNESS.

CREATE YOUR OWN SALAD! $9

SERVED WITH ANNABEL'S CRUNCHY BREAD

NAME: _____ TABLE #: _____

GREENS

- ☐ FIELD GREENS
- ☐ ROMAINE HEARTS
- ☐ BABY SPINACH
- ☐ BABY KALE
- ☐ ICEBERG LETTUCE

VEGGIES

- ☐ EDAMAME
- ☐ CHICKPEAS
- ☐ BLACK BEANS
- ☐ QUINOA
- ☐ MUSHROOMS
- ☐ TOMATOES
- ☐ CUCUMBER
- ☐ RED BELL PEPPER
- ☐ CORN
- ☐ SHREDDED CARROTS
- ☐ SCALLIONS
- ☐ RED ONIONS
- ☐ KALAMATA OLIVES
- ☐ SUN-DRIED TOMATOES
- ☐ ROASTED BEETS

CHEESE

- ☐ BLUE CHEESE
- ☐ SHAVED PARMESAN
- ☐ GOAT CHEESE
- ☐ SHREDDED CHEDDAR
- ☐ FETA CHEESE

CRUNCHY & SWEET

- ☐ BACON
- ☐ CROUTONS
- ☐ SUNFLOWER SEEDS
- ☐ TOASTED ALMONDS
- ☐ CANDIED PECANS
- ☐ PEPITAS
- ☐ APPLES
- ☐ DRIED CRANBERRIES
- ☐ GOLDEN RAISINS

DRESSING

- ☐ RANCH
- ☐ CAESAR
- ☐ GREEN GODDESS
- ☐ RED WINE VINAIGRETTE
- ☐ SESAME-SOY VINAIGRETTE
- ☐ SWEET LEMON VINAIGRETTE
- ☐ CARROT-GINGER

EXTRAS

- ☐ AVOCADO $2
- ☐ GRILLED CHICKEN $3
- ☐ GRILLED SALMON $7
- ☐ BURGER PATTY $3
- ☐ GRILLED VEGGIES $2

DRAFT BEERS

	16 oz	23 c
GRIFFIN CLAW NORM'S RAGGEDY ASS	$7	$9
SAM ADAMS SEASONAL	$7	$9
LEINENKUGEL'S BAVARIAN DUNKLE	$7	$9
BELL'S TWO-HEARTED ALE	$7	$9
SHORT'S HUMA LUPA LICIOUS	$7	$9
ROCHESTER MILLS RED	$7	$9
FOUNDER'S SEASONAL	$7	$9
ATWATER VANILLA JAVA PORTER	$7	$9
FOUNDER'S DIRTY BASTARD	$7	$9
ANGRY ORCHARD	$7	$9
BLUE MOON	$7	$9
SAM ADAMS BOSTON LAGER	$7	$9
FAT TIRE	$7	$9
GUINNESS	$7	$9
STELLA ARTOIS	$7	$9
BUD LIGHT	$5	$7
MILLER LIGHT	$5	$7

BOTTLED BEERS

AMSTEL LIGHT	$5	DOS EQUIS	$5
COORS LIGHT	$4	LABATT LIGHT	$4
CORONA	$5	LABATT (N/A)	$4
HEINEKEN	$5	PABST BLUE RIBBON	$4
MIKE'S HARD LEMONADE	$4	BUDWEISER	$4
MILLER LIGHT	$4	BUD LIGHT	$4
MOLSON CANADIAN	$4	MICHELOB ULTRA	$4

COCKTAILS

SPICY DILL BLOODY MARY $9
Tito's Vodka, Bloody Mary Mix, Pickle Juice & a Spicy Garlic Dill Spear

BREAD & BUTTER BLOODY MARY $9
Tito's Vodka, Bloody Mary Mix, Pickle Juice & Bread & Butter Pickles

