



The City of Lee's Summit
Final Agenda
City Council - Regular Session

Thursday, February 2, 2017

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 25

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA

1. PUBLIC COMMENTS:

(NOTE: Total time for Public Comments will be limited to 10 minutes.)

2. COUNCIL COMMENTS:

(NOTE: Total time for Council Comments will be limited to 5 minutes.)

3. APPROVAL OF CONSENT AGENDA:

Items on the Consent Agenda are routine business matters for action by the City Council with no public discussion. All items have been previously discussed in Council Committee and carry a Committee recommendation. Consent agenda items may be removed by any Councilmember for discussion as part of the regular agenda.

- A. [2017-0874](#) Approval of Action Letters for January 5, 12, and 19, 2017.

- B. [2017-0899](#) Mayor's Appointments:
 - Human Services Advisory Board: Reappoint Michael Straughn, REXANNE HILL, Sue Jackson, Marla Franklin, Matthew Silvers, Cotton Sivils, and Helen Hatridge terms to expire 01-20-21.
 - License Tax Review Committee: Reappoint Dena Mezger, Karl Blumenhorst, Glen Jones and Cynda Rader, terms to expire 02-20-19.
 - Livable Streets Advisory Board: Reappoint Eric Vaughan, James Ray, Eric Kratz terms to expire 2-17-20.

- C. [2017-0907](#) Approval of a Type A1 Liquor License for Smoke Brewing Company, LLC, 209 SE Main Street.
- D. [2017-0912](#) Houlihan's change of managing officer, currently holding a Type G3 and S Liquor License.

4. **PROPOSED ORDINANCES:**

- A. [BILL NO. 17-24](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.
- B. [BILL NO. 17-25](#) AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED WITHIN THE PLAT ENTITLED "LOT 251, PARK RIDGE 5th PLAT," IN THE CITY OF LEE'S SUMMIT, MISSOURI.
- C. [BILL NO. 17-26](#) AN ORDINANCE AMENDING ORDINANCE NO.8028 AND ACCEPTING FINAL PLAT ENTITLED "MONTICELLO 2nd PLAT, LOTS 33-67 & TRACTS D-F", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

5. **RESOLUTIONS:**

- A. [RES. NO. 17-02](#) A RESOLUTION DIRECTING STAFF TO EXTEND THE TIME PERIOD FOR THE SUSPENSION AND DELAY OF THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND APPLICATIONS FOR BUILDING PERMITS IN AN AREA GENERALLY BOUNDED BY PINE TREE PLAZA, 50 HIGHWAY, ADESA PROPERTY, JEFFERSON STREET, PERSELS (WEST OF M-291), 16TH STREET (EAST OF M-291) THE UNION PACIFIC RAILROAD RIGHT-OF-WAY AND SOUTH M-291 HIGHWAY TO A DATE OF MARCH 17, 2017.
- B. [RES. NO. 17-03](#) A RESOLUTION AUTHORIZING THE MAYOR TO APPOINT SUCCESSOR DIRECTORS TO THE BLUE PARKWAY AND COLBERN ROAD COMMUNITY IMPROVEMENT DISTRICT.

6. **PUBLIC HEARINGS (Sworn):**

In an effort to assist applicants who travel from outside the Kansas City Metropolitan Area, every effort will be made to hear the application on the scheduled meeting date.

- A. [2016-0501](#) CONTINUED PUBLIC HEARING - Appl. #PL2016-114 - PRELIMINARY DEVELOPMENT PLAN - Approximately 7.11 acres located at the southeast corner of NW Blue Parkway and NW Colbern Road for the proposed Summit Village; Newmark Grubb Zimmer, applicant.
(NOTE: This Public Hearing is to be CONTINUED to a date certain of February 9, 2017 per staff's request.)
- B. [2016-0805](#) CONTINUED PUBLIC HEARING - Appl. #PL2016-184 - SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers - Walmart, 1000 NE Sam Walton Lane; Walmart Real Estate Business Trust, applicant.

- C. [2016-0837](#) PUBLIC HEARING - Plan for an Industrial Development Project for Archview Properties, LLC, for the Village at View High Apartments

7. OTHER BUSINESS:

- A. [BILL NO. 17-27](#) AN ORDINANCE GRANTING A SPECIAL USE PERMIT RENEWAL FOR OUTDOOR STORAGE OF TEMPORARY STORAGE CONTAINERS IN DISTRICT CP-2 ON LAND LOCATED AT 1000 NE SAM WALTON LANE FOR A PERIOD OF TEN (10) YEARS FROM THE PREVIOUS EXPIRATION DATE, ALL IN ACCORDANCE WITH ARTICLE 10 WITHIN THE UNIFIED DEVELOPMENT ORDINANCE, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.
- B. [BILL NO. 17-28](#) AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

8. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

9. COUNCIL ROUNDTABLE:

10. STAFF ROUNDTABLE:

11. ADJOURNMENT

Unless determined otherwise by the Mayor and City Council, no new agenda items shall be considered after 11:00 p.m.

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Internet site at "www.cityofls.net".



Packet Information

File #: 2017-0874, **Version:** 1

Approval of Action Letters for January 5, 12, and 19, 2017.



The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, January 5, 2017

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 22 - AMENDED

CALL TO ORDER

Mayor Rhoads called Regular Session No. 22 to order at 6:16 p.m.

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

Note: Councilmember Moreno was not Present at the time of the Roll Call, but did show up right after Roll Call was completed.

Present: 8 - Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Chris Moreno
Councilmember Dave Mosby
Councilmember Diane Seif

APPROVAL OF AGENDA

Mayor Rhoads advised the Council and public there are ongoing Audio Visual issues. ITS is working on resolving the issues but the microphones and document readers are not working properly. In addition, a few councilmembers are sick so everyone will do their best to be clear when speaking.

COUNCIL ACTION: On motion of Councilmember Binney, Second by Councilmember Forte, the Council voted unanimously to approve the published amended agenda.

1. PUBLIC COMMENTS:

Mr. Pickering stated he had previously contacted Councilmember Seif regarding his concerns with the Lee's Summit Municipal Airport traffic. He

would like the council to look at what can be done with regard to increased airport traffic flow.

2. COUNCIL COMMENTS:

Councilmember Moreno asked if the Public Works Committee had included stormwater improvements on the upcoming proposed tax extension for the CIP (Capital Improvement Projects).

Councilmember Mosby, Chair of the Public Works Committee, stated the CIP has been reviewed by the Public Works Committee and they did look at stormwater as well. This will be before Council for inclusion in the April election ballot.

Councilmember Moreno asked how long stormwater has been discussed as part of the CIP.

Councilmember Mosby said it has been discussed since at least 2015.

Councilmember Moreno asked when this would be brought before Council.

Mr. Steve Arbo, City Manager, advised this will be present to Council next Thursday, January 12, 2017.

Councilmember Moreno asked Mr. Arbo if he would be proposing a new ethics and conflict of interest proposal in January.

Mr. Arbo advised the employees already have an ethics policy. The Purchasing and Procurement policy is being reviewed with the audit by RubinBrown. The audit recommendations will be reviewed by Management Team next Tuesday, January 10, and the recommendations and suggestions by Management Team will be brought to Council at a later date.

Councilmember Moreno asked if that would be brought to the full Council or through the Rules Committee first.

Mr. Arbo advised it is likely it would through the Finance and Budget Committee first as the recommendations would be regarding the Purchasing and Procurement Policy.

3. APPROVAL OF CONSENT AGENDA:

- A. [2016-0810](#) Approval of Action Letters from December 1, 8 and 15, 2016.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that the Action Letters for December 1, 8 and 15, 2017 be approved as part of the Consent Agenda. The motion carried by a unanimous vote (Councilmember Moreno "Away From Table").

- B. [2016-0825](#) Mayor's Appointments:
Health Education Advisory Board: Appoint Rhonda Canning to replace Stewart Chase, term to expire 07-01-19.
Public Safety Advisory Board: Appoint Neil Ullery to replace James Preisig, term to expire 05-01-17.
TIF Commission: Appoint Allison Burns to replace Jaclyn Malony, term to expire 12-15-18.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that the Mayor's Appointments be approved as part of the Consent Agenda. The motion carried by a unanimous vote (Councilmember Moreno "Away From Table").

- C. [2016-0814](#) Approval of Type H and S Liquor License for Wal-Mart #4590, 3410 SW Market Street.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that this liquor license be approved as part of the Consent Agenda. The motion carried by a unanimous vote (Councilmember Moreno "Away From Table").

4. **PROPOSED ORDINANCES:**

- A. [BILL NO.](#)
[17-01](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF A BREAK IN LIMITED ACCESS LICENSE AGREEMENT BETWEEN THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AND THE CITY OF LEE'S SUMMIT, MISSOURI, FOR A BREAK IN ACCESS ON M-291 HIGHWAY.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Carlyle, that Bill No. 17-01 be adopted and numbered Ord. No. 8056. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Seif

Away FT: 1 - Councilmember Mosby

Enactment No: Ord. No. 8056

- B. [BILL NO.](#)
[17-02](#) AN ORDINANCE APPROVING SOLE SOURCE NO. 2017-058 AND APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND PHYSIO CONTROL, INC. FOR THE MAINTENANCE OF LIFE-PAK DEFIBRILLATORS, LUCAS COMPRESSION DEVICES AND ASSOCIATED EQUIPMENT FOR A PERIOD OF ONE YEAR WITH A ONE YEAR RENEWAL OPTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT FOR THE SAME. (F&BC 12/5/16)

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Forte, that Bill No. 17-02 be adopted and numbered Ord. No. 8057. The motion carried by the following vote:

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Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Seif

Away FT: 1 - Councilmember Mosby

Enactment No: Ord. No. 8057

- C.** [BILL NO.](#) AN ORDINANCE APPROVING AWARD OF RFQ 2017-042 TO HDR
[17-03](#) ENGINEERING, INC., TO OLSSON ASSOCIATES INC. AND TO BURNS AND
MCDONNELL ENGINEERING COMPANY, INC. FOR ON-CALL YEARLY
ENGINEERING SERVICES FOR WATER AND WASTEWATER. A ONE-YEAR
WITH TWO POSSIBLE ONE-YEAR RENEWAL OPTIONS. (PWC 12/19/16)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 17-03 be adopted and numbered Ord. No. 8058. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8058

- D.** [BILL NO.](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF A NON-EXCLUSIVE
[17-04](#) EASEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI
AND KCP&L GREATER MISSOURI OPERATIONS COMPANY. (PWC
12/19/16)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that Bill No. 17-04 be adopted and numbered Ord. No. 8059. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8059

- E.** [BILL NO.](#) AN ORDINANCE APPROVING CHANGE ORDER #4 - FINAL TO THE
[17-05](#) CONTRACT WITH LINAWEAVER CONSTRUCTION, INC. FOR THE WARD
ROAD IMPROVEMENTS PROJECT, AN INCREASE OF \$25,761.75 FOR A
REVISED CONTRACT PRICE OF \$1,817,980.09. (PWC 12/19/16)

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ACTION: A motion was made by Councilmember Seif, seconded by Councilmember Binney, that Bill No. 17-05 be adopted and numbered Ord. No. 8060. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8060

F. [BILL NO. 17-06](#)

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$100,632.00 AND COMMITMENT OF \$299,579.00 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR THE #152 - LEE'S SUMMIT COMMUTER EXPRESS SERVICE. (PWC 12/19/16)

ACTION: A motion was made by Councilmember Moreno, seconded by Councilmember Seif, that Bill No. 17-06 be adopted and numbered Ord. No. 8061. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8061

G. [BILL NO. 17-07](#)

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICE BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$21,922.00 AND COMMITMENT OF \$59,795 OF ITS FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR THE #252 - LEE'S SUMMIT METROFLEX CIRCULATOR SERVICE. (PWC 12/19/16)

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Binney, that Bill No. 17-07 be adopted and numbered Ord. No. 8062. The motion carried by the following vote:

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Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8062

H. [BILL NO.
17-08](#)

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR TRANSIT SERVICE BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND OATS, INC. FOR TRANSIT SERVICE EFFECTIVE APRIL 1, 2017 THROUGH DECEMBER 31, 2017 IN AN AMOUNT NOT TO EXCEED \$92,500 AND COMMITMENT OF AN AMOUNT NOT TO EXCEED \$148,000 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO OATS FOR TRANSIT SERVICE. (PWC 12/19/16)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Seif, that Bill No. 17-08 be adopted and numbered Ord. No. 8063. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8063

I. [BILL NO.
17-09](#)

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR CAPITAL EQUIPMENT CFDA 20.507 BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA). (PWC 12/19/16)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Seif, that Bill No. 17-09 be adopted and numbered Ord. No. 8064. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8064

5. RESOLUTIONS:

- A. [RES. NO. 17-01](#) A RESOLUTION DIRECTING STAFF TO EXTEND THE TIME PERIOD FOR THE SUSPENSION AND DELAY OF THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND APPLICATIONS FOR BUILDING PERMITS IN AN AREA GENERALLY BOUNDED BY PINE TREE PLAZA, 50 HIGHWAY, ADESA PROPERTY, JEFFERSON STREET, PERSELS (WEST OF M-291), 16TH STREET (EAST OF M-291) THE UNION PACIFIC RAILROAD RIGHT-OF-WAY AND SOUTH M-291 HIGHWAY TO A DATE OF FEBRUARY 17, 2017.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Carlyle, that Resolution 17-01 be adopted. The motion carried by a unanimous vote (Councilmember Moreno "Away From Table").

6. **PRESENTATIONS:**

- A. [2016-0832](#) Dr. Martin Luther King Jr. Celebration

COUNCIL ACTION: No Council Action Required.

- B. [2016-0817](#) Conceptual Economic Incentive Request Presentation; Cowork - Lee's Summit, SF003, LLC, Applicant.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Faith, to authorize the applicant and staff to proceed with the preparation of a Land Clearance for Redevelopment Authority Redevelopment Project Application in accordance with the adopted Economic Development Incentive Policy and Land Clearance for Redevelopment Authority procedures and processes as proposed by the applicant. The motion carried by a unanimous vote (Councilmember Carlyle "Away From Table").

