

**DEVELOPMENT AGREEMENT BETWEEN  
CLAYTON PROPERTIES GROUP, INC., AND THE CITY OF LEE'S SUMMIT,  
MISSOURI FOR THE WOODSIDE RIDGE DEVELOPMENT**

THIS AGREEMENT (“**Agreement**”) is made this \_\_\_ day of \_\_\_\_\_, 2019, by and between Clayton Properties Group, Inc. a Tennessee corporation dba Summit Homes, (the “**Developer**”), and the City of Lee’s Summit, Missouri, a municipal corporation (“**City**”).

WHEREAS, on September 6, 2018, the City Council concluded a public hearing for Application #PL2018-103, for preliminary development plan of approximately 111.8 acres of land generally lying west of Pryor Road and north of the Sterling Hills residential development, on property legally described in **Exhibit A** (the “**Property**”), now owned by the Developer, which will be developed as Woodside Ridge (the “**Development**”) as shown in **Exhibit B** which is a proposed phasing map to implement the preliminary development plan;

WHEREAS, following the public hearing for the Development, the Council voted to approve the application for the Development subject to the Developer entering into a development agreement with the City to provide for the certain Improvements, as defined below, necessary for the Development;

WHEREAS, in satisfaction of the City Council's condition of approval, the Developer and the City now desire to enter into this Agreement;

WHEREAS, the parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions; and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this Agreement shall have the following definitions:

“**Certificate of Final Acceptance**” shall have the meaning assigned in Section 1027 of the Design and Construction Manual as adopted by the City.

“**Certificate of Occupancy**” shall have the meaning assigned in Chapter 7, Lee’s Summit Building Code, as adopted by the City.

“**Certificate of Substantial Completion**” shall have the meaning assigned Section 1027 of the Design and Construction Manual as adopted by the City.

“**City Engineer**” shall mean the City Engineer or its designated representative.

“**Developer**” shall mean Clayton Properties Group, Inc. or its successors and assigns in the Property.

“**Excusable Delays**” shall have the meaning assigned in **Section 2.D**.

“**Fence Improvement**” means a 6’ tall vinyl siding fence to be constructed on Tract E of the Preliminary Development Plan for the Property which runs parallel to the Property line with the Fire Station Property for a distance of approximately 280 feet from the southern boundary of the Property to a point that is adjacent to the southern right-of-way line for NW Shamrock Avenue, at the approximate location shown on **Exhibit C**.

“**Fire Station Property**” means the property owned by the City adjacent to Tract F of the Property on which the City fire station will be constructed by the City.

“**Fire Station Sewer Improvement**” means a sewer improvement constructed at the approximate location depicted on **Exhibit C** (only the main line is depicted) to be constructed by Developer for the City according to the provisions of **Section 2** of this Agreement, which shall have the following specifications:

- 8” PVC (SDR-26) public sanitary sewer main
- Approximately 324 foot long
- Service line connections (wyes, bends, risers)
- 4’ diameter manhole

“**Improvements**” mean the Phase 1 Improvements and the Phase 2 Improvements.

“**Lot**” means each of the lots as set forth on the Preliminary Development Plan.

“**Phase 1 Improvements**” means the following:

Traffic Improvements –

- (1) A southbound right-turn lane with 80 feet of storage plus taper at the intersection of Pryor Road and O’Brien Road as indicated on the Pryor Road and O’Brien Intersection Improvement Plans.
- (2) A eastbound left-turn lane with 150 feet of storage plus taper at the intersection of Pryor Road and O’Brien Road as indicated on the Pryor Road and O’Brien Intersection Improvement Plans.
- (3) A northbound left-turn lane with 200 feet of storage plus taper at the intersection of Pryor Road and Shamrock Avenue.
- (4) A eastbound left-turn lane with 150 feet of storage plus taper at the intersection of Pryor Road and Shamrock Avenue.

Water and Sewer Improvements –

- (1) Replacement of approximately 125 feet of existing 6” public water main located at Ambersham Drive in the Sterling Hill subdivision with 8” water main.
- (2) Approximately 165 feet of 8” sanitary sewer main along Ambersham Drive, connecting to the existing sanitary line located at the intersection of Whitlock Drive and Ambersham Drive in the Sterling Hills subdivision. Connection to the existing sanitary sewer shall be performed in accordance with the approved construction plans for said work.

**“Phase 2 Improvements”** means the following:

Sewer Improvements – Approximately 190 feet of public sanitary sewer located within the street right-of-way with one manhole to connect to the existing public sanitary system located at the Northeast corner of NW Cody Drive and NW Killarney Lane in the Sterling Hills subdivision.

**“Preliminary Development Plan”** shall mean the preliminary development plan for the Development approved by Ordinance No. 8470 on September 20, 2018.

**“Staff”** shall mean employees of the City of Lee’s Summit.

**“Temporary Certificate of Occupancy”** shall have the meaning defined in Lee’s Summit Building Code, which is set forth in Chapter 7 of the City of Lee’s Summit Code of Ordinances.

