



# **LEE'S SUMMIT**

LAW DEPARTMENT  
OFFICE OF THE CITY ATTORNEY

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December 11, 2018

**TO:** Lee's Summit City Council  
**FROM:** David Bushek  
**RE:** Summary of Streets of West Pryor Economic Incentives

## **Executive Summary:**

The developer Streets of West Pryor, LLC is requesting that the City Council approve several economic development incentives for the Streets of West Pryor development project which is located to the west of Pryor Road between I-470 and Chipman Road. Developer is requesting the following incentives to provide reimbursement for project costs:

- a tax increment financing plan that collects property tax and sales tax increments;
- a contribution of the City's 1% general sales tax collected on hotel rooms rentals;
- a community improvement district that imposes a new 1% sales tax;
- a transportation development district that imposes a new 0.5% sales tax;
- a Chapter 100 development plan that provides for sales tax exemption on construction materials for the apartments and the commercial development in the TIF Redevelopment Project Area.

The total project costs are estimated to be about \$178 million and the total amount of reimbursement that would be provided by the incentive package summarized above is about \$36 million which represents about 20% of the total project costs. This memorandum summarizes the requested incentives. This memo focuses primarily on the TIF Plan because this is the primary reimbursement source and involves the most process and evaluation, but this memorandum also summarizes and discusses all of the other incentive requests. All of the incentive requests will be presented at the December 18, 2018 meeting.

## **TIF Commission Recommendation**

The TIF Commission approved Resolution 2018-1, by a vote of 8-2, which recommends that the City Council:

- make the required factual findings and approve the TIF Plan,
- designate the Redevelopment Area pursuant to the TIF Act,
- approve the single Redevelopment Project and activate the collection of tax increment financing revenues therein;
- designate Streets of West Pryor, LLC, as the developer of record for the TIF Plan and the Redevelopment Project and enter into a tax increment financing contract with the developer for implementation of the TIF Plan.

The resolution and the minutes of the TIF Commission meeting are included in the Council meeting packet. The TIF Commission made no recommendations regarding the CID, TDD, hotel sales tax reimbursement and Chapter 100 Plan, as those items are not within the TIF Commission’s jurisdiction.

**Developer:** Streets of West Pryor, LLC (the “Developer”)

**Property:** The Redevelopment Area for the TIF Plan contains approximately 73 acres, bounded by I-470 on the north, Pryor Road on the east, Chipman Road on the south and Lowenstein Drive on the west. The property owners in the Redevelopment Area are listed in *Exhibit 7-1* of the TIF Plan. A map showing the lot owners is attached to this memorandum as Exhibit A.

**Development:** Developer proposes to construct the development listed in Exhibit B to this memorandum. The development lots are shown on the map attached to the TIF Plan as *Exhibit 1*. The Site Plan for the project is set forth in Exhibit B to this memorandum. The scope of development and Site Plan are copied from the Preliminary Development Plan submitted by Developer on October 16, 2018, which was reviewed by the Planning Commission on November 8, 2018 and which is a separate item on the Council’s December 18<sup>th</sup> agenda.

**Sources of Funds:** A detailed budget is included in the TIF Plan as *Exhibit 6*, and the Plan also contains a statement of Sources and Uses in *Exhibit 7*, along with a cash flow worksheet in *Exhibit 10* to demonstrate that the “but for” test has been satisfied. Data from these sources is summarized as follows:

<b><u>Sources of Funds</u></b>		
<b><u>Private Funding Sources</u></b>		
Funding from Tenants/Users	\$80,749,765	45.2%
Developer Capital (Private Loans and Equity)	\$61,811,714	34.6%
<b>Subtotal</b>	<b>\$142,561,479</b>	<b>79.8%</b>
<b><u>Project Cost Reductions from Public Incentives</u></b>		
Chapter 100 Sales Tax Exemption to Tenants/Users	\$3,298,870	1.8%
Chapter 100 Sales Tax Exemption to Developer	\$2,749,196	1.5%
	<b>\$6,048,066</b>	<b>3.4%</b>
<b><u>Public Reimbursement Sources</u></b>		
TIF Reimbursement	\$19,655,272	11.0%
CID Reimbursement (TIF & Non-Captured)	\$8,010,893	4.5%
TDD Reimbursement (TIF & Non-Captured)	\$1,779,604	1.0%
City Sales Tax Rebate from Hotel	\$504,231	0.3%
<b>Subtotal</b>	<b>\$29,950,000</b>	<b>16.8%</b>
<b>Total</b>	<b>\$178,559,545</b>	<b>100.0%</b>