GREEN IGUANA MARGARITA $10
Patron Silver, Melon Liqueur & Lime

BIRMINGHAM SWEET TEA $9
Sky Citrus Vodka, Sweet Tea Vodka & Lemon

RASPBERRY MOJITO $9
Sky Raspberry Vodka & Pomegranate Liqueur

HENDRICK'S CUCUMBER COCKTAIL $10
Hendrick's Gin, St Elders, Simple Syrup, Cucumber Slices & Lemon

CARIBBEAN STYLE RUM RUNNER $9
Sugar Island Coconut Rum, Creme de Banana, Orange Juice, Pineapple Juice & Grenadine

R-RATED CUSTARD DRINKS

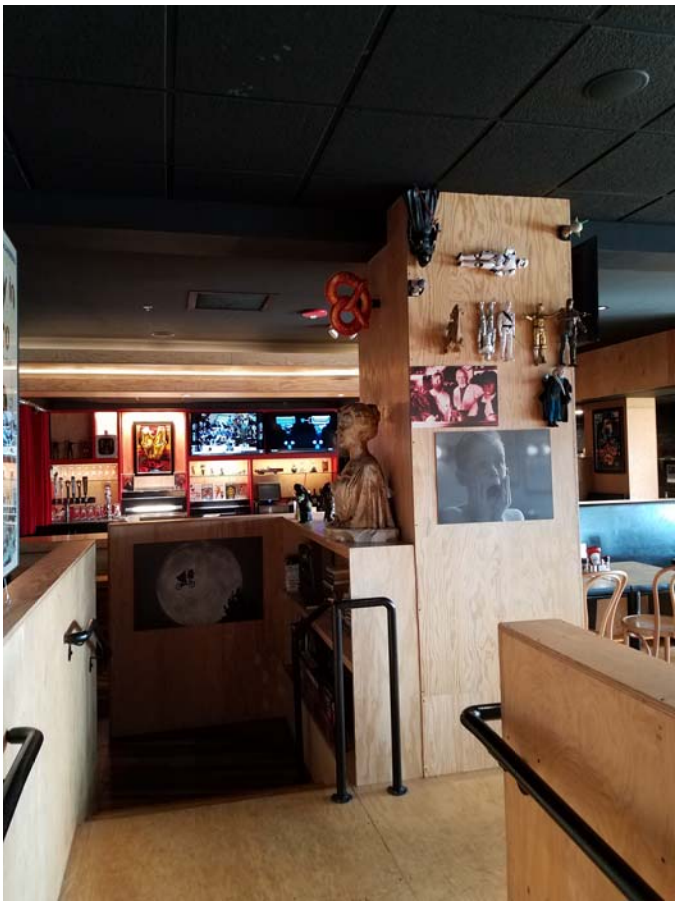
HENNESSY ALEXANDER $10
Hennessy, Dark Creme de Cocoa & Custard Mix

GRASSHOPPER $10
Green Greme de Menthe, Dark Creme de Cocoa & Custard Mix

COCONUT RUM TWISTER $10
Sugar Islane Coconut Rum, Myers Dark & Custard Mix

THE ANNABEL $10
Bailey's, Kahlua, Chocolate Syrup & Custard Mix

Try Our
AWARD
WINNING
Chili



City of Birmingham
A Walkable Community

MEMORANDUM

Planning Division

DATE: **March 16, 2017**

TO: **Planning Board**

FROM: **Jana L. Ecker, Planning Director**

SUBJECT: **Final Site Plan & Special Land Use Permit Amendment**
250 N. Old Woodward – Emagine Palladium and Four Story Burger

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The subject site is located at 250 N. Old Woodward, on the south side of the existing Palladium building, in a portion of the former Palladium Theatre space. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District.