2. **Requirements for Improvements.** Unless otherwise specified herein, the provisions set forth in this Section 2, “Requirements for Improvements” shall be applicable to the financing, design, engineering and construction of the Improvements to be constructed by the Developer as required by this Agreement.
  - A. **Requirement to design, engineer and construct.** The Developer, at its sole cost and expense, shall design, engineer and construct the Improvements. The City shall issue certificates of occupancy for structures in the Development pursuant to the schedule set forth in Section 3, “Timing of Issuance of Certificate of Occupancy” below.
  - B. **Construction Costs.** All costs associated with designing, engineering and constructing the Improvements shall be paid by the Developer. No cost shall be paid by the City for designing, engineering, constructing or managing the construction of any of the Improvements.

**Exception:** The City may undertake the construction of the Improvements described as “(3) A northbound left-turn lane with 200 feet of storage plus taper at the intersection of Pryor Road and Shamrock Avenue” and “(4) A eastbound left-turn lane with 150 feet of storage plus taper at the intersection of Pryor Road and

Shamrock Avenue” in connection with the City’s development of the Fire Station Property. In the event that the City undertakes this construction, the Developer shall not be obligated to design, engineer, construct or fund the construction of this improvement.

- C. Applicable Standards and Approvals. The Improvements shall be designed, engineered, constructed, placed into service and dedicated to the City in accordance with the ordinances of the City, including, but not limited to, the City’s Design and Construction Manual then in effect at the time the Plans for the Improvements are submitted, and any other applicable rules, requirements and standards established by the City. All such work shall be done in good and workmanlike manner. The Developer shall be responsible for obtaining approval for any portion of the Improvements that require approval of another jurisdiction. The City agrees to cooperate in good faith with the Developer in obtaining said required approvals from other jurisdictions for the Improvements.
  
- D. Project Schedule. Prior to the construction of the Improvements the Developer shall submit to the City Engineer a proposed Project Schedule for the Improvements to be constructed by the Developer. The Project schedule shall be subject to delays that are not within the control of the Developer such as, without limitation, weather delays, delays due to subsurface conditions, engineering delays, contractor unavailability, strikes and delays caused by the City (“**Excusable Delays**”). No permits will be issued for the Development until the schedule has been reviewed by the City Engineer and staff of departments directly impacted by the timing of such Improvements. If conflicts with the schedule are determined, staff shall return the schedule with comments, to be resubmitted by the Developer. The Developer shall be notified once it is determined that no conflicts exist with the schedule. The Project Schedule shall be incorporated into this Agreement by addendum, and no action of the City Council will be required to incorporate the schedule.
  
- E. Design Phase. The Developer shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Improvements. On the basis of such approved preliminary design documents, the Developer shall:
  - (1) Prepare detailed drawings, plans, and design data to show the character and scope of the work to be performed by contractors for all Improvements (“**Plans**”).
  - (2) Furnish to the City Engineer copies of such Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the Improvements.
  - (3) Furnish the number of approval copies of the final Plans for the Improvements as the City may require.

- (4) Ensure that the Plans conform to federal and state laws and City ordinances and regulations.

All final Plans shall be presented to the City Engineer for approval, and no action of the City Council will be required to incorporate the final Plans into this Agreement.

F. Construction.

- (1) The Developer will construct all the Improvements according to the approved Plans. The Developer shall maintain, at its sole cost and expense, the applicable Improvements until such time as said applicable Improvements are accepted by the City Engineer pursuant to Section 2.J, "Dedication" of this Agreement. The Developer shall not do or permit others under it to do any work related to the construction of the Improvements until the Developer has paid for all required City and other governmental required permits and authorizations.
- (2) No building permits for residences will be issued by the City for any Lot in Phase 1 as depicted in Exhibit B until a Certificate of Substantial Completion for all of the Phase 1 Improvements has been issued by the City.

G. Right of Way Acquisition.

- (1) The Developer shall be responsible for acquiring or negotiating for the donation of all right-of-way or easements that are needed from private parties to construct the Improvements, including all necessary temporary construction easements.
- (2) In the event that the Developer is unable, after good faith negotiations, to acquire some or all of the right-of-way or easements necessary for those Improvements over which the City exercises jurisdiction, the Developer may submit a request to the City in the manner prescribed by Section 26, "Notice" below requesting that the City use its authority to acquire the property interests necessary for the Improvements. The City will respond to such a request within thirty (30) days of receipt of same, and in such response the City will indicate whether it agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction. The City is not obligated to use its authority to assist in the acquisition of property interests necessary for the Improvements.
- (3) In the event the City agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction, prior to beginning any work to acquire said right-of-way or easements, the Developer shall first execute an Acquisition Funding Agreement with the City which provides for the terms and conditions under which the Developer

will place all estimated Acquisition Costs in escrow with the City prior to commencement of condemnation for right-of-way or easements. The Acquisitions Costs shall include, but shall not be limited to: the actual price paid for all right-of-way or easements, whether determined by negotiation or eminent domain; expenses related to the establishment of acquisition values of right-of-way or easements, including appraisals; legal fees, other expenses paid to third parties, and expenses incurred by the City related to acquisition of right-of-way or easements, whether through negotiation or eminent domain; and any other reasonable and necessary costs or expenses related to acquisition of the right-of-way or easements. The Acquisition Funding Agreement shall obligate the Developer to reimburse the City in full for all Acquisition Costs that result from the City's use of its authority to acquire any portion of the Improvements.