- C. [2016-0729](#) Presentation of Special Audit Report

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that the Technical Report dated November 2016 by RubinBrown be made a public document. The motion carried by a unanimous vote.

RubinBrown provided a PowerPoint presentation regarding their audit, findings, suggestions and recommendations.

After lengthy discussion, Councilmember Moreno asked to table the discussion to February 2nd, 2017 for full and final report to include additional query information that was requested. Motion was seconded by Councilmember Edson. After additional discussion and clarification, it was decided there was no need to postpone the acceptance of this audit report and the motion and second were withdrawn.

Mr. Arbo advised the recommendations made in this audit will be reviewed by Management Team on January 10th. At that time, Management Team will discuss the next steps to improve and update the Purchasing and Procurement Policy. That information will then be present to Council at a later date.

7. PUBLIC HEARINGS (Sworn):

- A. [2016-0827](#) PUBLIC HEARING - Appl. #PL2016-184 - SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers - Walmart, 1000 NE Sam Walton Lane; Walmart Real Estate Business Trust, applicant. (NOTE: This item is to be CONTINUED to a date certain of February 2, 2016, per the applicant's request.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that this Public Hearing be CONTINUED to a date certain of February 2, 2017 per the applicant's request. The motion carried by a unanimous vote (Councilmember Moreno "Away From Table").

- B. [2016-0687](#) PUBLIC HEARING - Appl. #PL2016-195 - PRELIMINARY DEVELOPMENT PLAN - Bob Sight Quick Lane, 607 NW Blue Parkway; Davidson Architecture & Engineering, applicant.

COUNCIL ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, to direct staff to present an ordinance approving Application #PL2016-195 - PRELIMINARY DEVELOPMENT PLAN - Bob Sight Quick Lane, 607 NW Blue Parkway; Davidson Architecture & Engineering, applicant, subject to staff's letter dated December 9, 2016, Items 1 - 4. The motion carried by a unanimous vote.

8. OTHER BUSINESS:

- A. [BILL NO. 17-10](#) AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN ON LAND LOCATED AT 607 NW BLUE PARKWAY IN DISTRICT CP-2, PROPOSED BOB SIGHT QUICK LANE, ALL IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that Bill No. 17-10 be adopted and numbered Ord. No. 8065. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8065

- B. [BILL NO. 17-11](#) AN ORDINANCE APPROVING THE 2017 LABOR AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 2195 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME BY AND ON BEHALF OF THE CITY.

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Edson, that Bill No. 17-11 be adopted and numbered Ord. No. 8066. The motion carried by the following vote:

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Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8066

D. [BILL NO.](#)
[17-13](#)

AN ORDINANCE AMENDING CHAPTER 29, TRAFFIC AND MOTOR VEHICLES, OF THE LEE'S SUMMIT CODE OF ORDINANCES, BY REPEALING, ARTICLE I. - IN GENERAL, SECTIONS 29-1 DEFINITIONS, 29-7 OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS, ARTICLE III. - OPERATION OF VEHICLES, SECTIONS 29-141 DEFINITIONS, 29-142 DRIVING WHILE INTOXICATED, 29-143 DRIVING WITH EXCESSIVE BLOOD ALCOHOL CONTENT, 29-144 IMPLIED CONSENT TO TESTS FOR ALCOHOL AND DRUGS, 29-150 CHEMICAL TESTS, RESULTS ADMITTED INTO EVIDENCE, WHEN, EFFECT OF AND ARTICLE X. - CRASHES, SECTION 29-656 LEAVING THE SCENE OF A MOTOR VEHICLE CRASH; AND ENACTING IN LIEU THEREOF EIGHT NEW SECTIONS OF LIKE NUMBER AND SUBJECT, OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI TO REVISE THE PROVISIONS RELATING TO THE TRAFFIC AND MOTOR VEHICLES IN ACCORDANCE WITH REVISIONS TO STATE LAW. (PSAB 12/20/16)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 17-13 be adopted and numbered Ord. No. 8067. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8067

E. [BILL NO.](#)
[17-14](#)

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE CITY OF LEE'S SUMMIT, BY REPEALING, CHAPTER 17, OFFENSES IN ITS ENTIRETY; AND ENACTING IN LIEU THEREOF A NEW CHAPTER 17, OFFENSES, OF LIKE NUMBER AND SUBJECT, OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI TO REVISE THE PROVISIONS IN ACCORDANCE WITH REVISIONS TO THE REVISED CRIMINAL CODE OF MISSOURI. (PSAB 12/20/16)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Binney, that Bill No. 17-14 be adopted and numbered Ord. No. 8068. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8068

9. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

Councilmember Forte (Liaison Report for Downtown Lee's Summit Main Street) noted the gift certificate sales for the downtown Lee's Summit area exceeded \$15,000 this holiday season. They will be having the Chocolate Crawl on February 4, 2017 and there are many other exciting events coming up soon.

Councilmember Carlyle advised the Finance and Budget Committee will be meeting on Monday, January 9 at 4:00 p.m.

10. COUNCIL ROUNDTABLE:

Councilmember Binney noted that Bill No.'s 17-06 through 17-09 for the KCATA were a product of the hard work driven by Councilmember Whitley several years ago. He stated the City continues to see this through annually and this provides a cost savings with increased service to citizens in Lee's Summit.

Councilmember Seif stated she would like Management Team to look at the pro's and con's of having an internal audit and when they felt this might be effective for the City. Council agreed this would be something they would like to have information on as part of this process. Councilmember Carlyle stated the Budget Committee looked at this a year or so ago. She asked that staff talk to Mr. Lamb as he may have more information.

Councilmember Moreno acknowledged and thanked the street team on clearing the roads after the first real snow event which happened last night and earlier in the day. He also stated he was moved by a recent video of officers acknowledging the loss and saluting the son of a fallen police officer in Florida. He asked that we all remember the importance of police officers.

11. STAFF ROUNDTABLE:

There was no Staff Roundtable.

12. ADJOURNMENT

There being no further business, Mayor Rhoads adjourned the January 5,

City Council - Regular Session

Action Letter

January 5, 2017

2017 Regular Session No. 22 at 10:00 p.m.

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The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, January 12, 2017

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 23

CALL TO ORDER

Mayor Rhoads called the January 12, 2017 Regular Session No. 23 to order at 6:15 p.m. Assistant City Manager Christal Weber was present on behalf of City Manager Steve Arbo.

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: 8 - Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Chris Moreno
Councilmember Dave Mosby
Councilmember Diane Seif

APPROVAL OF AGENDA

COUNCIL ACTION: On motion of Councilmember Binney, second by Councilmember Forte, the Council voted unanimously to approved the published agenda.

1. PUBLIC COMMENTS:

Ms. Christine Bushyhead, representing the Lee's Summit Economic Development Council, requested expansion of the CIP Sales Tax ballot to include the words, "and other capital improvements projects". She noted the possibility of unforeseen needs within the next 15 years that would require funding and the EDC Board was concerned about limiting the projects in this election for sales tax renewal.

2. **COUNCIL COMMENTS:**

There were no Council Comments.

3. **PUBLIC HEARINGS (Sworn):**

- A. [2016-0830](#) Public Hearing - Plan for an Industrial Development Project for M150 Echelon Land Development LLC, for the Residences at Echelon Multi-family Project.

Mayor Rhoads closed the regular session at 6:22 p.m. and opened the public hearing.

Mr. Evan Fitts represented Echelon Land Development and discussed the application. Mr. Mark Dunning, Assistant City Manager, reviewed the proposed revisions to the PILOTs schedule.

Following extensive discussion, Mayor Rhoads closed the public hearing at 6:38 p.m. and reconvened the regular session. Additional discussion ensued and Mayor Rhoads again closed the regular session at 6:45 p.m. and reopened the public hearing for further questions from the Council to the applicant and Mr. Dunning regarding the PILOTs. Mayor Rhoads closed the public hearing at 6:50 p.m. and reconvened the regular session.

COUNCIL ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Faith, that an ordinance approving a plan for an Industrial Development Project for M150 Echelon Land Development, LLC, a Missouri Limited Liability Company, consisting of the construction and improvement of a commercial facility for the company; authorizing the City of Lee's Summit, Missouri to issue its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in a principal amount not to exceed \$27,000,000 to finance the costs of such project; authorizing and approving certain documents; and authorizing certain other actions in connection with the issuance of bonds. The motion carried with 5 "Aye" and 2 "No" (Councilmembers Binney and Edson) votes.

4. **OTHER BUSINESS:**

- A. [BILL NO. 17-15](#) AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR M150 ECHELON LAND DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY FOR THE COMPANY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (RESIDENCES AT ECHELON PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$27,000,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

BILL NO. 17-15 was read for the first time by Councilmember Carlyle, who moved for second reading; motion was seconded by Councilmember Forte.

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Motion was made by Councilmember Moreno, seconded by Councilmember Mosby, to **AMEND** the ordinance to change the PILOTs from \$1,051 per unit to \$935 per unit. Council voted 2 “yes” (Councilmembers Moreno and Mosby), 6 “no”, to approve the amendment. **MOTION FAILED.**

On the motion for second reading, the Council voted 6 “yes” (Councilmembers Seif, Forte, Mosby, Carlyle, Faith and Moreno), 2 “no” (Councilmembers Binney and Edson). **MOTION PASSED.**

The ordinance was read for the second time by Councilmember Carlyle, who moved for approval and motion was seconded by Councilmember Forte.

Motion was made by Councilmember Faith, seconded by Councilmember Mosby, to **AMEND** the schedule for the PILOTs from \$1,052 to \$993 per unit. **MOTION PASSED** on a vote of 5 “aye” (Councilmembers Seif, Forte, Mosby, Faith and Moreno), 3 “no” (Councilmembers Binney, Edson and Carlyle).

COUNCIL ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Forte, that Bill No. 17-15 be adopted AS AMENDED and numbered Ord. No. 8069. The motion carried by the following vote:

Aye: 5 - Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Nay: 3 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson

Enactment No: Ord. No. 8069

B. [2016-0804](#) Final Recommendations on CIP Sales Tax Renewal (PWC 12/19/16)

Ms. Dena Mezger, Director of Public Works, presented the proposed recommendations from the Public Works Committee for the Capital Improvements Projects (CIP) Sales Tax, calling for an election on the April 4, 2017, ballot. After the presentation and extensive discussion, Mayor Rhoads asked for the reading of Bill No. 17-16.

This Presentation was approved.

C. [BILL NO. 17-16](#)

AN ORDINANCE CALLING AN ELECTION FOR APRIL 4, 2017, IN THE CITY OF LEE’S SUMMIT, MISSOURI, A CONSTITUTIONAL CHARTER CITY, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF SAID CITY THE QUESTION OF WHETHER TO CONTINUE TO IMPOSE A CAPITAL IMPROVEMENTS SALES TAX OF ONE-HALF OF ONE PERCENT (1/2 OF 1%) FOR THE PURPOSE OF FUNDING CAPITAL IMPROVEMENTS WHICH MAY INCLUDE THE DESIGN, CONSTRUCTION, REPAIR AND MAINTENANCE OF STREETS, ROADS, BRIDGES, AND ADDITIONAL PROJECTS RELATED TO STORMWATER, TRANSPORTATION AND TRANSPORTATION-RELATED IMPROVEMENTS AND THE ACQUISITION OF NECESSARY RIGHTS-OF-WAY

AND OTHER PROPERTY INTERESTS AND WHICH MAY INCLUDE THE RETIREMENT OF DEBT UNDER PREVIOUSLY AUTHORIZED BONDED INDEBTEDNESS; PRESCRIBING THE FORM OF QUESTION TO BE USED AND PROVIDING THAT NOTICE OF SAID ELECTION BE GIVEN AND SAID ELECTION BE HELD IN ACCORDANCE WITH ALL APPLICABLE MISSOURI LAW.

BILL NO. 17-16 was read for the first time by Councilmember Mosby, who moved for second reading. Motion was seconded by Councilmember Edson.

Motion was made by Councilmember Carlyle, seconded by Councilmember Forte, to **AMEND** the ordinance to include the phrase "...other capital improvements..." in the ballot language and to amend the ordinance heading by adding the phrase "...and/or other capital improvements". Following discussion, the Council voted 3 "aye" (Councilmembers Forte, Carlyle and Faith", 5 "no" (Councilmembers Binney, Edson, Seif, Mosby and Moreno), to amend the ordinance. **MOTION FAILED.**

COUNCIL ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 17-16 be adopted and numbered Ord. No. 8070. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Nay: 1 - Councilmember Forte

Enactment No: Ord. No. 8070

5. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

Councilmember Mosby sent a list outlining items the Public Works Committee will be considering.

Councilmember Seif noted the Rules Committee will be meeting on January 23rd.

6. COUNCIL ROUNDTABLE:

Councilmember Faith asked if the extensive changes to the Missouri Criminal Code were in a summary form and available to the public. Major John Boenker advised he will be working on this and will report back to the Council.

Councilmember Moreno thought the Police Department did an excellent job of placing "Tobacco 21" signs and communicating the new law.

Councilmember Binney attended State inaugural events in Jefferson City.

He was aware of at least two Lee's Summit residents who received the Governor's "Missouri Heroes" honor, which recognizes citizens who have made an impact on peoples' lives. Those two residents were Kristen Merrill and Councilmember Craig Faith.

Councilmember Binney was concerned about the adoption of Ordinance No. 8069, which he feels sets a precedent to incentivize residential properties.

Councilmember Faith noted the Chamber Gala scheduled for Saturday has been postponed due to the forecast for an ice storm.

7. STAFF ROUNDTABLE:

Ms. Weber advised the first Citizens Leadership Academy session, scheduled for Saturday, has been moved to January 21st due to the impending ice storm.