On March 25, 2015, the Planning Board conducted a public hearing to discuss a request by the applicant to open the Emagine Palladium Theatre, along with the Ironwood Grill., in the former Palladium Theatre space at 250 N. Old Woodward. Both the theatre and the restaurant were proposing to serve alcoholic liquors, and thus in accordance with the Zoning Ordinance, they are required to operate under a valid Special Land Use Permit. The existing Class C liquor license owner was The Palladium of Birmingham, LLC (owner of the Palladium Building), which assigned the license to CH Birmingham, LLC a/k/a Emagine Palladium and Ironwood Grill inside Emagine Palladium which owns and operates the theatre and restaurant previously proposed and approved. The Planning Board voted to recommend approval of the Final Site Plan and Special Land Use Permit Amendment to the City Commission with the following conditions:

1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;
2. Meet all City Department requests, subject to administrative approval;
3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;
4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;
5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band; and
6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area.

On May 18, 2015, the City Commission approved the Final Site Plan and Special Land Use Permit ("SLUP") to allow the operation of the Emagine Palladium Theatre and Ironwood Grill restaurant, operating under one Class C Liquor License, with the same conditions noted by the Planning Board. In accordance with this approval, the City Commission passed a resolution approving the Special Land Use Permit Amendment, and the applicant entered into a contract

with the City. In accordance with the terms of the SLUP Resolution, Emagine Palladium and Ironwood Grill were required to obtain the prior approval of the City Commission upon change in ownership or name of the establishment. A copy of the approved resolution is attached for your review, and the relevant sections have been highlighted in yellow for your consideration.

In or around December 2016, Emagine Palladium and Ironwood Grill changed the name and concept of the eating establishment serving alcoholic liquors. Ironwood Grill was converted into Four Story Burger, a new, casual restaurant concept serving alcoholic liquors. A SLUP Amendment was not requested to permit this change, and the City Commission thus did not provide approval of the name change nor update the provisions of the SLUP to allow for the operation of Four Story Burger.

On March 13, 2017, the City Commission held a public hearing to determine whether to renew the applicant's liquor license for the coming year, given the current SLUP violation due to the name change prior to obtaining a SLUP Amendment. The City Commission postponed the public hearing to March 27, 2017 to allow the Planning Board to review the recent SLUP Amendment request.

On March 13, 2017, the City Commission also set a public hearing to consider revoking the existing SLUP for Emagine Palladium and Ironwood Grill for failure to abide by the terms of the SLUP given the name change to Emagine Palladium and Four Story Burger without the required SLUP Amendment from the City Commission. This SLUP violation hearing is scheduled for April 13, 2017.

The applicant and Special Land Use Permit holder, Emagine Palladium Theatre and Ironwood Grill, is now seeking a Special Land Use Permit Amendment to grant approval to change the name of their establishment to Emagine Palladium Theatre and Four Story Burger. Ironwood Grill was closed at the end of 2016, and the new concept Four Story Burger restaurant was opened.

Chapter 10 and Chapter 126 of the City Code require that the applicant obtain a Special Land Use Permit Amendment approval from the City Commission to change the name of an existing liquor establishment operating under a Special Land Use Permit. Emagine Palladium Theatre and Ironwood Grill will be required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit Amendment, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit Amendment to change the name of the establishment to Emagine Palladium Theatre and Four Story Burger.

1.0 Land Use and Zoning

1.1 Existing Land Use – A portion of the tenant space is used for Emagine Theatre, and a portion was previously used for the Ironwood Grill restaurant. Land uses surrounding the site are retail, commercial and residential.

1.2 Existing Zoning – The property is currently zoned B-4, Business-Residential, and D-4 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.

1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	**South**	**East**	**West**
Existing Land Use	Commercial / Retail	Commercial / Retail	Commercial / Retail	Commercial / Retail
Existing Zoning District	B-4 Business-Residential	B-4 Business-Residential	B-4 Business-Residential	B-4 Business-Residential
Downtown Overlay Zoning District	D-4	D-4	D-4	D-4

2.0 Proposed Theatre and Restaurant Operations

Both movie theatres and food and drink establishments are permitted in the B4 zoning district, and alcoholic beverages may be served with approval of a valid SLUP. The existing theatre and restaurant space is approximately 31,000 sq.ft. in size. No changes are proposed to the existing theatre layout or operation.