(4) The Developer shall dedicate or convey, as applicable, to the City, at no cost to the City, all property interests owned by the Developer which are necessary for the Improvements.

- H. Utility Relocation. The parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Improvements, shall be paid by the Developer, and are not the responsibility of the City, except for any Improvements to be constructed by the City under the exceptions in section 2 above. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Improvements, which are not paid by a utility company, shall be paid by the Developer and are not the responsibility of the City, except as provided above.
- I. Inspections and Revisions. The Developer agrees to permit City employees, agents and contractors to inspect, observe, and oversee the construction of all Improvements in order to ascertain and determine that the standards of the City have been met. The Developer shall obtain the City Engineer's approval of all revisions materially altering the design or specifications of the Improvements.
- J. Dedication. Upon completion, inspection and approval of the Improvements by the City, the Developer will dedicate the Improvements to the City, for its use, operation and maintenance. The City shall be under no obligation to accept the dedication or conveyance of any Improvements constructed pursuant to this Agreement until it has been inspected and approved to the satisfaction of the City Engineer. Upon written notice of the inspection and approval of the City Engineer, the Developer agrees to convey all the Improvements to the City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be by appropriate document, and shall be sufficient, in the opinion of the City Attorney, to convey marketable title of record, as set forth in Title Standard 4 of the Missouri Bar.

K. Fire Station Sewer Improvement.

- (1) Developer will construct or cause to be constructed the Fire Station Sewer Improvement when the Phase 1 Improvements are constructed for the Development. Prior to the commencement of construction of the Phase 1 Improvements, Developer will deliver a construction schedule to the City for the Improvements and the Fire Station Sewer Improvement, which shall be reviewed and approved by the City. After approval by the City, Developer will use commercially reasonable efforts to construct the Improvements and the Fire Station Sewer Improvement in substantial compliance with the approved schedule, subject to Excusable Delays. Developer shall not be liable to the City for any damages or losses that may be incurred by the City as a result of any Excusable Delay.
- (2) The provisions of Section 2.E of this Agreement relating to the Design Phase shall apply to the Fire Station Sewer Improvement.
- (3) The City will pay to Developer as reimbursement for the Fire Station Sewer Improvement (the “**Fire Station Sewer Payment**”) the actual out of pocket third party cost to construct the Fire Station Sewer Improvement, plus 20% overhead and profit, up to a total maximum amount of \$54,000.00 for all costs including overhead and profit. The estimated amount of the Fire Station Sewer Payment is represented in Exhibit D on the Effective Date of this Agreement. The cap above is predicated upon the assumption that no rock, shale, springs, unstable soil or other similar sub-surface conditions will be encountered. In the event any such conditions are encountered that will cause the cap to be exceeded, Developer will notify the City of the existence of the conditions and the estimated additional costs associated therewith. Within ten (10) days thereafter, the parties will agree upon a change order to equitably adjust the amount of the cap. Developer shall provide proof of the actual costs of the Fire Station Sewer Improvement in the form of paid invoices and processed and paid checks. After evaluating the actual cost documentation and determining the amount of the Fire Station Sewer Payment, the City shall make the Fire Station Sewer Payment within fifteen days after a Certificate of Substantial Completion has been issued by the City for the Fire Station Sewer Improvement.

L. Fence Improvement.

- (1) Location. The Fence Improvement shall be constructed by or at the direction of Developer. The precise location of the Fence Improvement shall be selected by Developer, provided that the Fence Improvement shall be constructed entirely on the Property within Tract F and not on the Fire Station Property and not on the border between the Property and the Fire Station Property. All landscaping associated with the Fence Improvement shall be located entirely on the Property and not on the Fire Station Property.

No part of the Fence Improvement or associated landscaping shall be located on the border between the Property and the Fire Station Property.