8. ADJOURNMENT

There being no further business, Mayor Rhoads ADJOURNED the January 12, 2017, City Council Regular Session No. 23 at 9:05 p.m.

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Internet site at "www.cityofls.net".



The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, January 19, 2017

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 24

CALL TO ORDER

Mayor Rhoads called the January 19, 2017, Lee's Summit Regular Session No. 24 to order at 6:30 p.m., due to technical difficulties.

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: 8 - Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Chris Moreno
Councilmember Dave Mosby
Councilmember Diane Seif

APPROVAL OF AGENDA

On motion of Councilmember Binney, second by Councilmember Forte, the Council voted unanimously to approve the agenda as published.

1. PUBLIC COMMENTS:

There were no public comments.

2. COUNCIL COMMENTS:

Motion was made by Councilmember Seif, seconded by Councilmember Edson, to **RECONSIDER BILL NO. 17-16**, calling for an election on April 4, 2017, to consider extending the Capital Improvements Sales Tax. This Bill was read and adopted at the January 12, 2017, City Council meeting and numbered Ordinance No. 8070. **MOTION** to reconsider **PASSED** on a vote of 6 "aye", 2 "no" (Councilmembers Binney and Forte).

DISCUSSION: Councilmember Seif requested the following be added to BILL NO. 17-16:

SECTION 2A. That any revenue collected hereunder and commencing on April 1, 2018, shall be allocated as follows:

1. Not less than seventy percent (70%) shall be allocated annually to transportation-related improvements including design, construction, repair and maintenance of streets, roads, bridges, additional transportation related projects and acquisition of necessary rights-of-way and other property interests and may include the retirement of debt under previously authorized bonded indebtedness.
2. Not less than twenty-five percent (25%) shall be allocated annually to storm water-related improvements including design, construction ,maintenance of storm water facilities and acquisition of necessary rights-of-way and other property interest and may include the retirement of debt under previously authorized bonded indebtedness.
3. Not more than five percent (5%) may be allocated to other capital improvement projects after approval by the City Council.

Any deviation from this allocation schedule may occur only after approval by the City Council.

Councilmember Forte was concerned about changing the language from what was discussed in Committee and was not ready to place parameters on something that will be an extension of 15 years. Councilmember Binney pointed out previous Councils had a specific list of projects for funding and this was not specific. Councilmember Carlyle stated if the City limited storm water to 25%, and there are a great deal of stormwater issues that need to be addressed, some of the projects may not be funded.

Councilmember Faith remembered the discussion from the previous meeting was to have flexibility. His concern was that any pet projects in the future could be funded and other important projects would not be funded. Councilmember Mosby responded there was a need for some flexibility for unique developments but the projects could be moved depending on the priorities.

The Council discussed the proposed addition at length. On the motion to adopt BILL NO. 17-16 with the addition of the proposed Section 2.A., the Council voted 3 "aye", 5 "no" by Roll Call vote:

ROLL CALL:

Councilmember Forte	No	Councilmember Seif	Aye
Councilmember Moreno	No	Councilmember Faith	No
Councilmember Mosby	Aye	Councilmember Carlyle	No
Councilmember Binney	No	Councilmember Edson	Aye

MOTION FAILED

With the successful motion to reconsider the previously-adopted bill, Mr. Head determined that the Council must reconsider the original bill as written.

BILL NO. 17-16 was read by Councilmember Mosby, as initially written and approved at the January 12, 2017, City Council meeting. Motion was made by Councilmember Mosby, seconded by Councilmember Binney, for adoption.

Councilmember Faith moved to **AMEND** the ordinance by adding the phrase "...and other capital improvement projects..." in the ballot; motion was seconded by Councilmember Carlyle. This amendment was discussed at length by the Council and resulted in the following roll call vote:

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	No	Councilmember Faith	Aye
Councilmember Mosby	No	Councilmember Carlyle	Aye
Councilmember Binney	No	Councilmember Edson	No

MOTION FAILED

On the motion to **ADOPT BILL NO. 17-16** as originally written, the Council voted as follows:

ROLL CALL:

Councilmember Forte	No	Councilmember Seif	Aye
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Aye
Councilmember Binney	Aye	Councilmember Edson	Aye

BILL NO. 17-16 was **APPROVED** and became **ORDINANCE NO. 8070**

3. APPROVAL OF CONSENT AGENDA:

- A. [2017-0882](#) Approval of Type G3 and S Liquor License application for B&B Theater, 1451 NE Douglas Street.

This matter was approved and passed unanimously.

4. PROPOSED ORDINANCES:

- A. [BILL NO. 17-17](#) AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED WITHIN THE PLAT ENTITLED "LOT 6A, REPLAT OF LOTS 6 AND 7, HOLLOWAY GARDENS AND PART OF TRACT A, GEORGE'S ADDITION," IN THE CITY OF LEE'S SUMMIT, MISSOURI.

A motion was made by Councilmember Mosby, seconded by Councilmember Binney, that this Ordinance be adopted and numbered Ordinance No. 8071. The motion carried by the following vote:

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Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8071

- B.** [BILL NO. 17-18](#) AN ORDINANCE APPROVING THE DUAL AWARD OF BID NO. 2017-055 FOR A ONE YEAR CONTRACT WITH FOUR (4) POSSIBLE ONE-YEAR CONTRACT RENEWALS FOR THE PROCUREMENT AND SERVICE OF HANKOOK AND CONTINENTAL/GENERAL TIRES TO ANCHOR SALES & SERVICE, (CONTRACT NO. 2017-055-01) AND DLS TIRE CENTERS, INC. (CONTRACT NO. 2017-055-02) BASED ON ATTACHED BID TABULATION AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE CONTRACTS FOR THE SAME BY AND ON BEHALF OF THE CITY OF LEES SUMMIT MISSOURI. (F&BC 1-9-17)

ACTION: A motion was made by Councilmember Seif, seconded by Councilmember Binney, that this Ordinance be adopted and numbered Ord. No. 8072. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif

Nay: 1 - Councilmember Moreno

Enactment No: Ord. No. 8072

- C.** [BILL NO. 17-19](#) AN ORDINANCE AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE HENRY COUNTY DETENTION CENTER, AN AGENCY OF HENRY COUNTY, MISSOURI, FOR THE OFFSITE HOUSING OF PRISONERS. (F&BC 1-9-17)

ACTION: A motion was made by Councilmember Moreno, seconded by Councilmember Seif, that this Ordinance be adopted and numbered Ord. No. 8073. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8073

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- D. [BILL NO. 17-20](#) AN ORDINANCE AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE CALDWELL COUNTY DETENTION CENTER, AN AGENCY OF CALDWELL COUNTY, MISSOURI, FOR THE OFFSITE HOUSING OF PRISONERS. (F&BC 1-9-17)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Seif, that this Ordinance be adopted and numbered Ord. No. 8074. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8074

- E. [BILL NO. 17-21](#) AN ORDINANCE APPROVING EXTENSION NO. 2 TO CONTRACT NO. 2011-142/4R BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND TOWN & COUNTRY DISPOSAL, LLC TO EXTEND CURRENT CONTRACT SERVICES AND PRICING FOR WASTE REMOVAL AND RECYCLING SERVICES THROUGH JUNE 30, 2017. (F&BC 1-9-17)

The following is a summary of Council deliberation on both Bill No. 17-21 and Bill No. 17-22:

NOTE: Councilmember Carlyle announced a potential conflict of interest on Bill Nos. 17-21 and 17-22 and recused herself from the meeting.

BILL NO. 17-21 was read for the first time by Councilmember Forte, who moved for second reading; motion was seconded by Councilmember Binney.

DISCUSSION: Councilmember Moreno asked for clarification. Mr. Ben Calia, Procurement and Contract Services Manager, explained this contract would extend the current contract for six months at the same rate.

The Council voted 6 "aye", 1 "no", 1 "abstain", for second reading of the bill and motion passed.

BILL NO. 17-21 was read for the second time by Councilmember Forte, who moved for adoption; motion was seconded by Councilmember Binney and the Council voted as follows:

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	No	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

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MOTION FAILED

(due to the requirement for five (5) affirmative votes to pass an ordinance)

BILL NO. 17-22

BILL NO. 17-22 was read for the first time by Councilmember Forte, who moved for second reading; motion was seconded by Councilmember Binney.

DISCUSSION: Mr. Head explained this contract would begin on July 1st, the date the previous contract discussed in Bill No. 17-21 would have expired if the six-month extension had been approved. With the failure of the extension in Bill No. 17-21, the Council eliminated the City's ability to have service from the end of this month to the first day of July, requiring new contract negotiations. When the bid was being let, he suggested an extension because the pricing was advantageous and the budget would not have to be increased. The contract in Bill No. 17-22, which would be effective July 1st, is a new contract and contains the option for additional renewals.

Councilmember Moreno questioned the bidding of the contract. Mr. Calia advised there were two respondents to the bid, one of which was deemed non-responsive, although 21 companies accessed the documents on the internet site and the bid was mailed to 23 haulers who are licensed by the City. According to some of the feedback he received, haulers maintained they did not have the number of trucks to provide the service.

Council discussed this issue at length. The Council was concerned about the 141% increase in cost and the opportunity for four renewals. Mr. Arbo noted the six-month extension included in failed Bill No. 17-21, with no cost increase, was predicated on approval of the contract in Bill No. 17-22, at least for a one-year contract.

Following extensive discussion, the Council made the following motions and votes:

Councilmember Mosby moved to **AMEND** the ordinance to approve a one-year contract with no possible renewals. Motion was seconded by Councilmember Forte.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	No	Councilmember Edson	No

MOTION PASSED

On the motion for second reading of BILL NO. 17-22, as amended, the Council voted as follows:

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye

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Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION PASSED

BILL NO. 17-22 was read for the second time by Councilmember Forte, to include the above amendment. Councilmember Forte moved for adoption; motion was seconded by Councilmember Binney.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	No	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION FAILED

BILL NO. 17-21

Motion was made by Councilmember Binney, seconded by Councilmember Forte, to reconsider Bill No. 17-21 and motion passed unanimously (Councilmember Carlyle "abstain. Motion was then made by Councilmember Binney, seconded by Councilmember Forte, to adopt Bill No. 17-21, which passed unanimously (Councilmember Carlyle "abstain"). However, Councilmember Binney was not on the prevailing side on the original vote for adoption of the ordinance, since the motion failed; therefore, both motions were not legitimate.

Motion was made by Councilmember Moreno, seconded by Councilmember Mosby, to **RECONSIDER BILL NO. 17-21**, which would extend the contract with Town and Country Disposal for six months with no increase in rate, and the motion passed unanimously (Councilmember Carlyle "abstain").

Motion was made by Councilmember Binney, seconded by Councilmember Forte to **ADOPT BILL NO. 17-21**.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	Aye
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	Aye

MOTION PASSED

BILL NO. 17-21 was **APPROVED** and became **ORDINANCE NO. 8075**.

BILL NO. 17-22

Motion was made by Councilmember Moreno, seconded by Councilmember Forte, to **RECONSIDER BILL NO. 17-22**, to include a one-year contract with Town and Country Disposal with no renewals.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

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MOTION PASSED

Motion was made by Councilmember Forte, seconded by Councilmember Binney to **ADOPT BILL NO. 17-22**, as amended above.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION PASSED

AMENDED BILL NO. 17-22 was **APPROVED** and became **ORDINANCE NO. 8076**.

NOTE: Councilmember Carlyle returned to the table.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that this Ordinance be adopted and numbered Ord. No. 8075. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Abstain: 1 - Councilmember Carlyle

Enactment No: Ord. No. 8075

F. [BILL NO. 17-22](#)

AN ORDINANCE APPROVING THE AWARD OF BID NO. 2017-014 FOR WASTE REMOVAL AND RECYCLING SERVICES TO TOWN AND COUNTRY DISPOSAL, LLC BASED ON ATTACHED BID TABULATION AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE CONTRACT NO. 2017-014 FOR THE SAME BY AND ON BEHALF OF THE CITY OF LEES SUMMIT MISSOURI. (F&BC 1-9-17)

The following is a summary of Council deliberation on both Bill No. 17-21 and Bill No. 17-22:

NOTE: Councilmember Carlyle announced a potential conflict of interest on Bill Nos. 17-21 and 17-22 and recused herself from the meeting.

BILL NO. 17-21 was read for the first time by Councilmember Forte, who moved for second reading; motion was seconded by Councilmember Binney.

DISCUSSION: Councilmember Moreno asked for clarification. Mr. Ben Calia, Procurement and Contract Services Manager, explained this contract would extend the current contract for six months at the same rate.

The Council voted 6 "aye", 1 "no", 1 "abstain", for second reading of the bill and

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motion passed.

BILL NO. 17-21 was read for the second time by Councilmember Forte, who moved for adoption; motion was seconded by Councilmember Binney and the Council voted as follows:

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	No	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION FAILED

(due to the requirement for five (5) affirmative votes to pass an ordinance)

BILL NO. 17-22

BILL NO. 17-22 was read for the first time by Councilmember Forte, who moved for second reading; motion was seconded by Councilmember Binney.

DISCUSSION: Mr. Head explained this contract would begin on July 1st, the date the previous contract discussed in Bill No. 17-21 would have expired if the six-month extension had been approved. With the failure of the extension in Bill No. 17-21, the Council eliminated the City's ability to have service from the end of this month to the first day of July, requiring new contract negotiations. When the bid was being let, he suggested an extension because the pricing was advantageous and the budget would not have to be increased. The contract in Bill No. 17-22, which would be effective July 1st, is a new contract and contains the option for additional renewals.

Councilmember Moreno questioned the bidding of the contract. Mr. Calia advised there were two respondents to the bid, one of which was deemed non-responsive, although 21 companies accessed the documents on the internet site and the bid was mailed to 23 haulers who are licensed by the City. According to some of the feedback he received, haulers maintained they did not have the number of trucks to provide the service.