### **Property Investment and Valuation:**

- Current County assessed valuation of Redevelopment Area: \$980,356
  - Taxable Property Value in Redevelopment Project Area: \$147,139
  - Value of Tax-Exempt Property in Redevelopment Project Area: \$792,020 (owned by City)
- Total Project Costs: about \$178.6 million
- Projected assessed valuation of TIF Project Area after full build-out: about \$11.2 million

### **Ownership and Development Structure**

- **Current Ownership:** Some portions of the property are owned by Developer, and Developer has the right to purchase the remainder. The City owns property on the north and south ends of the Redevelopment Area, and the City has entered into a contract for the sale of this property to Developer for about \$2.95 million.
- **Ownership and Development after Council approval:** If the City Council approves the incentive package including the Chapter 100 Plan, then after Developer purchases the remaining areas and unifies ownership, the property in the TIF Project Area and the two apartment properties will be transferred to the City to initiate the Chapter 100 period for those properties. The ownership and incentive structure from that point forward falls into three categories:

(1) **TIF Project Area:** When construction of improvements on lots in the TIF Project Area are completed, title to those lots will be transferred to the Developer or end user which will place those lots back on the tax rolls and allow the TIF collection period to begin. The completed lots will be owned by Developer and leased to a tenant, or owned by the end user, depending upon the real estate arrangements for each lot.

(2) **Apartments:** The apartment properties will remain in City ownership for a 10-year period and the apartment operators will lease these properties from the City under the Chapter 100 structure. The apartment operators as lessees will make Payments In Lieu of Taxes (PILOTs) under the Chapter 100 Plan which will be sized to equal what the real property taxes would have been if the Chapter 100 Plan had not been approved.

At the end of the 10-year Chapter 100 period, ownership of the apartments will be transferred to the apartment operators. The apartment properties will not be subject to TIF collections at any time, except that retail and restaurant portions of the apartment structures will be included in the TIF Redevelopment Project Area to capture real property and sales tax increments from these businesses.

(3) **Single-Family Residential:** This area will remain in Developer ownership until developed with single-family residential structures and marketed and sold to homeowners in the normal course of business. The single-family areas will not be subject to incentives under the Chapter 100 Plan or the TIF Plan, and these properties will be taxed according to the normal taxation process. The single-family residential area is included in the TIF Redevelopment Area because this area is also being developed by Developer as the master developer of the entire project.

- **TIF Project:** The Redevelopment Area includes one TIF Redevelopment Project area which includes all of the retail and office development and the retail and restaurant portions of the

apartment buildings. TIF collection will begin when the Redevelopment Project is approved, and may last for a maximum of 23 years. The TIF Redevelopment Project does not include the apartments (except for the retail and restaurant portions of the apartment structures) or the single-family residential areas. TIF revenues will not be collected while the lots are in City ownership under the Chapter 100 structure, and this results in about two years at the beginning of the 23-year life of the TIF Plan during which TIF revenues will not be collected.

- Residential Areas: The single family residential uses and apartments are not located within the TIF Redevelopment Project area and TIF revenues will not be collected from the single-family residential or apartment portions of the project.

### **TIF Reimbursement and Financing Structure:**

Developer is requesting reimbursement from five revenues sources:

#### **1. TIF Revenue**

- PILOTS: 100% of the PILOTS in the TIF Redevelopment Project area will be captured and used to repay Reimbursable Project Costs according to the budget set forth in *Exhibit 6* of the TIF Plan. Developer estimates that the TIF Redevelopment Project will generate about \$19.9M in PILOTS over the 23-year life of the TIF Plan. It is assumed in the Redevelopment Plan that property tax revenues will increase at a rate of 2.0% bi-annually.
- EATs: 50% of the EATs will be captured. The Developer estimates that about \$21 million in EATs (not including the CID and TDD EATs) will be generated during the 23-year TIF period. It is assumed in the Redevelopment Plan that sales tax revenues will increase at a rate of 1.5% a year.
- Reimbursable Project Costs: TIF revenue is proposed to reimburse about \$20.16 million in project costs.
- No City “Super-TIF” contribution has been requested for the retail, grocery store and restaurant portions of the development – 50% of all sales tax revenues from these developments will flow to the City as normal (except for the Hotel Sales Tax Rebate request discussed below).