- (2) **Payment.** Prior to construction of the Fence Improvement, Developer shall provide a final unit cost of the Fence Improvement per linear foot to the City for review and approval. The per unit cost estimate shall include the Fence Improvement only and not any landscaping which may be constructed by Developer in connection with or in the vicinity of the Fence Improvement. The unit costs which is approved by the City shall be applied to calculate the reimbursement payment to be provided by the City pursuant to this paragraph. The estimated amount of the Fence Improvement is represented in **Exhibit D** on the Effective Date of this Agreement. The City shall reimburse Developer for the actual cost to construct the Fence Improvement that is constructed in compliance with the terms and conditions of this Agreement, using the per unit costs that is approved by the City as the basis for calculating the payment. Such reimbursement payment shall be made when the City issues a Certificate of Substantial Completion for the Phase 1 Improvements.
- (3) **Maintenance.** The Fence Improvement and all associated landscaping shall be maintained in a good condition by Developer or assigns in accordance with the City's Property Maintenance Code. The City shall have no obligation to maintain the Fence Improvement or pay for the costs of repairs and maintenance of the Fence Improvement, either during the term or this Agreement or after this Agreement has been terminated.

3. **Timing of Issuance of Certificates of Occupancy.** A Temporary or Final Certificate of Occupancy will not be issued until either a Certificate of Substantial Completion or a Certificate of Final Acceptance has been issued for the Improvements applicable to the building for which the Certificate of Occupancy is being requested.

4. **Indemnification.**

- A. **General Indemnity.** The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of the Developer's construction obligations under this Agreement; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out of or to the extent caused by the negligence or willful misconduct of the City, its employees or agents, or relating to any



Excusable Delays. This indemnification obligation shall survive the termination or expiration of this Agreement.

- B. No Limitations or Waiver. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- C. Notification of Claims. With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same. Such notice shall be given in the manner prescribed by Section 26, "Notice" of the Agreement.
- D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

5. **Insurance**.

- A. General Provisions. Prior to commencing construction of the Improvements, the Developer shall file with the City evidence of liability insurance that has been obtained by Developer or Developer's contractors that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below.
- B. Limits and Coverage. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:
  - (1) Commercial General Liability: Minimum \$2,000,000 each occurrence limit for bodily injury and property damage; \$2,000,000 policy aggregate; \$2,000,000 products and completed operations aggregate.
  - (2) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.

- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610, RSMo, applicable to political subdivisions pursuant to Section 537.600, RSMo; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence.

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the Improvements, and issuance of a Certificate of Substantial Completion by the City.
- D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences during construction of the Improvements. The Developer agrees to hold harmless,

indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City as a result of the failure of either the Developer or any contractor or subcontractor of the Developer to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. The Developer shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.

6. **Bonds.** The Developer shall, or shall ensure that its contractors shall, provide for the following bonds for the Phase 1 and 2 Improvements and the Fire Station Sewer Improvement, except for any Improvements to be constructed by the City under the exceptions in section 2 above.
  - A. **Performance Bond.** Prior to commencement of construction and ending upon acceptance of the Improvements and the Fire Station Sewer Improvement by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Performance Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements and the Fire Station Sewer Improvement covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Performance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
  - B. **Payment Bonds.** Prior to commencement of construction and ending upon acceptance of the Improvements and the Fire Station Sewer Improvement by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Payment Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements and the Fire Station Sewer Improvement covered by such bond, as determined by the City Engineer, conditioned upon the faithful payment of the provisions, terms and conditions of the construction contract. The Payment Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
  - C. **Maintenance Bonds.** Prior to acceptance and dedication of the Improvements and the Fire Station Sewer Improvement, the Developer shall, or shall ensure that its contractors shall, provide a Maintenance Bond in a form approved by the City Attorney, in an amount equal to fifty percent (50%) of the cost of the Improvements and the Fire Station Sewer Improvement as approved by the City Engineer, which shall be in effect for a term of three (3) years from the date that the City issues a Certificate of Substantial Completion for the Improvements and the Fire Station Sewer Improvement covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Maintenance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

- D. **Indemnity for Failure to Provide Bonds.** The Developer shall indemnify the City and its officers and employees for any damage or loss incurred or sustained by the City, its officers or employees, as a result of the failure of the Developer or its contractors to provide the bonds set forth in this Section.
7. **Prevailing Wage.** To the extent required by law, the Developer, and all contractors and subcontractors performing work for or on behalf of the Developer with respect to the Improvements and the Fire Station Sewer Improvement, shall pay wages in accordance with, and in all respects comply with, Missouri's Prevailing Wage Law (Sections 290.210 – 290.340, RSMo.) and all other laws relating to the payment of wages. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. The Developer shall submit sufficient information to the City's Director of Finance to allow City staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations.
8. **Remedies.** Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.
9. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
10. **Non-Waiver.** No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
11. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
12. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
13. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or infrastructure requirements related to the development of the Property. The Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for damages, losses or injuries that may be sustained as a result of the City's review and

approval of any Plans or Plats of or relating to the Development, the Property or the Improvements, or as a result of the issuance of any approvals, permits, certificates or acceptances for the development or use of any portion of the Development, the Property or the Improvements. The Developer further acknowledges and agrees that the City's review and approval of any such Plans or Plats and the issuance of any such approvals, permits, certificates or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, licensees or any third party, against damage or injury of any kind at any time. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development.