Council discussed this issue at length. The Council was concerned about the 141% increase in cost and the opportunity for four renewals. Mr. Arbo noted the six-month extension included in failed Bill No. 17-21, with no cost increase, was predicated on approval of the contract in Bill No. 17-22, at least for a one-year contract.

Following extensive discussion, the Council made the following motions and votes:

Councilmember Mosby moved to **AMEND** the ordinance to approve a one-year contract with no possible renewals. Motion was seconded by Councilmember Forte.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
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Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	No	Councilmember Edson	No

MOTION PASSED

On the motion for second reading of BILL NO. 17-22, as amended, the Council voted as follows:

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION PASSED

BILL NO. 17-22 was read for the second time by Councilmember Forte, to include the above amendment. Councilmember Forte moved for adoption; motion was seconded by Councilmember Binney.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	No	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION FAILED

BILL NO. 17-21

Motion was made by Councilmember Binney, seconded by Councilmember Forte, to reconsider Bill No. 17-21 and motion passed unanimously (Councilmember Carlyle "abstain. Motion was then made by Councilmember Binney, seconded by Councilmember Forte, to adopt Bill No. 17-21, which passed unanimously (Councilmember Carlyle "abstain"). However, Councilmember Binney was not on the prevailing side on the original vote for adoption of the ordinance, since the motion failed; therefore, both motions were not legitimate.

Motion was made by Councilmember Moreno, seconded by Councilmember Mosby, to **RECONSIDER BILL NO. 17-21**, which would extend the contract with Town and Country Disposal for six months with no increase in rate, and the motion passed unanimously (Councilmember Carlyle "abstain").

Motion was made by Councilmember Binney, seconded by Councilmember Forte to **ADOPT BILL NO. 17-21**.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	Aye
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	Aye

MOTION PASSED

BILL NO. 17-21 was **APPROVED** and became **ORDINANCE NO. 8075**.

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BILL NO. 17-22

Motion was made by Councilmember Moreno, seconded by Councilmember Forte, to **RECONSIDER BILL NO. 17-22**, to include a one-year contract with Town and Country Disposal with no renewals.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION PASSED

Motion was made by Councilmember Forte, seconded by Councilmember Binney to **ADOPT BILL NO. 17-22**, as amended above.

ROLL CALL:

Councilmember Forte	Aye	Councilmember Seif	No
Councilmember Moreno	Aye	Councilmember Faith	Aye
Councilmember Mosby	Aye	Councilmember Carlyle	Abstain
Councilmember Binney	Aye	Councilmember Edson	No

MOTION PASSED

AMENDED BILL NO. 17-22 was **APPROVED** and became **ORDINANCE NO. 8076**.

NOTE: Councilmember Carlyle returned to the table.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Binney, that this Ordinance be adopted and numbered Ord. No. 8076. The motion carried by the following vote:

Aye: 5 - Councilmember Binney
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby

Nay: 2 - Councilmember Edson
Councilmember Seif

Recused: 1 - Councilmember Carlyle

Enactment No: Ord. No. 8076

- G.** [BILL NO. 17-23](#) AN ORDINANCE APPROVING AMENDMENT NO. 7 TO THE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2017, AS ADOPTED BY ORDINANCE NO. 7894, BY REVISING THE AUTHORIZED ALLOCATION OF FULL TIME EQUIVALENTS FOR CERTAIN POSITIONS IN THE POLICE DEPARTMENT AND MUNICIPAL COURT AND BY REVISING THE AUTHORIZED BUDGET EXPENDITURES OF THE CITY OF LEE'S SUMMIT, MISSOURI. (F&BC 1-9-17)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that this Ordinance be adopted and numbered Ord. No. 8077. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Enactment No: Ord. No. 8077

5. **PRESENTATIONS:**

- A. [2017-0883](#) Lee's Summit Economic Development Council (LSEDC) Quarterly Report - 4th Quarter 2016

Mr. Rick McDowell, President and CEO of the Lee's Summit Economic Development Council, provided an update.

6. **COMMITTEE REPORTS (Committee chairs report on matters held in Committee):**

Councilmember Seif announced there would be a Rules Committee meeting on January 23rd at 5:00 p.m.

7. **COUNCIL ROUNDTABLE:**

Councilmember Faith attended the Martin Luther King event on Monday, which he thought was outstanding, as was the Tuesday night event with the Chamber. He also reminded the Council of the LS CARES Mayor's Character breakfast on January 26th, as well as the first Citizens Leadership Academy session this Saturday, January 21st.

Councilmember Edson requested an update on preservation of the Longview barns. Mr. Arbo will ask but the rehabilitation is in the hands of Mariner and Sunflower.

Councilmember Binney mentioned the "Cop on Top" event at Habinero's Restaurant, an event to raise funds for the Special Olympics.

8. **STAFF ROUNDTABLE:**

Mr. Arbo reviewed the preparation and procedures followed by Staff for the ice storm last weekend, which was not as severe as forecast. He wanted to recognize and appreciate the entire team of LS employees. Not all were full-time Public Works employees. In order to provide the level of service expected by citizens, engineers, administrative staff and many other employees worked 12-hour shifts in order to provide the necessary human power required for such an event, working together to make a safe place to live. This service goes well beyond what is listed in job descriptions. Although one salt dome was emptied, another supply was on the way to restock the empty dome.

9. **ADJOURNMENT**

There being no further business, Mayor Rhoads ADJOURNED the January

City Council - Regular Session

Action Letter

January 19, 2017

12, 2017, Regular Session No. 24 of the Lee's Summit City Council at 9:10
p.m.

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be
viewed on the City's Internet site at "www.cityofls.net".

Packet Information

File #: 2017-0899, **Version:** 2

Mayor's Appointments:

Human Services Advisory Board: Reappoint Michael Straughn, Rexanne Hill, Sue Jackson, Marla Franklin, Matthew Silvers, Cotton Sivils, and Helen Hatridge terms to expire 01-20-21.

License Tax Review Committee: Reappoint Dena Mezger, Karl Blumenhorst, Glen Jones and Cynda Rader, terms to expire 02-20-19.

Livable Streets Advisory Board: Reappoint Eric Vaughan, James Ray, Eric Kratz terms to expire 2-17-20.

Issue/Request:

Due to term expirations, Mayor Rhoads is seeking City Council approval of his appointments to the Human Services Advisory Board, License Tax Review Committee and the Livable Streets Advisory Board.



LEE'S SUMMIT
MISSOURI

Mayor Randall L. Rhoads

DATE: January 27, 2017
TO: City Council
FROM: Mayor Randall L. Rhoads
RE: Boards and Commissions Appointments

I am submitting the following appointments for the Council's approval:

Mayor's Appointments:

Human Services Advisory Board: Reappoint Michael Straughn, Rexanne Hill, Sue Jackson, Marla Franklin, Matthew Silvers, Cotton Sivils and Helen Hatridge terms to expire 01-20-21.

License Tax Review Committee: Reappoint Dena Mezger, Karl Blumenhorst, Glen Jones and Cynda Rader, terms to expire 02-20-19.

Livable Streets Advisory Board: Reappoint Eric Vaughan, James Ray, Eric Kratz, and Dr. Edwin Kraemer, terms to expire 02-17-20.

Packet Information

File #: 2017-0907, **Version:** 3

Approval of a Type A1 Liquor License for Smoke Brewing Company, LLC, 209 SE Main Street.

Key Issues:

Approval of a Type A1 Liquor License for Smoke Brewing Company, LLC, 209 SE Main Street.

Proposed City Council Motion:

I move for approval of a Type A1 Liquor License for Smoke Brewing Company, LLC, 209 SE Main Street as part of the Consent Agenda.

Background:

A background check was conducted on the managing officer and partner with no negative information found.

Staff Recommendation:

The Director of Liquor Control recommends approval of the Type A1 license application for Smoke Brewing Company, LLC.

Sole Owner & Operator

Corporation

Partnership LLC

Corporation/LLC Name: Smoke Brewing Company, LLC

Business Name: Smoke Brewing Co. Phone: (816) 578-4300

Business Address: 20956 Main St. Lee's Summit, MO 64063

(I), (We), the undersigned, hereby apply to the City of Lee's Summit, MO, for the following described license:

Type AI for the premises described above.
Manufacturing, brewing malt liquor

Applicant's Name: Glenn J. Edwards Phone: _____

Home Address: _____

Place of Birth: _____ Date of Birth: _____

Place of Employment (other than business): N/A

Employment Address: _____ Phone: _____

1. List all previous addresses, if less than five years at current address: N/A

2. Are you a citizen of the United States of America? Yes If naturalized, give date and place of naturalization: _____

3. Will you be the person in active control and/or management (managing officer) of this business full-time? Yes. If not, give complete details on the planned management and persons involved.

4. Have you or any person employed by you ever held any type of liquor license issued by the City of Lee's Summit or by the licensing authority of any state, county or city? NO If so, please give details: _____

5. Has any such license listed in question #4 ever been suspended or revoked? N/A If so, please give complete details: _____

of Missouri; and do you promise and agree not to violate any of the ordinances of Lee's Summit, Missouri, the laws of the State of Missouri, or the United States in the conduct of the business for which the license is sought? Yes

LLC
IF BUSINESS IS OWNED BY A CORPORATION, COMPLETE THIS SECTION:

Name of corporation/LLC: Smoke Brewing Company, LLC

State in which incorporated: MO Date of incorporation: 9/12/13

If not a Missouri corporation/LLC, date authorized to do business in Missouri: _____

Full name, complete residential address, date of birth and Social Security Number of the President, Vice President, Treasurer and Secretary of the corporation (or Members of the LLC):

Glenn J. Edwards,

Date of Birth:

Joshua G. Edwards,

Date of Birth:

If stock is not publicly held, give names and residential addresses of all stockholders who hold 10% or more of the capital stock:

Glenn J. Edwards,

Joshua G. Edwards,

County of Jackson)

State of Missouri)

SS

I, Glenn J. Edwards being of lawful age and duly sworn upon my oath,
(Print Applicant's Name)

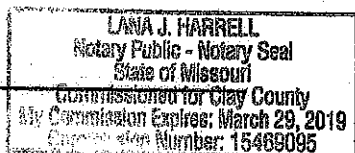
do swear that the answers and information given in this application are true and complete to the best of my knowledge and belief.

[Signature]
Applicant's Signature

Subscribed and sworn to before me this 17th day of January, 2017

[Signature]
Notary Public

My commission expires:



Packet Information

File #: 2017-0912, **Version:** 2

Houlihan's change of managing officer, currently holding a Type G3 and S Liquor License.

Change of managing at Houlihan's, 625 NW Murray Road

Proposed City Council Motion:

I move to approve the change of managing office for Houlihan's, 625 NW Murray Road, as part of the Consent Agenda.

Background:

A background check was conducted on the new managing officer with no negative information found.

Staff Recommendation:

The Director of Liquor Control recommends approval of the new managing officer for Houlihan's.

January 12, 2017

Ms. Cathy Gilmore
Lee's Summit Police Department
10 NE Tudor
Lee's Summit, MO 64086

RE: Houlihan's Restaurants, Inc.
Address of Premise: 625 NW Murray Rd., Lee's Summit, MO

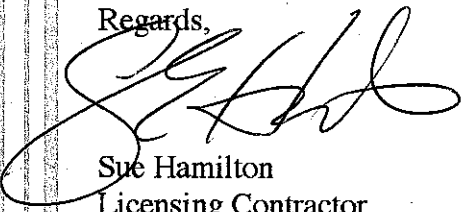
Dear Cathy:

Please be advised of a Change of Managing Officer for the Houlihan's restaurant located at the address written above along with the following documents:

- 1) Copy of personal property tax receipt;
- 2) Copy of Photo ID;
- 3) Managing Officer Appointment Form; and
- 4) Money Order in the amount of \$35.

If you require additional information or documentation, please call (913-488-6250) or email (shamilton@houlihans.com) anytime. Thank you for your assistance.

Regards,



Sue Hamilton
Licensing Contractor

Enclosures

H
HOULIHAN'S



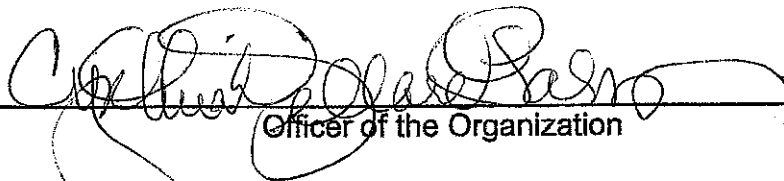
MANAGING OFFICER APPOINTMENT FORM

DATE 12/20/2016

Houlihan's Restaurants, Inc., has appointed
(NAME OF CORPORATION OR ORGANIZATION)

Christopher Corp as Managing
(NAME OF MANAGING OFFICER)

Officer for the corporation/organization. The Managing Officer is a person in the licensee's employ, either as an officer or as an employee who is vested with the general control and superintendence of a whole, or a particular part of, the licensee's business, as required by 11 CSR 70-2.030(7).