The new Four Story Burger is currently open to the public (with no membership requirement), as was Ironwood Grill. The new restaurant is located in the space that Ironwood Grill previously occupied, however many interior changes will now provide a casual dining experience and offer 145 seats (Ironwood Grill was previously 198 seats), including 18 seats at the bar, with an exhibition style brick pizza oven kitchen and an open air dining experience overlooking Hamilton above the theatre marquis. Four Story Burger will offer unique sandwiches, salads and sides with locally sourced ingredients and baked goods, as well as an assortment of local craft beers and creative cocktails. A private banquet room is also proposed with a private bar that will be available for rental for birthday parties, meetings, bridal showers and similar functions. The proposed hours of operation for the Four Story Burger are 10:00am – 12:00am, seven days a week.

Emagine Palladium Theatre members will be entitled to priority reserved seating at the Four Story Burger during busy periods and be entitled to call ahead food service. Theatre members can enjoy concession stand food and beverages that will be offered in the theatre lobby, or they may order from Four Story Burger and restaurant wait staff will provide the service of food and beverages from Four Story Burger to patrons' theatre seat prior to the start of the movie.

The applicant will be required to execute an amended contract with the City outlining the details of the proposed theatre and restaurant operations that must be fully executed upon approval of the SLUP.

3.0 Screening and Landscaping

3.1 Screening – No changes are proposed. If any additional mechanical units or venting are required, all changes must be submitted to the Planning Division for approval.

3.2 Landscaping –No changes are proposed. All existing street trees are proposed to remain.

4.0 Parking, Loading, Access, and Circulation

4.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking for theatre or restaurant uses.

4.2 Loading - Loading spaces are not required, nor proposed for this tenant space individually. Loading areas for the entire building are provided off of Ferndale Avenue.

4.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.

4.4 Pedestrian Access & Circulation – Pedestrian access to both the theatre and the restaurant will be available directly from the City sidewalk. Patrons will walk into the first floor lobby and will be greeted by a concierge who will assist both restaurant and movie membership guests with reservations and ticketing, and direct patrons to the stairs and elevators to the second floor.

4.5 Streetscape – The existing sidewalk conforms to the current Downtown Birmingham Streetscape Standards. No changes are proposed.

5.0 Lighting

No exterior lighting changes are proposed.

6.0 Departmental Reports

6.1 Engineering Division – No concerns were reported from the Engineering Division.

6.2 Department of Public Services – No concerns were reported from the Department of Public Services.

6.3 Fire Department – No concerns were reported from the Fire Department.

6.4 Police Department - No concerns were reported from the Police Dept.

6.5 Building Department – As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Board and/or Design Review Board and applicant consideration:

1. The restaurant renovation was recently completed in accordance with the building codes. There are no apparent construction concerns with the proposed exterior changes.

7.0 Design Review

The applicant was originally proposing signage and lighting changes to the southern elevation of the building above and below the existing marquis. However, the applicant has now advised that no exterior changes are proposed to the building and no new signage is proposed on the building. All changes have already been made on the interior of the building, on the fourth floor in the previous Ironwood Grill space. The large bar for Ironwood Grill has been maintained, and booths have been added in the bar area. The main seating area that lines the large windows has been converted from a 98 seat booth seating area into a more casual 72 seat area with moveable bistro tables and chairs. The former secondary dining area closer to the theatres has been converted from a 56 seat dining area with booths and freestanding tables to a 41 seat lounge area with couches and club chair seating. The existing pizza oven and bar seating surrounding it is proposed to remain. The new Four Story Burger theme is movie and entertainment based with movie posters, movie reels and other film-related design elements scattered throughout the restaurant.