14. **Recording and Binding Effect.** No building permits shall be issued for any structure in the development until this Agreement has been fully executed. The City shall file a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("Office"). This Agreement shall run with the land and be binding on and inure to the benefit of the parties and their respective legal representatives, successors in interest, successors and assigns. Upon certification by the City Engineer of the completion of the Developer's construction obligations under this Agreement, the City Manager, in his sole discretion, shall execute, on behalf of the City, a document suitable for recording in the Office, in such form as is approved by the City Attorney that acknowledges the completion of the Developer's obligations under the Agreement.
15. **Estoppel Letter.** Upon request by Developer made from time to time, the City shall prepare and deliver to Developer an estoppel letter confirming for the benefit of any purchaser or lender whether the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.
16. **Representations.** The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement. The parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions.
17. **No Waiver of Breach.** No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
18. **Rules of Construction.** Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective

legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.

19. **Assignment.** The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties, which consent shall not be unreasonably withheld. The Developer shall request the assignment of the Agreement, with the consent of the City, to any person, firm, corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement.
20. **Entire Agreement.** This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.
21. **Exhibits.** All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
22. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
23. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
25. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

City Manager  
City Hall  
220 SE Green Street  
Lee's Summit, Missouri 64063

With a copy to:

City Attorney  
City Hall  
220 SE Green Street  
Lee's Summit, Missouri 64063

Notices to Developer shall be addressed to:

David Price  
Clayton Properties Group, Inc. dba Summit Homes  
120 SE 3<sup>rd</sup> St  
Lee's Summit, MO 64082

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

**CITY OF LEE’S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Stephen A. Arbo, *City Manager*

Attest:  
  
\_\_\_\_\_  
Trisha Fowler Arcuri, *City Clerk*

Approved as to form:

\_\_\_\_\_  
Brian Head, *City Attorney*

Notary for City of Lee's Summit

STATE OF MISSOURI     )  
                                          ) ss.  
COUNTY OF JACKSON    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
  
\_\_\_\_\_

[SEAL]



**Clayton Properties Group, Inc.**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notary for Clayton Properties Group, Inc.

STATE OF \_\_\_\_\_ )  
                                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, the manager of Clayton Properties Group, Inc., who is personally known to me to be the same person who executed the within instrument on behalf of said corporation and such person duly acknowledged the execution of the same to be his/her the act and deed of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_

NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

[SEAL]

**END OF DOCUMENT**

## EXHIBIT A

### LEGAL DESCRIPTION FOR PROPERTY

#### Property Description

A tract of land in the Northeast Quarter and Southeast Quarter of Section 2, Township 47 North, Range 32 West of the 5th Principal Meridian in Lee's Summit, Jackson County, Missouri being bounded and described as follows: Commencing at the Southeast corner of said Southeast Quarter; thence North 02°53'56" East, along the East line of said Southeast Quarter, 1,328.34 feet; thence North 87°49'43" West, along the South line of the North Half of of said Southeast Quarter, said line also being the North line and it's Easterly extension of STERLING HILLS 1ST PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri, 580.00 feet to the Point of Beginning of the tract of land to be herein described; thence continuing North 87°49'43" West along said line and the North line of STERLING HILLS 3RD PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri , 2,048.70 feet to the Southwest corner of the North Half of said Southeast Quarter, said corner also being a point on the East line of STERLING HILLS 5TH PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri; thence North 03°05'41" East, along the West line of said Southeast Quarter, said line also being the East line of said STERLING HILLS 5TH PLAT, 1,325.87 feet to the Northwest corner of said Southeast Quarter; thence North 03°26'14" East, along the West line of said Northeast Quarter, said line also being the East line of WINTERSET WOODS 3RD PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri, 665.72 feet to the Northwest corner of the South Half of the South Half of said Northeast Quarter, said corner also being a point on the South line of THE FORESTS OF BROOKRIDGE ESTATES SECOND PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri; thence South 87°37'42" East, along the South line of said THE FORESTS OF BROOKRIDGE ESTATES SECOND PLAT and the South line of THE FORESTS OF BROOKRIDGE ESTATES THIRD PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri 1,210.45 feet to the Southeast corner of said THE FORESTS OF BROOKRIDGE ESTATES THIRD PLAT; thence North 03°27'53" East, along the East line of said THE FORESTS OF BROOKRIDGE ESTATES THIRD PLAT, 765.70 feet to the Southwest corner of Lot 1, VILLAGE CARE CENTER PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri; thence South 87°23'49" East, along the South line of said Lot 1, 1,343.72 feet to a point on the West right-of-way line of NW Pryor Road, as now established, said point also being the Northeast corner of Lot 1, FOREST LAKE AT JOHN KNOX VILLAGE 1ST PLAT, a subdivision of land in said Lee's Summit, Jackson County, Missouri; thence South 03°27'53" West, along said West right-of-way line, 243.74 feet; thence South 87°23'49" East, continuing along said West right-of-way line, 20.00 feet; thence South 03°27'53" West, continuing along said West right-of-way line, 237.99 feet; thence North 86°32'07" West, 499.90 feet; thence South 03°27'53" West, 70.20 feet; thence North 86°32'07" West, 200.00 feet; thence South 03°27'53" West, 221.62 feet to a point on the North line of the South Half of the South Half of said Northeast Quarter; thence South 87°37'42" East, 200.04 feet to the Northwest corner of Lot 1, JOHN KNOX RETIREMENT VILLAGE 9TH/ PLAT, a