Officer of the Organization

Effective 1/1/2017
Date(s) of the Event

Packet Information

File #: BILL NO. 17-24, **Version:** 1

AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

Proposed City Council Motion:

I move for a second reading of AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

I move for adoption of AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

BILL NO. 17-24

AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2016-215, submitted by QuikTrip Corporation, requesting approval of the final plat entitled "QuikTrip No. 0191, Lots 1-3 & Tracts A-C", was referred to the Planning Commission as required by the Unified Development Ordinance No. 5209; and,

WHEREAS, the Planning Commission considered the final plat on January 24, 2017, and rendered a report to the City Council recommending that the plat be approved.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the final plat entitled "QuikTrip No. 0191, Lots 1-3 & Tracts A-C" is a subdivision in the Southeast ¼ of Section 29, Township 48 North, Range 31 and the Northeast ¼ of Section 32, Township 48, Range 31, in Lee's Summit, Missouri more particularly described as follows:

All that part of the SE 1/4 of Section 29, Township 48, Range 31, and the NE 1/4 of Section 32, Township 48, Range 31, and Lots 69-71, ORCHARD HILLS, a subdivision of land, all in the City of Lee's Summit, Jackson County, Missouri, more particularly described as follows:

Commencing at the Northwest corner of the NE 1/4 of said Section 32; thence S 88° 30' 02" E, along the North line of said NE 1/4, a distance of 30.00 feet, to a point on the East right-of-way line of Independence Avenue, as now established, said point being the Point of Beginning; thence N 1° 33' 39" E, along the East line of said Independence Avenue, a distance of 16.00 feet, to the Southwest corner of Lot 59 of said ORCHARD HILLS; thence S 88° 30' 02" E, along the South line of Lots 59 thru 68, of said ORCHARD HILLS, a distance of 808.61 feet, to the Southeast corner of said Lot 68; thence N 1° 35' 21" E, along the East line of said Lot 69, a distance of 142.47 feet, to the Northeast corner of said Lot 68; thence S 88° 25' 04" E, along the North line of said Lots 69 thru 71, a distance of 250.00 feet, to a point on the West right-of-way line of Missouri Route 291, as now established, said point being the Northeast corner of said Lot 71; thence S 01° 35' 21" W, along said West right-of-way line, being the East line of said Lot 71, a distance of 142.52 feet, to the Southeast corner of said Lot 71; thence S 88° 25' 24" E, along said west right-of-way line, a distance of 73.12 feet; thence S 1° 40' 04" W, along said west right-of-way line, a distance of 50.46 feet; thence S 88° 19' 56" E, along said West right-of-way line, a distance of 52.00 feet; thence S 1° 40' 04" W, along said West right-of-way line, a distance of 583.50 feet; thence S 4° 02' 34" E, along said West right-of-way line, a distance of 42.04 feet; thence N 88° 28' 09" W, along the North line of Lot 1 and Tract A, WINDSOR COMMONS, a subdivision in the City of Lee's Summit, Jackson County, Missouri, a distance of 429.51 feet; thence N 1° 46' 26" E, a distance of 660.22 feet, to a point on the North line of the NE 1/4 of said Section 32; thence N 88° 30' 02" W, along said North line, a distance of 759.60 feet, to the point of beginning.

BILL NO. 17-24

The above described tract of land contains 332,365 square feet, or 7.630 acres, more or less.

SECTION 2. That the proprietor of the above described tract of land ("Proprietor") has caused the same to be subdivided in the manner shown on the accompanying plat, which subdivision shall hereafter be known as "QuikTrip No. 0191, Lots 1-3 & Tracts A-C".

SECTION 3. That the roads and streets shown on this plat and not heretofore dedicated to public use as thoroughfares shall be dedicated as depicted on the plat. The City Council hereby authorizes the Director of Planning and Special Projects, on behalf of the City of Lee's Summit, Missouri, to accept the land or easements dedicated to the City of Lee's Summit for public use and shown on the accompanying plat, upon the subdivider filing and recording a final plat in accordance with Article 16, Subdivisions, Unified Development Ordinance ("UDO") of the City, which plat shall conform to the accompanying plat, and hereby authorizes acceptance of the public improvements required by this ordinance and Article 16 of the UDO of the City, upon the Director of Public Works certifying to the Director of Planning and Special Projects and the City Clerk that the public improvements have been constructed in accordance with City standards and specifications.

SECTION 4. That the approval granted by this ordinance is done under the authority of Section 89.410.2 of the Revised Statutes of Missouri and Section 16.340 of the UDO because all subdivision-related public improvements required by the UDO have not yet been completed. In lieu of the completion and installation of the subdivision-related public improvements prior to the approval of the plat, the Proprietor has, in accordance with Section 16.340 of the UDO, provided a **surety bond** to secure the actual construction and installation of said public improvements. The City Council approved acceptance of the surety bond on December 15, 2016.

SECTION 5. That an easement shall be granted to the City of Lee's Summit, Missouri, to locate, construct and maintain or to authorize the location, construction, and maintenance of poles, wires, anchors, conduits, and/or structures for water, gas, sanitary sewer, storm sewer, surface drainage channel, electricity, telephone, cable TV, or any other necessary public utility or services, any or all of them, upon, over, or under those areas outlined or designated upon this plat as "Utility Easements" (U.E.) or within any street or thoroughfare dedicated to public use on this plat. Grantor, on behalf of himself, his heirs, his assigns and successors in interest, shall waive, to the fullest extent allowed by law, including, without limitation, Section 527.188, RSMo. (2006), any right to request restoration of rights previously transferred and vacation of any easement granted by this plat.

SECTION 6. That building lines or setback lines are hereby established as shown on the accompanying plat and no building or portion thereof shall be constructed between this line and the street right-of-way line.

SECTION 7. That the final plat substantially conforms to the approved preliminary plat and to all applicable requirements of the Code.

SECTION 8. That the City Council for the City of Lee's Summit, Missouri, does hereby approve and accept, as a subdivision to the City of Lee's Summit, Missouri, the final plat entitled

BILL NO. 17-24

“QuikTrip No. 0191, Lots 1-3 & Tracts A-C,” attached hereto and incorporated herein by reference.

SECTION 9. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council for the City of Lee’s Summit, Missouri, this _____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED by the Mayor of said City this _____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

City of Lee's Summit

Development Services Department

January 20, 2017

TO: Planning Commission
FROM: Robert G. McKay, AICP, Director of Planning and Special Projects *RM*
RE: **Appl. #PL2016-215 – FINAL PLAT – QuikTrip No. 0191, Lots 1-3 & Tracts A-C; QuikTrip Corporation, applicant**

Commentary

This final plat application is for *QuikTrip No. 0191, Lots 1-3 & Tracts A-C*, located at the southwest corner of NE Mulberry St and NE M-291 Hwy. The proposed final plat consists of 3 lots and 3 common area tracts on 7.6 acres. The proposed final plat is substantially consistent with the approved preliminary development plan.

- 3 lots and 3 common area tracts on 7.6 acres

Subdivision-Related Public Improvements

In accordance with Unified Development Ordinance (UDO) Section 16.340, prior to an ordinance being placed on a City Council agenda for the approval of a final plat, all subdivision-related public improvements shall be constructed and a Certificate of Final Acceptance shall be issued. In lieu of completion of the public improvements and the issuance of a certificate, financial security (an escrow secured with cash, an irrevocable letter of credit, or a surety bond) may be provided to the City to secure the completion of all public improvements.

A surety bond deposit agreement has been provided to the City and approved by the City Council in an amount sufficient to secure completion of the subdivision-related public infrastructure, which is currently under construction. Approval of the surety bond deposit agreement allows the final plat to move forward to the City Council for approval.

Recommendation

Staff recommends **APPROVAL** of the final plat.

Project Information

Proposed Use: commercial

Land Area: 104,071 sq. ft. (2.4 acres) – Lot 1
23,798 sq. ft. (0.5 acres) – Lot 2
96,067 sq. ft. (2.2 acres) – Lot 3
3,647 sq. ft. (0.1 acres) – Tract A
10,405 sq. ft. (0.2 acres) – Tract B
29,443 sq. ft. (0.7 acres) – Tract C
332, 365 total sq. ft. (7.6 acres)

Lots: 3 lots and 3 common area tracts

Location: southwest corner of NE Mulberry St. and NE M-291 Hwy

Zoning: CP-1 (Planned Neighborhood Commercial District)

Surrounding zoning and use:

North (across NE Mulberry St): CP-2 (Planned Community Commercial District) – Travel Clean car wash; RP-1 (Planned Two-Family Residential District) – Orchard Hills; R-1 (Single-Family Residential District)

South: CP-1 — (Planned Neighborhood Commercial District) – office/retail

East: (across NE M-291 Hwy) CP-2 — (Planned Community Commercial District) – vacant

West: R-1 (Single-Family Residential) – Meadow Lane Elementary School

Background

- January 7, 2016 – The City Council approved the preliminary development plan (Appl. #PL2015-143) for QuikTrip No. 0191 by Ordinance No. 7788. The preliminary development plan also served to substitute as the preliminary plat for the subject property as allowed under Section 16.120 of the UDO.
- November 23, 2016 – The City issued a building permit (#PRCOM20163048) for only the foundation and underslab for QuikTrip No. 0191. No building permit allowing vertical construction shall be issued prior to the approval and recording of the final plat.
- November 30, 2016 – Staff administratively approved the final development plan (Appl. #PL2016-072) for QuikTrip No. 0191.
- December 15, 2016 – The City Council approved a surety bond deposit agreement guaranteeing installation of subdivision improvements for QuikTrip No. 0191 by and between QuikTrip Corporation and the City of Lee's Summit and approving the use of the surety bond as security for the installation and construction of said subdivision improvements by Ordinance No. 8048.

Code and Ordinance Requirements to be met Following Approval

The items in the box below are specific to this subdivision and must be satisfactorily addressed in order to bring this plat into compliance with the Codes and Ordinances of the City.

Engineering

1. All required engineering plans and studies, including water lines, sanitary sewers, storm drainage, streets and erosion and sediment control shall be submitted along with the final plat and approved prior to the approval of the final plat.
2. All Engineering Plan Review and Inspection Fees shall be paid prior to approval of the engineering plans and prior to the issuance of any infrastructure permits or the start of construction (excluding land disturbance permit).
3. All permanent off-site easements, in a form acceptable to the City, shall be executed and recorded with the Jackson County Recorder of Deeds prior to the issuance of a Certificate of Substantial Completion. A certified copy shall be submitted to the City for verification.
4. Any cut and / or fill operations, which cause public infrastructure to exceed the maximum / minimum depths of cover shall be mitigated by relocating the infrastructure vertically and / or horizontally to meet the specifications contained within the City's Design and Construction Manual, unless waived by the City Engineer.

Planning

5. A note on the plat shall indicate the presence or absence of active, inactive and capped oil and gas wells on the property. The note shall reference the source of information used to

make its determination. MoDNR has a well database found at <http://dnr.mo.gov/geology/geosrv/ogc/ogc-permits/>.

6. The following lot and tract shall be labeled with their respective addresses: Lot 3 - 1400 NE Windsor Dr; and Tract A - 1490 NE Windsor Dr.
7. A sidewalk easement shall be provided to cover the portions of sidewalk that leave the public right-of-way and encroach onto Lot 2 and Tract A.
8. Sign permits shall be obtained prior to installation of any signs through the Development Services Department. All signs proposed must comply with the sign requirements as outlined in the sign section of the Unified Development Ordinance.
9. No final plat shall be recorded by the developer until the Director of Planning and Special Projects and the City Attorney have reviewed and approved the declaration of covenants and restrictions pertaining to common property as prepared in accordance with Section 5.330 of the UDO, and until the Director of Planning and Special Projects has received certification from the Missouri Secretary of State verifying the existence and good standing of the property owners' association required by Section 5.340 of the UDO. In addition, the approved Declaration of Covenants, Conditions and Restrictions shall be recorded prior to the recording of the final plat.
10. A final plat shall be approved and recorded (with the necessary copies returned to the Development Services Department) prior to any building permits being issued for vertical construction.

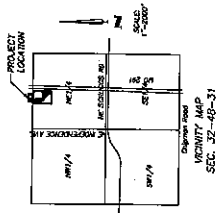
RGM/hsj

Attachments:

1. Final Plat, date stamped January 11, 2017 – 2 pages
2. Location Map

FINAL PLAT QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C

LOTS 69 THRU 71, ORCHARD HILLS & THE NE 1/4,
SECTION 32, TOWNSHIP 48, RANGE 31 & SE 1/4,
SECTION 29, TOWNSHIP 48, RANGE 31, CITY OF LEE'S
SUMMIT, JACKSON COUNTY, MISSOURI

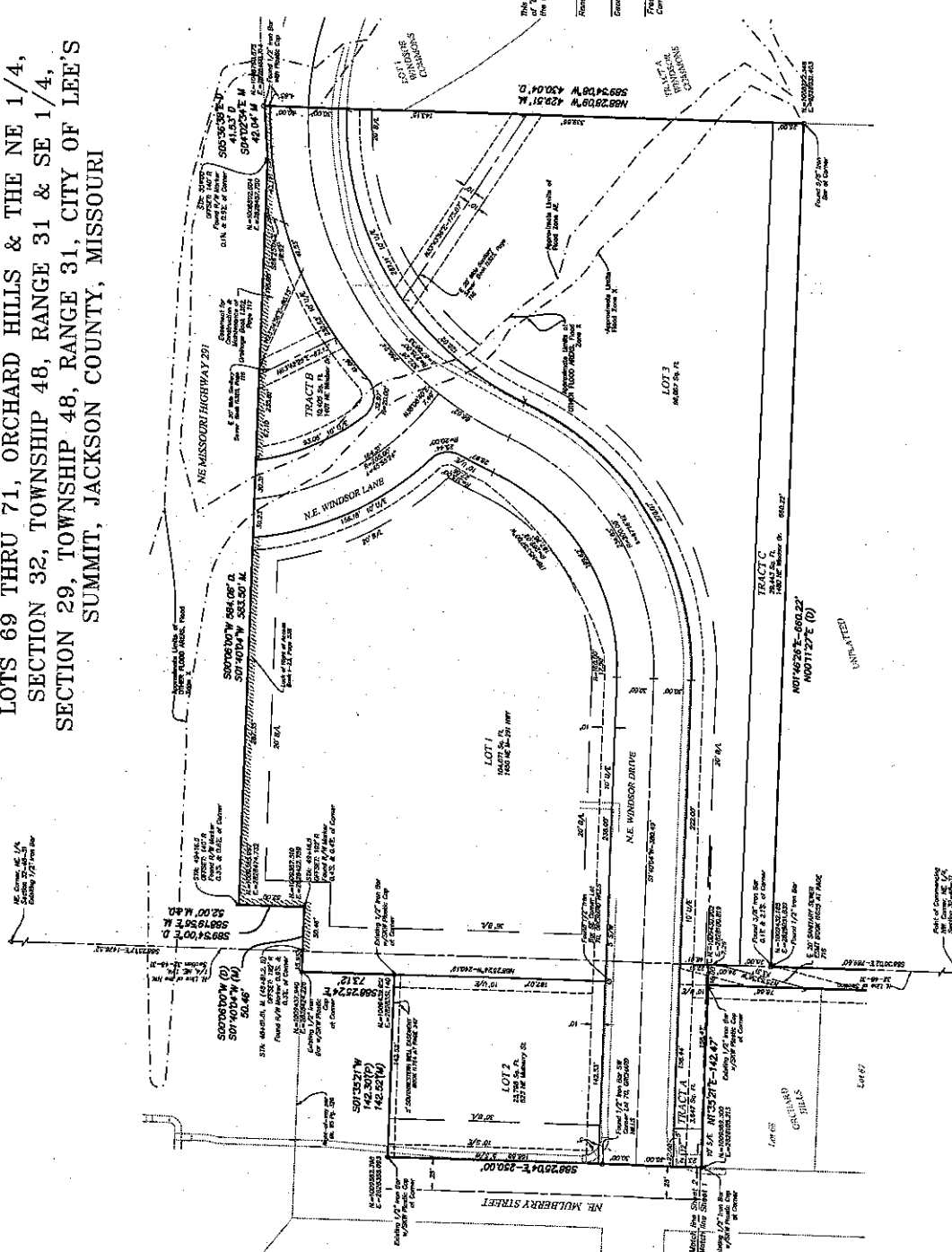


• 5/8" 1/2" Rubber W/ SWR cap
(Always alternate color)

GENERAL NOTES:
Platting shown herein and its accordance with the State Plane Coordinate System.
Coordinates shown herein are State Plane Missouri North Zone NAD83
Coordinates based on GPS observations using the National GPS Network.
Accuracy Standard is Type 3 Urban

This is to certify that the within plat
of QUIKTRIP NO. 0191, LOTS 1-3 & TRACTS A-C was submitted to and duly approved by the Mayor and City Council of
the City of Lee's Summit, Missouri, this _____ day of _____, 2017.