The applicant intends to continue to offer open air dining in good weather by opening the operable Nanawall window system. As the proposed open air dining is not located outside of the building footprint at grade or in the public right-of-way, most of the normal outdoor dining requirements do not apply. No outdoor dining permit or license agreement is required. However, the applicant is proposing that the Nanawall window system will only be open during the regular hours of business for Four Story Burger (weather permitting). As the restaurant will not be open past midnight on any evening, no open air dining will be offered past midnight.

Signage

At this time, no exterior signage is proposed on the building. The applicant previously installed new signage on the interior of the restaurant space. However, no sign permits were required as all interior signage was placed at least 3' back from the windows.

8.0 Downtown Birmingham 2016 Overlay District

The site is located within the D-4 zone of the DB 2016 Regulating Plan, within the Downtown Birmingham Overlay District. Specifically, the 2016 Plan recommends a mix

of retail, office, restaurant, entertainment and residential uses downtown, and thus the Palladium Building itself and the theatre and restaurant proposed are exactly the uses encouraged in the 2016 Plan. As noted, no exterior changes are proposed at this time on the building.

9.0 Approval Criteria for Final Site Plan

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

(1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.

(2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.

(3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.

(4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.

(5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.

(6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

10.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

> Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the **City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed** for the site described in the application of amendment.
>
> The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

11.0 Planning Department Findings

Based on a review of the site plans submitted, the Planning Department suggests that the Planning Board recommend approval of the applicant's request for a Special Land Use Permit Amendment to change the name of Emagine Palladium and Ironwood Grill to Emagine Palladium and Four Story Burger with the condition that the applicant execute an amended contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP Amendment.

12.0 Sample Motion Language

Based on a review of the site plans submitted, the Planning Board recommends APPROVAL of the applicant's request for a Final Site Plan and a SLUP Amendment to permit Emagine Palladium – Four Story Burger to operate at 250 N. Old Woodward with the following condition:

1. The applicant will be required to execute an amended contract with the City outlining the details of the proposed theatre and restaurant operations that must be fully executed upon approval of the SLUP Amendment.

OR

Motion to recommend DENIAL of the Final Site Plan and SLUP Amendment to the City Commission for 250 N. Old Woodward, Emagine Palladium – Four Story Burger, for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend POSTPONEMENT of the Final Site Plan and SLUP Amendment to the City Commission for 250 N. Old Woodward, Emagine Palladium – Four Story Burger, pending receipt of the following:

1. _____
2. _____
3. _____

Planning Board Minutes
March 22, 2017

2. 250 N. Old Woodward Ave.
Emagine Palladium Theatre and Four Story Burger

Request for Final Site Plan Review and SLUP Amendment for a name change from Emagine Palladium Theatre - Ironwood Grill to Emagine Palladium Theatre - Four Story Burger

Ms. Ecker noted the subject site is located at 250 N. Old Woodward Ave., on the south side of the existing Palladium Building in a portion of the former Palladium Theatre space. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District.

On March 13, 2017, the City Commission set a public hearing for March 27, 2013 to consider renewal of the Liquor License. They also set a public hearing for April 13, 2017 to consider the SLUP agreement and the name change violation and whether they should terminate the SLUP or not.

In the meantime the applicant and SLUP holder, Emagine Palladium Theatre and Ironwood Grill, is now seeking a SLUP Amendment to grant approval to change the name of their establishment to Emagine Palladium Theatre and Four Story Burger. Ironwood Grill was closed at the end of 2016, and the new concept Four Story Burger restaurant was opened. Chapter 10 and Chapter 126 of the City Code require that the applicant obtain a SLUP Amendment approval from the City Commission to change the name of an existing liquor establishment operating under a SLUP Amendment.

Emagine Palladium Theatre and Ironwood Grill will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP Amendment based on the interior changes only, and then obtain approval from the City Commission for the Final Site Plan and SLUP Amendment to change the name of the establishment to Emagine Palladium Theatre and Four Story Burger.