#### **2. City Hotel Sales Tax Rebate**

- Developer is requesting that all of the sales tax revenues resulting from the City’s 1% general sales tax collected from charges for sleeping rooms paid by transient guests of the hotel be annually appropriated to reimburse Developer for reimbursable project costs.
- This funding source is incorporated into the TIF Plan, and *Exhibit 6* to the TIF Plan includes the column “PILOTS / EATS / STR” which groups TIF reimbursement and the Hotel Sales Tax Rebate (STR) as funding sources. The TIF Plan includes a statement that it is anticipated that Developer will request the City to rebate this hotel sales tax revenue. If approved by the City Council, this will be an independent legislative action that is separate from, but concurrent with, the Council’s legislative action on the TIF Plan.
- Developer’s total projected revenue from the Hotel Sales Tax Rebate is estimated to be about \$504,000 over 30-year life of the request. An estimate of the Hotel Sales Tax Rebate Revenue is included *Exhibit 7* to the TIF Plan.

- Developer's request for the Hotel Sales Tax Rebate is premised upon the fact that TIF EATs collections do not apply to taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels. Developer has estimated that the request for a rebate of the full 1% general sales tax as applied to sleeping rooms at the hotel is slightly less than if TIF EATs collections applied to the City's combined sales tax rate of 2.25% (1% general, 0.25% parks, 0.5% capital improvements, 0.5% transportation). This is the basis for the 30-year request, rather than 23 years.

### **3. Chapter 100 Plan**

- Developer is requesting that a Chapter 100 Plan be approved simultaneously with the TIF Plan. The mechanics of the Chapter 100 Plan in the incentive structure is described above.
- The benefits of the Chapter 100 Plan for the Developer will be (1) about \$6 million savings in the form of sales tax exemption on construction materials for the apartments and all structures in the TIF Redevelopment Project Area and (2) a fixed PILOTs structure for the apartment properties for a 10-year period.
- The Chapter 100 Plan is referenced in the TIF Plan, but approval of the Chapter 100 Plan is a separate legislative action by the City Council and the TIF Commission is not charged with formally reviewing the Chapter 100 Plan prior to Council action.

### **4. CID Sales Tax**

- Developer is requesting that a 1% CID sales tax be imposed within the TIF Redevelopment Project Area. This is projected to generate about \$19.5 million in revenues over a 30 year period.
- 50% of the CID revenues which are not captured by the TIF Plan will be used primarily for power line relocation costs and road costs. 50% of the CID revenues which are captured by the TIF Plan will be allocated primarily to reimbursement of land reimbursement, park improvements and site grading costs.

### **5. TDD Sales Tax**

- Developer is requesting that a 0.5% TDD sales tax be imposed within the TIF Redevelopment Project Area except for the grocery store. This is projected to generate about \$4.4 million in revenues over a 30 year period.
- 50% of the TDD revenues which are not captured by the TIF Plan will be used for road costs and associated soft costs. 50% of the TDD revenues which are captured by the TIF Plan will be allocated primarily to reimbursement of the parking structure cost and soft costs.

**TIF Financing Options:** Reimbursement will start on a pay-as-you go basis. Bonds may be issued at the City Council's discretion, and as provided in the TIF contract, to finance Redevelopment Project Costs. The CID, TDD and Hotel Sales Tax Rebate sources may be pledged to repay bonds that are issued by the City or a related issuer.

**Benefit to Taxing Districts:** The Cost-Benefit Analysis attached to the TIF Plan as *Exhibit 9* shows the projected tax revenues to be generated by the project for each taxing district if the project does not occur and if the project does occur with the use of TIF.

**Basis of Reimbursement and the “But For” Test:**

- The basis of the reimbursement request is (1) extraordinary site development costs and (2) additional reimbursement needed to achieve a rate of return that is sufficient to cause Developer to undertake the project.
- Developer’s cash flow and rate of return analysis in Exhibit 10 shows:

	<u>Rate of Return</u>
Without Incentives	3.45%
With Incentives	9.53%

- The extraordinary site development costs are reflected within the cost items associated with:

Grading, retaining walls and site prep	\$6,291,113
Transmission Line Relocation	\$3,500,000

**Financial Advisor Review of TIF Plan and Chapter 100 Request**

The City engaged Piper Jaffray as the City’s financial advisor on this project. Piper Jaffray represents the City on this project and conducted an independent review of the Developer’s proposal and assumptions to provide independent advice to the City. Piper Jaffray’s review focused on the following items:

- reasonableness of Developer’s “but for” TIF conclusions;
- Developer’s TIF rate of return assumptions and calculations;
- Developer’s TIF cost and revenue projections;
- comparison of Developer’s TIF projections and calculations against industry averages and standards;
- sufficiency of the TIF Plan to fund the reimbursable project costs with bonds and on a pay-as-you-go reimbursement structure; and
- alternative to the Chapter 100 sales tax exemption request.