subdivision of land in said Lee's Summit, Jackson County, Missouri; thence South 03°27'53" West, along the West line of said Lot 1, 362.00 feet to the Southwest corner of said Lot 1, said corner also being a point on the North right-of-way line of O'Brien Road, as now established; thence continuing South 03°27'53" West, 38.00 feet to a point on the South right-of-way line of said O'Brien Road; thence South 04°27'07" West, 289.53 feet; thence North 85°32'53" West, 175.00 feet; thence South 04°27'07" West, 425.00 feet; thence South 85°32'53" East, 175.00 feet; thence South 04°27'07" West, 484.59 feet; thence South 02°53'56" West, 60.12 feet; thence continuing South 02°53'56" West along said line, 325.85 feet to the Point of Beginning. Containing 4,872,919 square feet or 112.13 acres, more or less.

**EXHIBIT B**

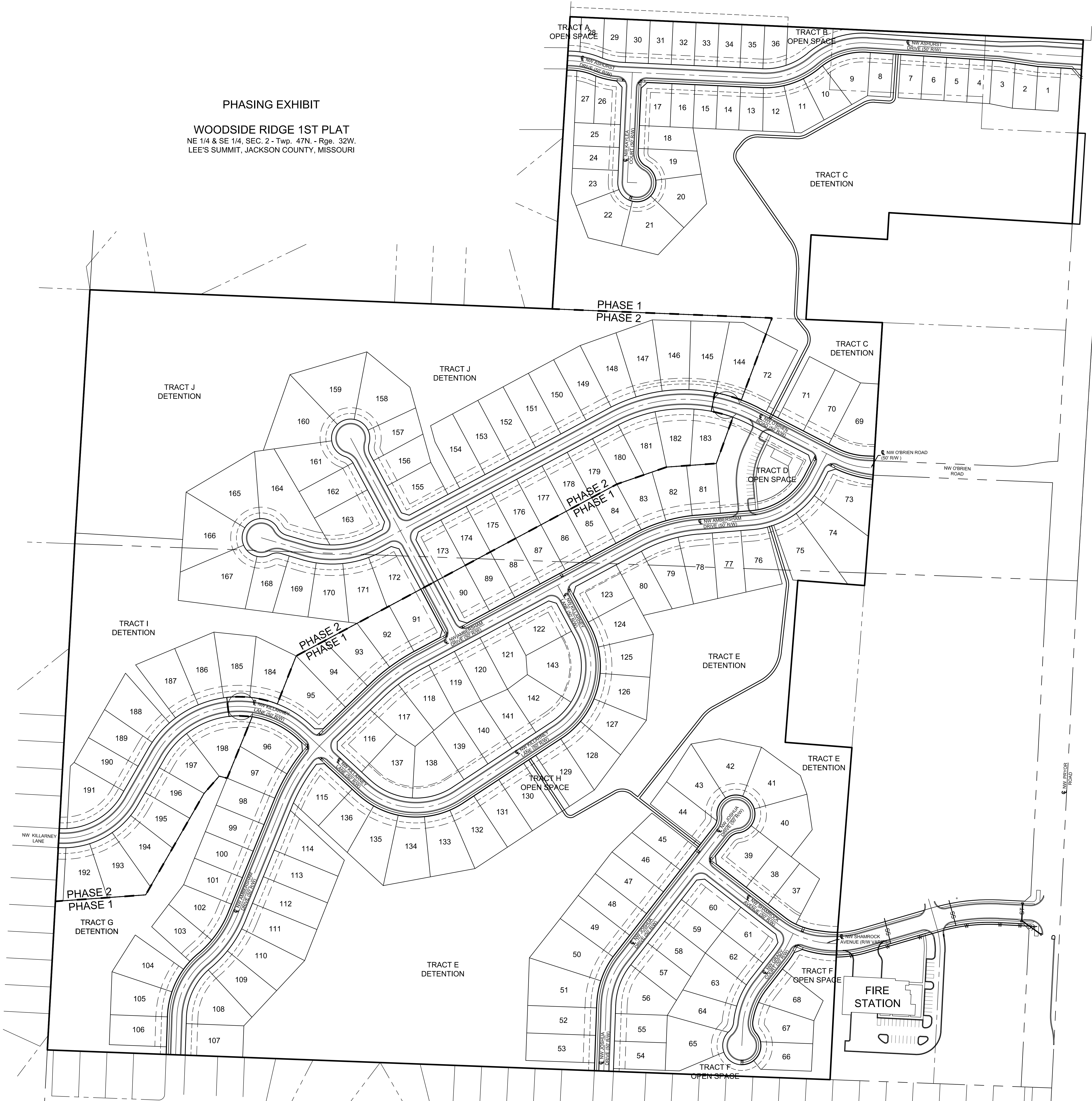
PHASING MAP

*[Attached]*



PHASING EXHIBIT

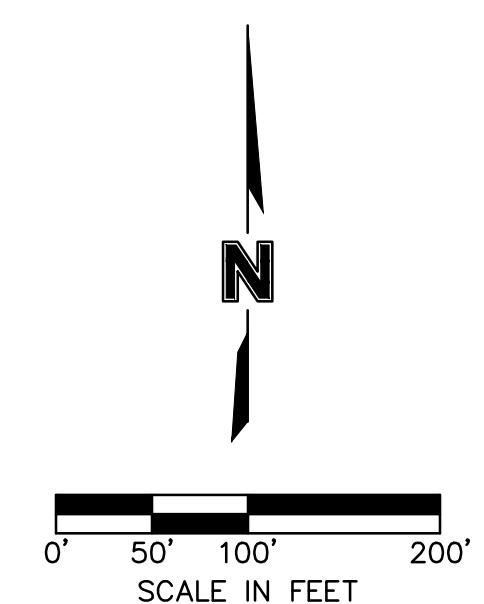
WOODSIDE RIDGE 1ST PLAT  
 NE 1/4 & SE 1/4, SEC. 2 - Twp. 47N. - Rge. 32W.  
 LEE'S SUMMIT, JACKSON COUNTY, MISSOURI



DWG: F:\2018\1001-1500\018-1140-A\40-Design\Exhibits\19-02-01 Phasing Exhibit\Phasing Exhibit\_A81140.dwg USER: chalmquist  
 DATE: Feb 01, 2019 12:28pm

drawn by:	CSH
designed by:	SS
checked by:	JS
QA/QC by:	JS
project no.:	A18-1140
date:	2019.02.01

**olsson**  
 Olsson - Civil Engineering  
 1301 Burlington Street  
 North Kansas City, MO 64116  
 TEL 816.381.1177  
 FAX 816.381.1886  
 www.olson.com