The new Four Story Burger is currently open to the public (with no membership requirement), as was Ironwood Grill. The new restaurant is located in the space that Ironwood Grill previously occupied, however many interior changes now provide a casual dining experience and offer 145 dining seats (Ironwood Grill was previously 196 seats). There are 18 seats at the bar, with an exhibition style brick pizza oven kitchen and an open air dining experience overlooking Hamilton above the theatre marquis. Four Story Burger will offer unique sandwiches, salads and sides with locally sourced ingredients and baked goods, as well as an assortment of local craft beers and creative cocktails. A private banquet room is also proposed with a private bar that will be available for rental for birthday parties, meetings, bridal showers and similar functions. Emagine Palladium Theatre members will be entitled to priority reserved seating at the Four Story Burger during busy periods and be entitled to call ahead food service.

Design Review

The large bar for Ironwood Grill has been maintained, and booths have been added in the bar area. The main seating area that lines the large windows has been converted from a 98 seat booth seating area into a more casual 72 seat area with moveable bistro tables and chairs. The former secondary dining area closer to the theatres has been converted from a 56 seat dining area with booths and freestanding tables to a 41 seat lounge area with couches and club chair seating. The existing pizza oven and bar seating surrounding it is proposed to remain. The new Four Story Burger theme is movie and entertainment based with movie posters, movie reels and other film-related design elements scattered throughout the restaurant.

The applicant intends to continue to offer open air dining in good weather by opening the operable Nanawall window system. However, the applicant is proposing that the Nanawall window system will only be open during the regular hours of business for Four Story Burger and therefore no open air dining will be offered past midnight.

Signage
At this time, no exterior signage is proposed on the building.

Mr. Roman Bonislawski, Ron and Roman Architects, said the owner came to them to say he had a restaurant that was failing. Their suggestion to him was to appeal to the common denominator that will most utilize the facility. Reduce the number of seats, make it friendly, make it cheap, make it accessible. They are challenged enough being on the fourth floor. As such, the project is already doing better than it was before.

Mr. John Goldstein, one of the partners of Imagine Palladium, said when Ironwood Grill was not working he was asked to fix it. He handed it over to Ron and Roman and trusted they would come up with something better. He said he was sorry that they didn't go through the correct process.

Mr. Bonislawski noted they are working with the Jonnas to present an appropriate master signage package, and to re-introduce the lighting that used to be on the building. That will be the subject of a separate application. Essentially they changed the concept, put in new furniture, reduced the number of tables, and raised the seating to enable customers to view the outside.

Ms. Whipple-Boyce indicated that she believes there is a disconnect between the way the public sees the space and what the applicant is trying to do with it. The stigma of the former movie membership idea and whether the public is even invited to be in the restaurant may still hurt them. Mr. Goldstein replied they now have an extensive loyalty program with a lot of tiers. They are also doing outreach and trying to ease back into a more traditional theatre model and restaurant open to the public. They are trying to make sure that the community knows it is a welcoming place.

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce that the Planning Board recommends approval of the applicant's request for a Final Site Plan and a SLUP Amendment to permit Emagine Palladium - Four Story Burger to operate at 250 N. Old Woodward Ave. with the following condition:

2. **The applicant will be required to execute an amended contract with the City outlining the details of the proposed theatre and restaurant operations that must be fully executed upon approval of the SLUP Amendment.**

At 8:14 p.m. there were no public comments on the motion.

Motion carried, 6-0.

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Clein, Jeffares, Koseck, Share
Nays: None
Absent: Boyle, Lazar

EMAGINE PALLADIUM AND FOUR STORY BURGER
250 N. OLD WOODWARD
SPECIAL LAND USE PERMIT AMENDMENT
2017

WHEREAS, Emagine Palladium and Four Story Burger filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to change the name of the existing theatre and restaurant from Emagine Palladium and Ironwood Grill to Emagine Palladium and Four Story Burger;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the north side of Hamilton and the east side of N. Old Woodward;

WHEREAS, The land is zoned B4, Business Residential, which permits establishments serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on March 22, 2017 reviewed the application for Final Site Plan Review and a Special Land Use Permit Amendment and recommended approval with the following condition:

1. The applicant will be required to execute an amended contract with the City outlining the details of the proposed theatre and restaurant operations that must be fully executed upon approval of the SLUP Amendment.