Piper Jaffray’s report is included in the Council meeting packet. The report makes the following conclusions:

- Construction costs are reasonable
- Revenue assumptions are reasonable
- Maximum TIF bonding capacity is \$21.25 million
- Projected grocery sales of \$509/sqft/year is reasonable, \$511 is national average
- May pay-off in less than 23 years if projections are accurate
- Rate of Return without incentives = **3.07%**
- Rate of Return with Incentives = **10.01%**
- Acceptable Range for Rate of Return is 5.77% to 10.62%
- The expected rate of return for this project would be at the higher end of the acceptable range given certain higher risk factors as presented by this project:

- Extraordinary site costs, large amount of site prep, power line relocation
- Revenue from sales of prepared pad sites rather than operating businesses

**Comparison to City’s Economic Development Policy**

The City’s Economic Development Policy Guidelines state that typically incentives using TIF will be an amount not to exceed 25% of the total private development costs. The TIF assistance is **11%** of the total project costs (public and private). All public incentives are **20.2%** of the total project costs. Developer has not provided a breakdown of the public vs. private costs in the TIF Plan.

**Migration of Existing Grocery Sales**

The TIF Commission discussed the issue of migration of existing grocery sales and the resulting impact to the City’s sales tax revenues. City staff presented charts to the TIF Commission reviewing how grocery sales migration would impact the City sales tax revenues. These charts will be discussed at the City Council meeting and are included in the presentation slides for the meeting.

**Required Findings for TIF Plan:** The following is a list of the findings required to be made by the City Council, along with references to the pages in the TIF Plan where supporting information may be found:

- **Blight:** The Redevelopment Area must be a blighted area, as such term is defined in Section 99.805(1), RSMo, as follows:

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

The basis presented by the Developer in support of a blight finding is the presence of several blighting factors as set forth in the Blight Study prepared by the Developer (*Exhibit 3*). The Redevelopment Plan is also accompanied by an affidavit, signed by the developer, attesting to the blighting conditions of the Redevelopment Area (*Exhibit 13*). The following is an overview of the blighting factors noted in the Blight Study:

- Inadequate Street Layout
  - Limited access
  - Lacks curbs, gutters, street lights, storm sewers
  - Limited access to Pryor Road
  
- Unsanitary or Unsafe Condition
  - Aged houses
  - Undermining
  - Mining certification process involves studies, certification and possible remediation
  - Violations of Property Maintenance Code for abandoned, discarded and unused objects and dead, dying or diseased trees

- Deterioration of Site Improvements
    - Street improvements in fair condition
    - Age of structures from 1940 to 1978
  - Improper subdivision or obsolete platting
    - Irregular lots, not modern platting
    - Lots have long and narrow configuration
    - 29-acre parcels limits access to smaller parcels
  - Existence of Conditions which Endanger Life or Property
    - No sewer access
    - Septic system for houses
    - Transmission lines and cost to move
    - Site serves as dumping ground
  - Economic underutilization
- **But-For Test:** The proposed redevelopment must satisfy the “but for” test set forth in Section 99.810, RSMo, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment. The Redevelopment Area has not been developed, despite excellent access to the interstate system. The site has significant development impediments due to the topography, soil/rock conditions and the presence of electric transmission lines which cut diagonally across the property. *Exhibit 10* states that the rate of return for the project without incentives is 3.45%, and the rate of return with incentives is 9.53%. The TIF Plan is accompanied by an affidavit, signed by the Developer, attesting to the “but for” test (*Exhibit 13*). *Note: We anticipate that Piper Jaffray will supply advice and testimony about the But For Test at the TIF Commission hearing.*
  - **Relocation Plan:** The TIF Plan includes as *Exhibit 4* a Relocation Assistance Plan as required by the TIF Act.
  - **Cost-Benefit Analysis:** A cost-benefit analysis is required showing the economic impact of the TIF Plan on each taxing district and political subdivision within the Redevelopment Area if the project is built pursuant to the TIF Plan or is not built. A cost-benefit analysis has been provided in *Exhibit 9* to the TIF Plan.
  - **Financial Feasibility:** There must be evidence that the proposed project is financially feasible for the Developer to construct with TIF assistance. Developer has provided *Exhibit 10* as evidence that the project is financially feasible to undertake with public assistance. *Note: We anticipate that Piper Jaffray will supply advice and testimony about the Financial Feasibility of the project at the TIF Commission hearing.*
  - **TIF Plan Contents:** The TIF Plan must contain the following information, and the page and exhibit references below indicate where the information may be found in the TIF Plan:
    - A general description of the program to be undertaken to accomplish its objectives (*Pages 1, 10-11*).
    - The estimated redevelopment project costs (*Page 11 and Exhibit 6*).
    - The anticipated sources of funds to pay the costs (*Page 12 and Exhibit 6*).