Attest:	_____	Date:	_____
	Debra R. Chism, MMC City Clerk		
	_____	Date:	_____
	Robert C. McCoy, ADC, Special Projects		
	_____	Date:	_____
	Frank Adams, Planning Commission Secretary		



RECEIVED

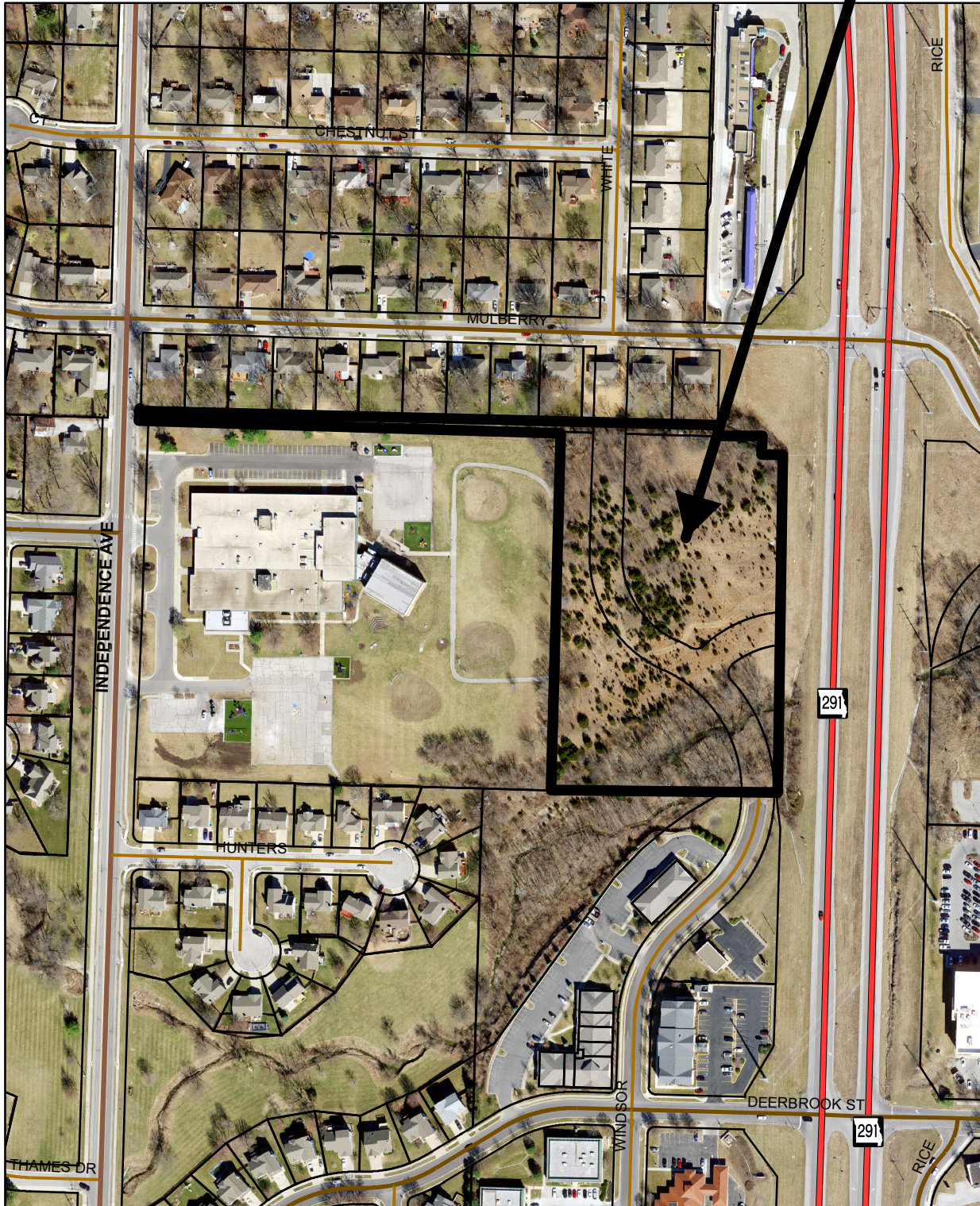
JAN 11 2017

Planning & Codes Admin

SHAFER, KLINE & WARREN, INC.
ENGINEERS & SURVEYORS
11559 COUNTRY CLUB DRIVE, LEES SUMMIT, MO 64089
PHONE: (816) 686-1800 FAX: (816) 686-0888

-2016-

**Appl. #PL2016-215 FINAL PLAT
QuikTrip No. 0191, Lots 1-3 & Tracts A-C;
QuikTrip Corporation, applicant**



Packet Information

File #: BILL NO. 17-25, **Version:** 1

AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED WITHIN THE PLAT ENTITLED "LOT 251, *PARK RIDGE 5th PLAT*," IN THE CITY OF LEE'S SUMMIT, MISSOURI.

Proposed City Council Motion:

First Motion: I move for a second reading of AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED WITHIN THE PLAT ENTITLED "LOT 251, *PARK RIDGE 5th PLAT*," IN THE CITY OF LEE'S SUMMIT, MISSOURI.

Second Motion: I move for adoption of AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED WITHIN THE PLAT ENTITLED "LOT 251, *PARK RIDGE 5th PLAT*," IN THE CITY OF LEE'S SUMMIT, MISSOURI.

BILL NO. 17-25

AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED WITHIN THE PLAT ENTITLED "LOT 251, *PARK RIDGE 5th PLAT*," IN THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #2016-221 was submitted by JFE Construction, Inc., requesting vacation of a utility easement within "LOT 251, *PARK RIDGE 5th PLAT*," a recorded subdivision in Lee's Summit, Missouri; and,

WHEREAS, the City of Lee's Summit, Missouri, accepted the minor plat entitled "LOT 251, *PARK RIDGE 5th PLAT*"; and,

WHEREAS, the said plat was recorded with the County Director of Records by Document No. #2016E0046775 on May 27, 2016, and said easement was referenced on said plat; and,

WHEREAS, the utility companies have been contacted and had no objection to the proposed vacation; and,

WHEREAS, the Public Works and Water Utilities Departments for the City of Lee's Summit have determined that no other uses exist for said easement; and,

WHEREAS, the Planning Commission considered the request on January 24, 2017, and rendered a report to the City Council recommending that the vacation of easement be approved; and,

WHEREAS, the City Council for the City of Lee's Summit has determined that no damages are ascertainable by reason of such vacation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the following described easement, located within "LOT 251, *PARK RIDGE 5th PLAT*," is hereby and herewith vacated:

A 15' WIDE PORTION OF AN EXISTING 25' WIDE UTILITY EASEMENT PARALLEL TO THE NORTH LINE OF LOT 251, PARK RIDGE - 5TH PLAT, A SUBDIVISION OF RECORD IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI; MORE PARTICULARLY DESCRIBED AS;

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 251; THENCE SOUTH 09 DEGREES 51 MINUTES 08 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 251, A DISTANCE OF 10.10 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH 09 DEGREES 51 MINUTES 08 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 251, A DISTANCE OF 15.15 FEET; THENCE SOUTH 88 DEGREES 18 MINUTES 56 SECONDS EAST, ALONG A LINE 25' SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID LOT 251, A DISTANCE OF 129.34 FEET, TO A POINT ON THE EAST LINE OF SAID LOT 251, THENCE NORTH 28 DEGREES 12 MINUTES 47 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 251, A DISTANCE OF 16.77 FEET; THENCE NORTH 88 DEGREES 18 MINUTES 56 SECONDS WEST, ALONG A LINE 10' SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID LOT 251, A DISTANCE OF 134.68 FEET, TO THE POINT OF BEGINNING;

BILL NO. 17-25

SECTION 2. That upon the effective date of the vacation of the easement described in Section 1 above, the City releases all right, title and interest in and to the City owned infrastructure located within the easement.

SECTION 3. That the City Clerk be and is hereby authorized and directed to acknowledge a copy of this ordinance and to record same in the Office of the Recorder of Deeds of the County in which the property is located.

SECTION 4. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2017.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Denise R. Chisum

APPROVED by the Mayor of said city this _____ day of _____, 2017.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Denise R. Chisum

APPROVED AS TO FORM:

City Attorney Brian W. Head

City of Lee's Summit

Development Services Department

January 20, 2017

TO: Planning Commission
FROM: Robert G. McKay, AICP, Director of Planning and Special Projects 
RE: **Application #PL2016-221 – VACATION OF EASEMENT – 1740 NE Aberdeen Dr.; JFE Construction, Inc., applicant**

Commentary

This application is for the vacation of a 15' portion of a 25' utility easement that is approximately 134' long located on Lot 251, *Park Ridge 5th Plat*. The vacation request stems from a conflict between the easement and the proposed location of a retaining wall. No objection was raised by the City's Public Works, Water Utilities Departments or other utility companies.

Recommendation

Staff recommends **APPROVAL** of the vacation of easement.

Project Information

Vacation of Easement: a 15' portion of a 25' utility easement

Location: 1740 NE Aberdeen Drive (Lot 251, *Park Ridge, 5th Plat*)

Zoning: R-1 (Single-Family Residential)

Surrounding Zoning and Use:

North: AG—Fleming Park

South (across NE Aberdeen Drive): R-1(Single-Family Residential)—vacant lot

East: R-1(Single-Family Residential)—vacant lot

West: R-1(Single-Family Residential)—single-family residence

Background

- May 19, 2016 – The City Council approved the final plat (Appl. #PL2014-034) *Park Ridge, 5th Plat, Lots 244 thru 289 and Tracts A5 thru F5*, by Ord. #7888. The subject easement was dedicated as part of this plat. The plat was recorded at the Jackson County Recorder's Office on May 27, 2016 by Doc. #2016E0046775.
- July 19, 2016 – A building permit (Permit #PRRES20161680) was issued for the construction of a home at 1740 NE Aberdeen Drive.

Analysis of Vacation of Easement

This application is for the vacation of a 15' portion of a 25' utility easement that is approximately 134' long located on Lot 251, *Park Ridge 5th Plat*. The vacation request stems from a conflict between the easement and the proposed location of a retaining wall.

No objection was raised by the City's Public Works, Water Utilities Department or other utility companies.

Code and Ordinance Requirements

The items in the box below are specific to this application and must be satisfactorily addressed in order to be in compliance with the Codes and Ordinances of the City.