WHEREAS, The applicant has committed to comply with all conditions for approval as recommended by the Planning Board on March 22, 2017;

WHEREAS, The Birmingham City Commission has reviewed the Emagine Palladium and Four Story Burger Special Land Use Permit Amendment application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED,The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Emagine Palladium and Four Story Burger's application for a Special Land Use Permit authorizing the operation of a restaurant serving alcoholic liquors at 250 N. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit Amendment is granted subject to the following conditions:

1. Emagine Palladium and Four Story Burger shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest;
3. The hours of operation for open air shall cease at 12:00am;
4. The use of eisenglass and other enclosure materials on any outdoor dining area shall require approval by the City Commission through a Special Land Use Permit Amendment;
5. Outdoor dining is seasonally permitted from April 1st through November 15th only, with an Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.
6. Emagine Palladium and Four Story Burger shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area;
7. Emagine Palladium and Four Story Burger shall enter into a contract with the City outlining the details of the proposed operation;
8. Emagine Palladium and Four Story Burger shall not increase the number of interior or exterior seats at any time without approval by the City Commission through a Special Land Use Permit Amendment;
9. Emagine Palladium and Four Story Burger shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance;
10. Emagine Palladium and Four Story Burger agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit by be cancelled by the City Commission; and
11. Emagine Palladium and Four Story Burger is required to have any modifications to the site plan, floor plan or operation of the bistro approved through a Special Land Use Permit Amendment as required in the Zoning Ordinance.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Emagine Palladium and Four Story Burger and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Emagine Palladium and Four Story Burger to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, Cherilynn Brown, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on April 13, 2017.

_____

Cherilynn Brown, City Clerk

CONTRACT TO OPERATE AN ESTABLISHMENT WITH A LIQUOR LICENSE

This Contract is entered into this ____ day of _____, 20___, by and between _____, whose address is _____, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, Licensee wishes to obtain a change in name for an establishment serving alcoholic liquors under a license issued by the Michigan Liquor Control Code;

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the issuance of a liquor license pursuant to MCLA §436.152a(1)(b) of the Michigan Liquor Control Code of 1998; and

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned change in name of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the use of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to obtain a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.

3. Licensee acknowledges that it must secure a special land use permit for a restaurant serving alcoholic liquors as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit or the Michigan Liquor Control Code is a violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.

4. Licensee acknowledges that no modifications to the site plan, floor plan, elevations or operation of the bistro may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the number of interior or exterior seats, the use of eisenglass and other enclosure materials on any outdoor dining area, relocation or addition of bar, etc.

5. Licensee acknowledges that it shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance, and further agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and

encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission.

6. License further acknowledges that outdoor dining is seasonally permitted from April 1st through November 15th only, with a valid Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.

7. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

8. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

9. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

10. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the special land use permit, either of which would prohibit Licensee from operating the establishment. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the special land use permit, as well as enforcing such other rights as may be available at law and/or in equity.

11. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of a licensed establishment at the Property.

12. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

13. Any disputes arising under this Contract, not within the jurisdiction of the Michigan Liquor Control Commission, shall be settled either by commencement of a suit in Oakland

County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

14. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

15. If any provision of this contract is declared invalid, illegal or unenforceable, such provision shall be severed from this contract and all other provisions shall remain in full force and effect.

16. This Contract shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY OF BIRMINGHAM and Licensee. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

By: _____

Its: _____

Date: _____

CITY OF BIRMINGHAM

By:_____
Mark Nickita, Mayor

Date: _____

By:_____
Cherilynn Brown, City Clerk
Date: _____