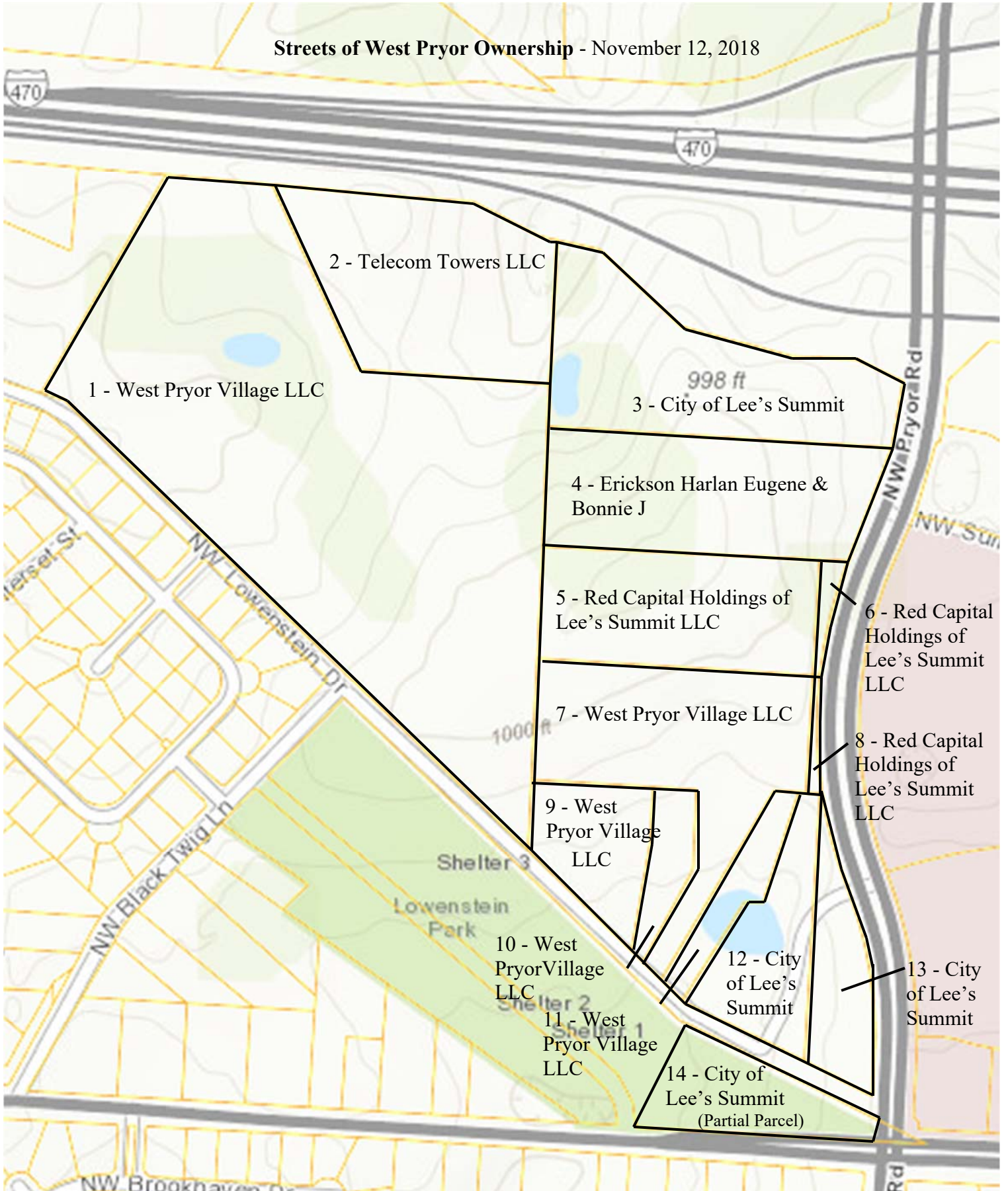


- Evidence of the commitments to finance the project costs (*Exhibit 12*).
  - The anticipated type and term of the sources of funds to pay costs (*Pages 12-15*).
  - The anticipated type and terms of the obligations to be issued (*Pages 15*).
  - The most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845, RSMo (*Page 15 and Exhibit 7*).
  - An estimate as to the equalized assessed valuation after redevelopment (*Page 16 and Exhibit 7*).
  - The general land uses to apply in the Redevelopment Area (*Pages 1, 10-11*).
  - Estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not more than twenty-three (23) years from the adoption of an ordinance approving a Redevelopment Project within the Redevelopment Area (*Page 20*).
  - Estimated dates of completion of the redevelopment project (*Exhibit 7*).
- **Plan Requirements:** The TIF Plan must also meet the following requirements, and the page and exhibit references below indicate where the information supporting these requirements may be found in the TIF Plan:
    - The TIF Plan is in conformance with the Comprehensive Plan for the development of the City as a whole (*Pages 19*).
    - A Relocation Assistance Plan has been developed for relocation assistance for businesses and residences, and the relocation of any business or residents in the Redevelopment Area, if necessary, will take place in accordance with the Relocation Assistance Plan (*Page 20 and Exhibit 4*).
    - The TIF Plan does not include the initial development or redevelopment of any gambling establishment (*Page 21*).
    - The areas selected for the Redevelopment Project include only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Redevelopment Project improvements (*Exhibit 1 & 2*).