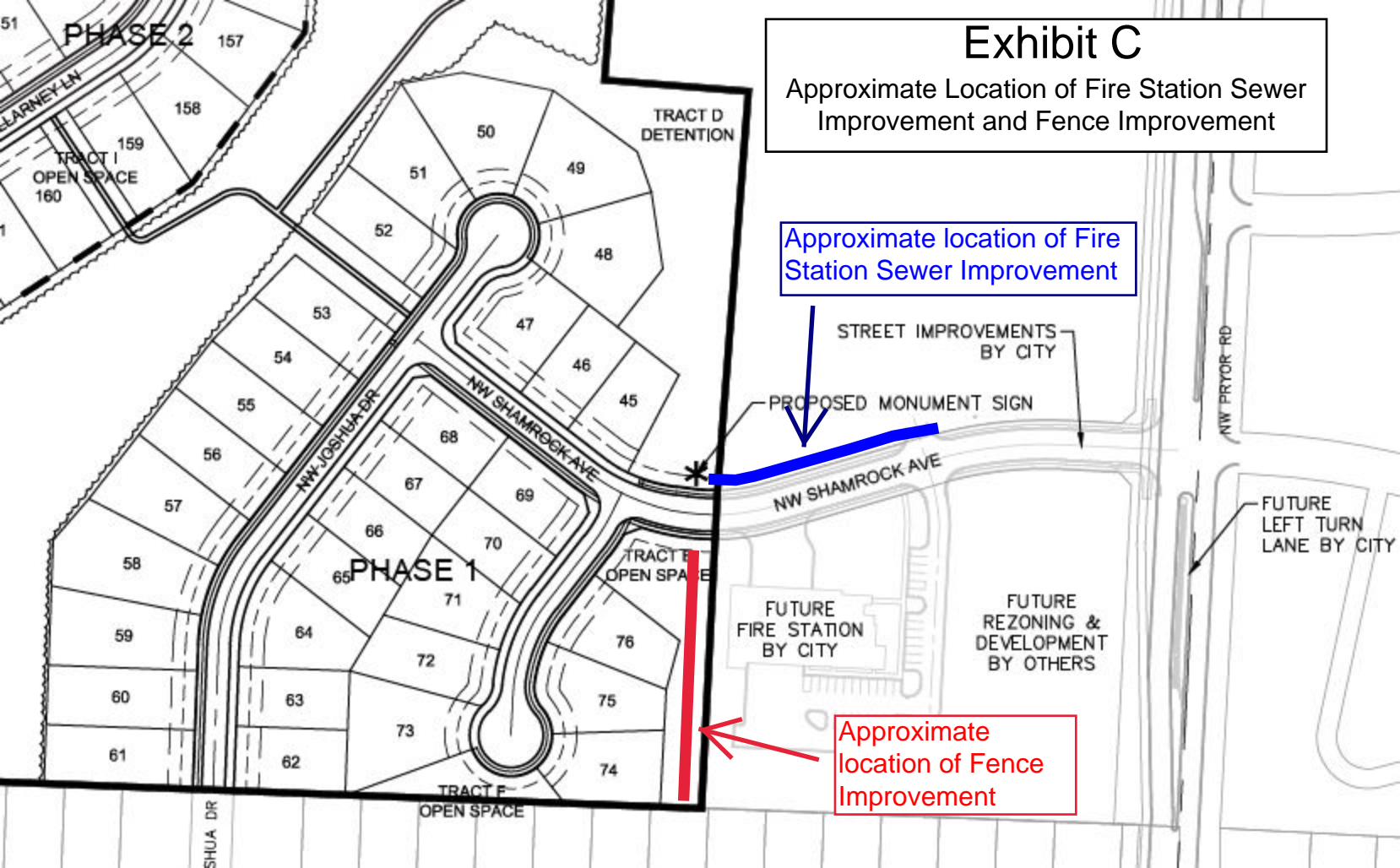




**EXHIBIT C**

LOCATION OF FIRE STATION SEWER IMPROVEMENT AND FENCE IMPROVEMENT

*[Attached]*



# Exhibit C

Approximate Location of Fire Station Sewer Improvement and Fence Improvement

Approximate location of Fire Station Sewer Improvement

STREET IMPROVEMENTS BY CITY

PROPOSED MONUMENT SIGN

NW SHAMROCK AVE

PHASE 1

FUTURE FIRE STATION BY CITY

FUTURE REZONING & DEVELOPMENT BY OTHERS

Approximate location of Fence Improvement

FUTURE LEFT TURN LANE BY CITY

**EXHIBIT D**

ESTIMATED FIRE STATION SEWER IMPROVEMENT AND FENCE COSTS

*[Attached]*



# EXHIBIT "D"



Opinion of Probable Cost

Woodside Ridge - Fire Station  
Scope of Work

April 9, 2019

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Extension</u>	
<b>Sanitary Sewer Extension For Fire Station (City of LS)</b>	1	LS	\$20,460.00	\$20,460	
(See attached for details)					
Bonding and Permit Fee	3.0%			\$614	
Professional Services	10%			\$2,046.00	
Misc. Extras and Overruns	10%			\$2,046.00	
				<hr/>	
				\$25,166	
Overhead	5%			\$1,258.29	
Profit	15%			\$3,963.61	
				<hr/>	
			<b>Total</b>	<b>\$30,388</b>	\$30,388
<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Extension</u>	
<b>Fire Station Privacy Fence for Landscaping Buffer</b>	300	LFT	\$52.00	\$15,600	
Bonding and Permit Fee	0.0%			\$0	
Professional Services	0%			\$0.00	
Misc. Extras and Overruns	5%			\$780.00	
				<hr/>	
				\$16,380	\$16,380
			<b>Total Amount</b>		<b>\$46,768</b>

# EXHIBIT "D"



Woodside Ridge Cost Sharing  