Planning

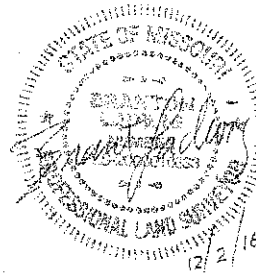
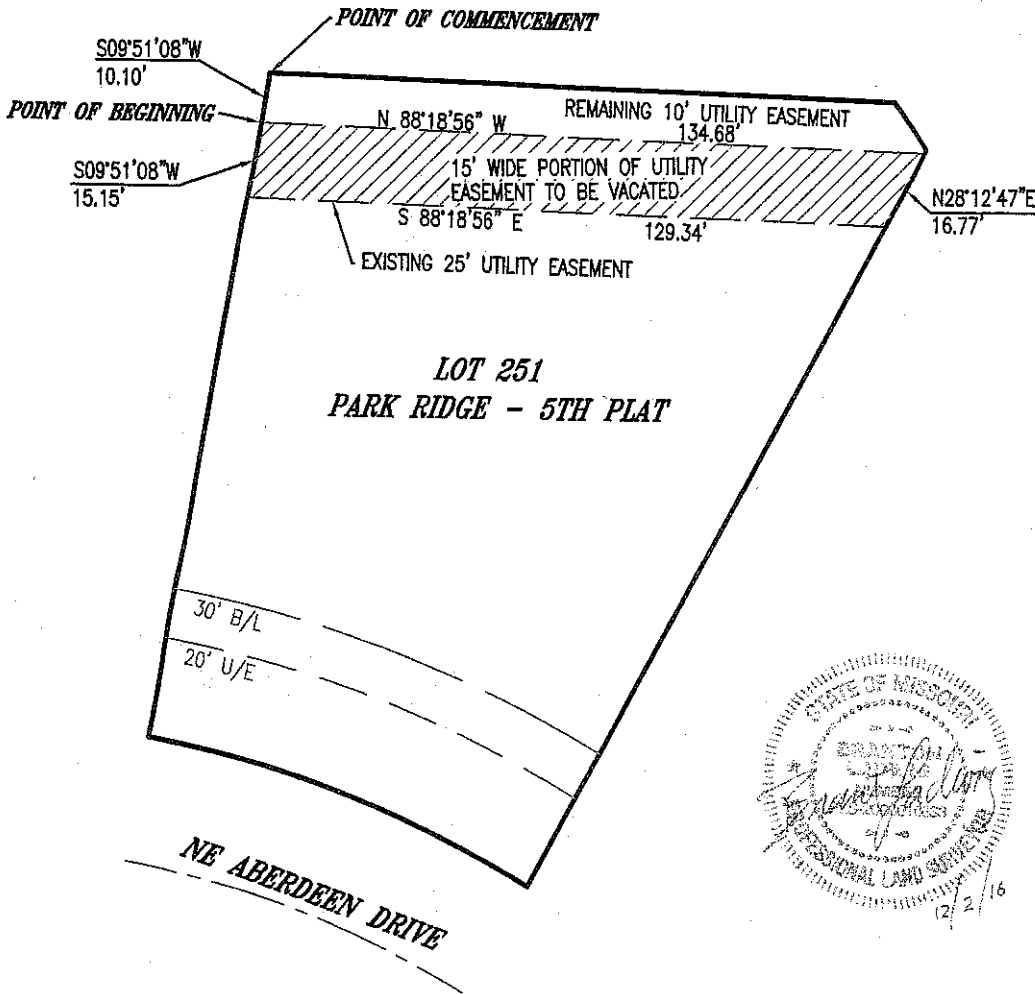
1. The vacation of easement shall be recorded prior to the issuance of any building permit for the retaining wall, if required.

RGM/jmt

Attachments:

1. Drawing and legal description of the easement to be vacated, date stamped December 5, 2016—1 page
2. Location Map

EXHIBIT "A" 15' UTILITY EASEMENT



LEGAL DESCRIPTION:

A 15' wide portion of an existing 25' wide utility easement parallel to the North line of Lot 251, Park Ridge - 5th Plat, a subdivision of record in Lee's Summit, Jackson County, Missouri; more particularly described as;
 Commencing at the Northwest corner of said Lot 251; thence South 09 degrees 51 minutes 08 seconds West, along the West line of said Lot 251, a distance of 10.10 feet, to the Point of Beginning; thence South 09 degrees 51 minutes 08 seconds West, along the West line of said Lot 251, a distance of 15.15 feet; thence South 88 degrees 18 minutes 56 seconds East, along a line 25' South of and parallel to the North line of said Lot 251, a distance of 129.34 feet, to a point on the East line of said Lot 251, thence North 28 degrees 12 minutes 47 seconds East, along the East line of said Lot 251, a distance of 16.77 feet; thence North 88 degrees 18 minutes 56 seconds West, along a line 10' South of and parallel to the North line of said Lot 251, a distance of 134.68 feet, to the Point of Beginning.



LADWIG & ASSOCIATES, LLC.
 LAND SURVEYORS
 33604 E. 235th Street
 Pleasant Hill, Missouri 64080
 816-309-6621

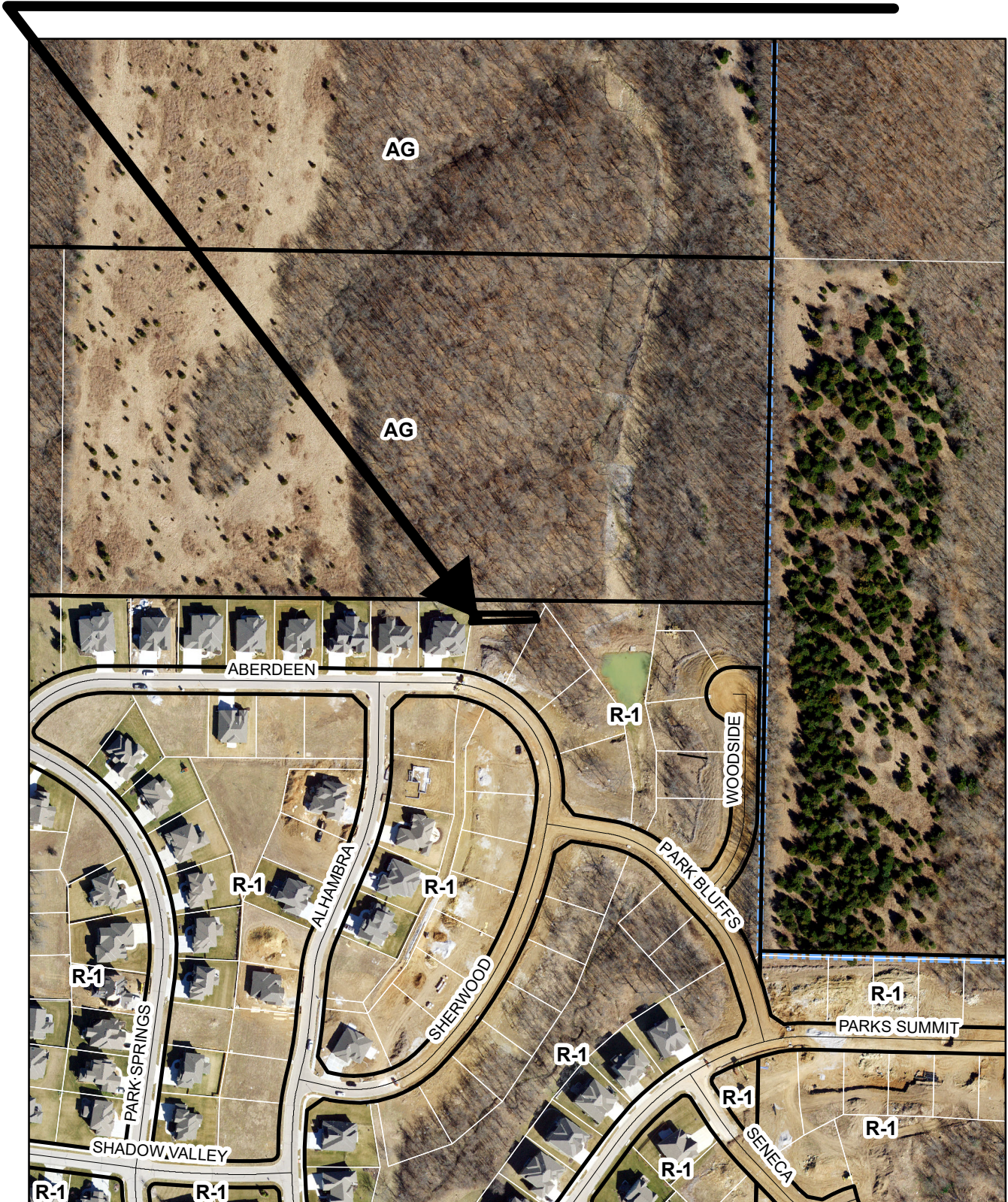
-2016-221-

RECEIVED

DEC 5 2016

Planning & Codes Admin

PL#2016-221 VACATION OF EASEMENT 1740 NE ABERDEEN DRIVE JFE CONSTRUCTION INC., APPLICANT



Packet Information

File #: BILL NO. 17-26, **Version:** 1

AN ORDINANCE AMENDING ORDINANCE NO.8028 AND ACCEPTING FINAL PLAT ENTITLED "MONTICELLO 2nd PLAT, LOTS 33-67 & TRACTS D-F", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

Issue/Request:

This amended ordinance revises the plat title, legal description, and plat boundaries as needed to accurately reflect the correct ownership and number of lots for said plat.

Proposed City Council Motion:

First Motion: I move for a second reading of AN AMENDED ORDINANCE ACCEPTING FINAL PLAT ENTITLED "MONTICELLO 2nd PLAT, LOTS 33-67 & TRACTS D-F", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

Second Motion: I move for adoption of AN AMENDED ORDINANCE ACCEPTING FINAL PLAT ENTITLED "MONTICELLO 2nd PLAT, LOTS 33-67 & TRACTS D-F", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

BILL NO. 17-26

AN ORDINANCE AMENDING ORDINANCE NO. 8028 AND ACCEPTING FINAL PLAT ENTITLED "MONTICELLO 2nd PLAT, LOTS 33-67 & TRACTS D-F", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application PL2016-062, submitted by Engineering Solutions, LLC, requesting approval of the final plat entitled "Monticello 2nd Plat, Lots 33-69 & Tracts D-F", was referred to the Planning Commission as required by the Unified Development Ordinance No. 5209; and,

WHEREAS, the Planning Commission considered the final plat on June 14, 2016, and rendered a report to the City Council recommending that the plat be approved.

WHEREAS, the City Council approved Ordinance No. 8028 on December 8, 2016, accepting final plat entitled "Monticello 2nd Plat, Lots 33-69 & Tracts D-F," as a subdivision to the City of Lee's Summit, Jackson County, Missouri.; and

WHEREAS, prior to recording the final plat, revisions to the plat title, legal description, and plat boundaries are needed to accurately reflect the correct ownership and number of lots for said plat.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the final plat entitled "Monticello 2nd Plat, Lots 33-67 & Tracts D-F" is a subdivision in Section 4, Township 48N, Range 31W, in Lee's Summit, Missouri more particularly described as follows:

A tract of land located in part of the Southwest 1/4 of Section 4, Township 48 North, Range 31 West, more particularly described as follows: Commencing at the West 1/4 corner of said Section 4, thence South 87° 55' 43" East, along the north line of said Southwest 1/4 a distance of 989.01 feet; thence South 02° 12' 15" West, along the west line of property owned by the United States Army Corps of Engineers, a distance of 1339.93 feet; thence South 87° 58' 48" East, a distance of 1052.90 feet; thence South 01° 47' 06" West, a distance of 313.68 feet, to the Point of Beginning; thence South 01° 47' 06" West, a distance of 1005.25 feet; thence North 88° 01' 51" West, a distance of 833.84 feet; thence North 01° 55' 48" East, a distance of 125.26 feet; thence North 88° 04' 12" West, a distance of 52.84 feet; thence North 01° 55' 48" East, a distance of 138.29 feet; thence North 02° 28' 44" West, a distance of 97.46 feet; thence North 07° 59' 17" West, a distance of 89.97 feet; thence North 13° 16' 37" West, a distance of 89.97 feet; thence North 04° 50' 35" West, a distance of 230.63 feet; thence North 49° 59' 17" West, a distance of 57.28 feet; thence South 65° 59' 57" East, a distance of 92.71 feet; thence South 72° 37' 57" East, a distance of 91.30 feet; thence South 79° 04' 25" East, a distance of 91.30 feet; thence South 85° 35' 18" East, a distance of 91.30 feet; thence North 87° 54' 36" East, a distance of 91.30 feet; thence North 81° 24' 30" East, a distance of 91.30 feet; thence North 74° 54' 24" East, a distance of 91.30 feet, thence North 68° 36' 10" East, a distance of 95.72 feet; thence North 62° 04' 36" East, a distance of 52.82 feet; thence North 60° 32' 07" East, a distance of 106.55 feet; thence North 56° 03' 25" East, a distance of 191.18 feet, returning to the Point of Beginning.

Containing 719,275.11 sq. ft. 16.51 acres more or less

BILL NO. 17-26

SECTION 2. That the proprietor of the above described tract of land ("Proprietor") has caused the same to be subdivided in the manner shown on the accompanying plat, which subdivision shall hereafter be known as "Monticello 2nd Plat, Lots 33-67 & Tracts D-F".

SECTION 3. That the roads and streets shown on this plat and not heretofore dedicated to public use as thoroughfares shall be dedicated as depicted on the plat. The City Council hereby authorizes the Director of Planning and Special Projects, on behalf of the City of Lee's Summit, Missouri, to accept the land or easements dedicated to the City of Lee's Summit for public use and shown on the accompanying plat, upon the subdivider filing and recording a final plat in accordance with Article 16, Subdivisions, Unified Development Ordinance ("UDO") of the City, which plat shall conform to the accompanying plat, and hereby authorizes acceptance of the public improvements required by this ordinance and Article 16 of the UDO of the City, upon the Director of Public Works certifying to the Director of Planning and Special Projects and the City Clerk that the public improvements have been constructed in accordance with City standards and specifications.

SECTION 4. That the approval granted by this ordinance is done under the authority of Section 89.410.2 of the Revised Statutes of Missouri and Section 16.340 of the UDO because all subdivision-related public improvements required by the UDO have not yet been completed. In lieu of the completion and installation of the subdivision-related public improvements prior to the approval of the plat, the Proprietor has, in accordance with Section 16.340 of the UDO, deposited an irrevocable **letter of credit** to secure the actual construction and installation of said public improvements, and the City hereby accepts same. No building permit shall be issued until the required public improvements are available to each lot for which a building permit is requested in accordance with the Design and Construction Manual.

SECTION 5. That an easement shall be granted to the City of Lee's Summit, Missouri, to locate, construct and maintain or to authorize the location, construction, and maintenance of poles, wires, anchors, conduits, and/or structures for water, gas, sanitary sewer, storm sewer, surface drainage channel, electricity, telephone, cable TV, or any other necessary public utility or services, any or all of them, upon, over, or under those areas outlined or designated upon this plat as "Utility Easements" (U.E.) or within any street or thoroughfare dedicated to public use on this plat. Grantor, on behalf of himself, his heirs, his assigns and successors in interest, shall waive, to the fullest extent allowed by law, including, without limitation, Section 527.188, RSMo. (2006), any right to request restoration of rights previously transferred and vacation of any easement granted by this plat.

SECTION 6. That building lines or setback lines are hereby established as shown on the accompanying plat and no building or portion thereof shall be constructed between this line and the street right-of-way line.