**EXHIBIT A**  
**PROPERTY OWNERSHIP IN REDEVELOPMENT AREA**

**[See attached]**

Streets of West Pryor Ownership - November 12, 2018



**EXHIBIT B**

**DEVELOPMENT SCHEDULE**

The following schedule of development is copied from the Preliminary Development Plan that was submitted to the City on October 16, 2018 and is considered by the City Council on December 18, 2018.

**Commercial Land Uses**

SITE DATA

LOT #	USE	LOT SF	LOT AC	FLOOR AREA SF (ENVELOPE)	FLOOR AREA RATIO (FAR)	# OF FLOORS
1	RESTAURANT (SIT-DOWN)	62,022	1.4	6,500	0.1048	1
2	RESTAURANT (SIT-DOWN)	71,216	1.6	6,500	0.0913	1
3	RESTAURANT W/DRIVE THRU	76,395	1.8	5,500	0.0720	1
4	MEDICAL	32,821	0.8	6,500	0.1980	1
4A	RESTAURANT DRIVE THRU ONLY	33,424	0.8	707	0.0212	1
5	GROCERY	311,668	7.2	63,119	0.1994	1
8	RESTAURANT (2 TENANTS)	119,922	2.8	7,500	0.0625	1
9	RESTAURANT (2 TENANTS)	145,710	3.3	9,500	0.0652	1
10	RESTAURANT	111,008	2.5	7,500	0.0676	1
10A	RESTAURANT (SIT-DOWN)	108,275	2.5	7,500	0.0693	1
11	RESTAURANT (SIT-DOWN)	81,134	1.9	7,500	0.0924	1
12	HOTEL (105 ROOMS) **	208,812	4.8	13,466	0.0645	4
6	BALL COURTS *	466,437	10.7	-	-	
TOTAL				141,792 SF		

**Residential Land Uses**

RESIDENTIAL DATA

LOT #	USE	LOT SF	LOT AC	FLOOR AREA SF (ENVELOPE)	FLOOR AREA RATIO (FAR)	# OF DWELLING UNITS	DWELLING UNITS PER AC	# OF FLOORS	STUDIO 1 BDRM	1 BDRM	2 BDRM
6	SENIOR LIVING ***	466,437	10.7	68,679	0.1472	165	24.2	4	-	-	-
7	APARTMENTS	268,862	6.2	54,900	-	250	36.2	4	-	187	63
	RETAIL			10,000	-	-	-	-	-	-	-
	RESTAURANT			5,000	-	-	-	-	-	-	-
				69,900 (TOTAL LOT 7)	0.2600						
14-42	SINGLE FAMILY RESIDENTIAL (R-1)	293,424 Δ 755,450 ΔΔ	6.7 Δ 17.3 ΔΔ	-	-	28	4.1 Δ 1.6 ΔΔ	-	-	-	