Project No.: A18-1140  
April 8, 2019  
For: Summit Homes

## Opinion of Probable Cost Cost for Fire Station Sanitary Sewer Based on Final Plans

ITEM OF WORK	QUANTITY	UNIT	UNIT COST	COST
<b>SANITARY SEWERS-TO FIRE STATION</b>				
<b>Mains</b>				
8" PVC (SDR-26)	324.00	L.F.	\$40.00	\$12,960.00
<b>Connection of Sanitary Laterals to Main</b>				
4" Lateral to 8" Main	2.00	Ea.	\$1,500.00	\$3,000.00
<b>Manholes</b>				
4' dia.	1.00	Ea.	\$4,500.00	\$4,500.00
			<b>Total</b>	<b>\$20,460.00</b>
			<b>Extras (10%) and Permits (3%)</b>	<b>\$2,659.80</b>

### Estimate Information

Dwg. name: (type drawing name)	Survey/GIS info: (Olsson topo, flown, etc.)
N Weather delays included	N Environmental reports available
N Geotechnical information available	N Site visit conducted
N Rock excavation included	N Private utility information available
Y Storm drainage study available	N Import/Export locations available

Final construction costs may be impacted by input from local, state, and federal regulatory authorities. Estimate does not include state or federal regulatory permit fees or potential mitigation cost for stream and wetland impacts.

Construction costs are subject to unit cost increases due to inflation and market factors beyond control of or unknown to consultant at time of estimate.

We do not guarantee that our opinions will not differ materially from negotiated prices or bids. If assurances as to probable construction costs are desired, an independent estimator or contractor should be employed.