SECTION 7. That individual lot owner(s) shall not change or obstruct the drainage flow lines on the lots, as shown on the Master Drainage Plan, unless specific application is made and approved by the City Engineer.

SECTION 8. That the final plat substantially conforms to the approved preliminary plat and to all applicable requirements of the Code.

BILL NO. 17-26

SECTION 9. That the City Council for the City of Lee's Summit, Missouri, does hereby approve and accept, as a subdivision to the City of Lee's Summit, Missouri, the final plat entitled "Monticello 2nd Plat, Lots 33-67 & Tracts D-F", attached hereto and incorporated herein by reference.

SECTION 10. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council for the City of Lee's Summit, Missouri, this _____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED by the Mayor of said City this ____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

City of Lee's Summit

Department of Planning & Codes Administration

June 10, 2016

TO: Planning Commission
FROM: Robert G. McKay, AICP, Director 
RE: **Appl. #PL2016-062 – FINAL PLAT – Monticello, 2nd Plat, Lots 33-67 and Tracts D-F; Engineering Solutions, LLC, applicant**

Commentary

This final plat application is for *Monticello, 2nd Plat, Lots 33-67 & Tracts D-F*, located on the south side of NE Bowlin Rd., north of the Lake Ridge Meadows and Dalton's Ridge subdivisions. The proposed final plat consists of 35 lots and three common area tracts on 16.51 acres. The proposed final plat is substantially consistent with the approved preliminary development plan.

- 35 lots and 3 common area tracts on 16.51 acres
- 2.11 units/acre, including common area
- 2.86 units/acre, excluding common area

Subdivision-Related Public Improvements

In accordance with UDO Section 16.340, prior to an ordinance being placed on a City Council agenda for the approval of a final plat, all subdivision-related public improvements shall be constructed and a Certificate of Final Acceptance shall be issued. In lieu of completion of the public improvements and the issuance of a certificate, financial security (an escrow secured with cash, an irrevocable letter of credit, or a surety bond) may be provided to the City to secure the completion of all public improvements.

A Certificate of Final Acceptance has not been issued for the subdivision-related public infrastructure, nor has any form of financial security been received to secure the completion of the public improvements. This application will be placed on hold following Planning Commission action until the requirements to be placed on a City Council agenda are met.

Recommendation

Staff recommends **APPROVAL** of the final plat.

Project Information

Proposed Use: single-family residential subdivision
Number of Lots: 35 lots and 3 common area tracts
Land Area: 16.51 acres; 12.22 acres, excluding common area
Density: 2.11 units/acre; 2.86 units/acre, excluding common area
Location: south side of NE Bowlin Rd., north of the Lake Ridge Meadows and Dalton's Ridge subdivision
Zoning: R-1 (Single-Family Residential)
Surrounding zoning and use:

North: R-1 (Single-Family Residential)—future *Monticello, 1st Plat* subdivision

South: R-1 (Single-Family Residential)—*Dalton's Ridge* subdivision

East: AG (Agricultural)—Fleming Park

West: R-1 (Single-Family Residential)—future *Monticello* subdivision

Background

- September 3, 2015 – The City Council approved a rezoning (Appl. #PL2015-065) from AG to R-1 and a preliminary development plan for the Monticello residential subdivision by Ordinance No. 7690.
- January 26, 2016 – The Planning Commission recommended approval of the final plat (Appl. #PL2015-128) for *Monticello, 1st Plat, Lots 1-32 & Tracts A-C*. The final plat is pending approval by the City Council. The applicant has since reduced the number of lots in the 1st plat from 33 to 32.

Code and Ordinance Requirements to be met Following Approval

The items in the box below are specific to this subdivision and must be satisfactorily addressed in order to bring this plat into compliance with the Codes and Ordinances of the City.

Public Works

1. All required engineering plans and studies, including water lines, sanitary sewers, storm drainage, streets and erosion and sediment control shall be submitted along with the final plat and approved prior to the approval of the final plat. All public infrastructure must be substantially complete, prior to the issuance of any building permits.
2. A Master Drainage Plan (MDP) shall be submitted and approved in accordance with the City's Design and Construction Manual for all areas of the development, including all surrounding impacted areas, along with the engineering plans for the development. The MDP shall address drainage level of service issues on an individual lot basis.
3. All Engineering Plan Review and Inspection Fees shall be paid prior to approval of the associated engineering plans and prior to the issuance of any infrastructure permits or the start of construction (excluding land disturbance permit).
4. All subdivision-related public improvements must have a Certificate of Final Acceptance prior to approval of the final plat, unless security is provided in the manner set forth in the City's Unified Development Ordinance (UDO) Section 16.340. If security is provided, building permits may be issued upon issuance of a Certificate of Substantial Completion of the public infrastructure as outlined in Section 1000 of the City's Design and Construction Manual.
5. The As-graded Master Drainage Plan shall be submitted to and accepted by the City prior to the issuance of a Certificate of Substantial Completion and prior to the issuance of any building permits for the development.
6. A Land Disturbance Permit shall be obtained from the City prior to any land disturbance activities on the property.
7. All permanent off-site easements, in a form acceptable to the City, shall be executed and recorded with the Jackson County Recorder of Deeds prior to the issuance of a Certificate of Substantial Completion. A certified copy shall be submitted to the City for verification.

8. A restriction note shall be included on the final plat stating: "Individual lot owner(s) shall not change or obstruct the drainage flow paths on the lots, as shown on the Master Drainage Plan, unless specific application is made and approved by the City Engineer"
9. Any cut and/or fill operations, which cause public infrastructure to exceed the maximum/minimum depths of cover shall be mitigated by relocating the infrastructure vertically and/or horizontally to meet the specifications contained within the City's Design and Construction Manual.

Fire

10. All issues pertaining to life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to the safety to fire fighters and emergency responders during emergency operations, shall be in accordance with the 2012 International Fire Code.

Planning and Codes Administration

11. Sign permits shall be obtained prior to installation of any signs through the Department of Planning and Codes Administration. All signs proposed must comply with the sign requirements as outlined in the sign section of the Unified Development Ordinance.
12. No final plat shall be recorded by the developer until the Director of Planning and Codes Administration and the City Attorney have reviewed and approved the declaration of covenants and restrictions pertaining to common property as prepared in accordance with Section 5.330 of the UDO, and until the Director has received certification from the Missouri Secretary of State verifying the existence and good standing of the property owners' association required by Section 5.340 of the UDO. In addition, the approved Declaration of Covenants, Conditions and Restrictions shall be recorded prior to the recording of the final plat.
13. A final plat shall be approved and recorded (with the necessary copies returned to Planning and Codes Administration) prior to any building permits being issued. All subdivision-related public improvements must be complete prior to approval of the final plat by the City Council unless security is provided in the manner set forth in UDO Section 16.340.
14. The developer shall execute a mutually satisfactory development agreement with the City, which addresses, at a minimum, the required sanitary sewer and road improvements. No building permit shall be issued for any structure in the development until written proof is provided to the City that the development agreement has been recorded in the Jackson County Recorder's Office. All public improvements shall be substantially complete prior to issuance for any building permit.
15. Each lot and tract shall be labeled with its respective address.
16. Provide tic marks to indicate where the lot dimensions begin and end for Lot 47.
17. The title of the plat shall be revised to state: Monticello, 2nd Plat, Lots 33-68. All references to the plat title within the plat shall be revised accordingly.
18. Note #2 may be removed as these access restrictions are not City requirements. If the note remains, it shall be revised to reflect the correct street names and lot numbers.
19. Easements and building lines shall extend across Tracts D, E, and F.
20. The access easement dedication paragraph shall be revised to reflect the Monticello Home's Association. Additionally, the access easement shall be relabeled from "P/E" to "A/E".

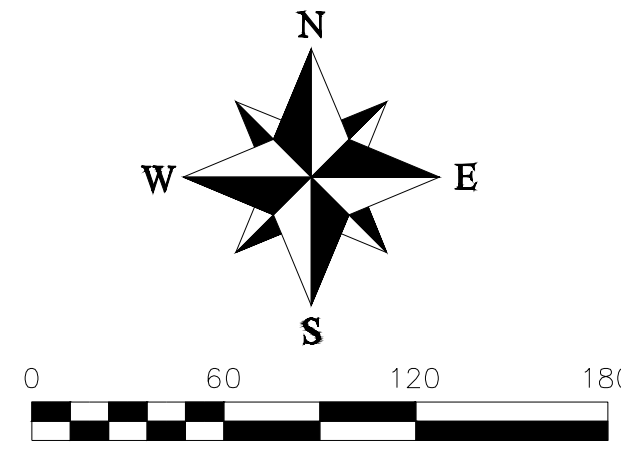
21. For any property within two miles of the airport, a Form 7460 shall be completed and submitted to the FAA, and comments received back prior to any construction.
22. The builders shall be required to put in a minimum of three evergreen trees, two ornamental trees and three shrubs, on each lot adjacent to the Lake Ridge Meadows and Dalton's Ridge subdivisions, acknowledging that the goal is to provide a visual buffer for the property to the north. No final certificate of occupancy shall be issued for an individually affected lot until such time as the required number of trees and shrubs are planted on said lot. The required landscaping shall be planted within 20 feet of the rear property line. The required landscaping shall meet the minimum size requirements of the UDO at the time of planting (i.e. 8' for Evergreen trees, 3" caliper for ornamental trees and 2-gallon container for shrubs.)

RGM/jmt

Attachments:

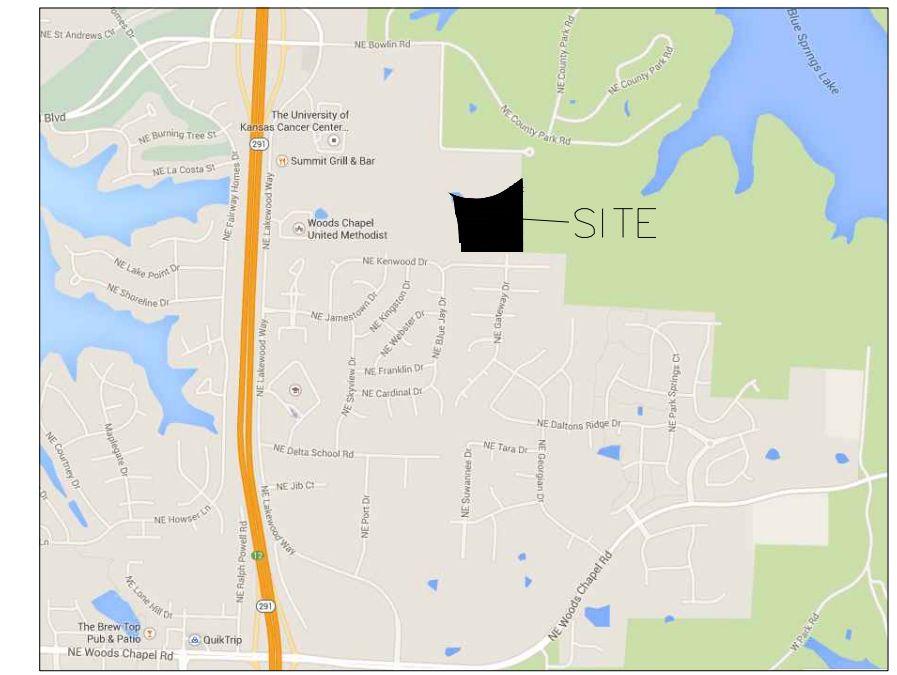
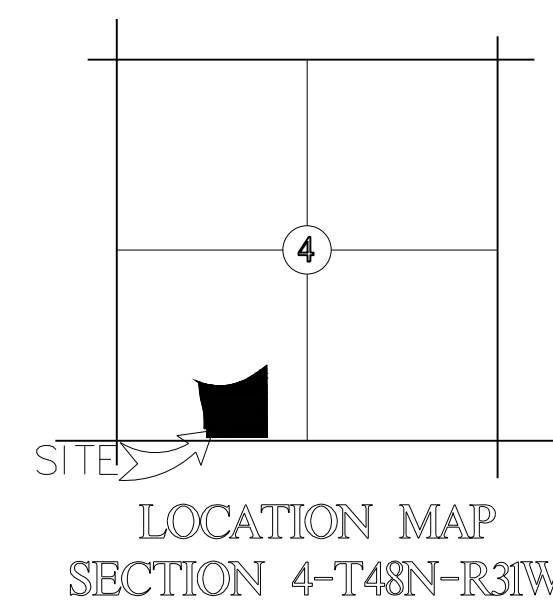
1. Final Plat, date stamped June 2, 2016 – 1 page
2. Location Map

Final Plat of Monticello - 2nd Plat Lots 33 - 67 & Tract D - F Section 4, Township 48N, Range 31W Lee's Summit, Jackson County, Missouri



LEGEND

- These standard symbols will be found in the drawing.
- Set 1/2" Rebar & Cap (LS-2005008319-D)
 - ⊙ Found Survey Monument (As Noted)
 - U/E Utility Easement
 - BL Building Setback Line
 - W/E Water Easement
 - A/E Access/Pedestrian Easement



VICINITY LOCATION MAP

UNITED STATES OF AMERICA CORPUS OF ENGINEERS

OWNER/DEVELOPER:
Silverstone Development, LLC
Troy Bellah
PO Box 346
Lee's Summit, MO 64063

APPROVED:
PUBLIC WORKS / ENGINEERING

GEORGE M. BINGER III, P.E., CITY ENGINEER DATE

PLANNING & CODES ADMINISTRATION

ROBERT G. McKay, AICP, DATE
DIRECTOR OF PLANNING AND CODES ADMINISTRATION

PLANNING COMMISSION

FRED DeMORO, SECRETARY DATE

CITY OF LEE'S SUMMIT:

MAYOR AND CITY COUNCIL CERTIFICATION:
THIS IS TO CERTIFY THAT THE ACCOMPANYING PLAT OF MONTICELLO 2ND PLAT, LOTS 33-67 AND TRACTS D-F WAS SUBMITTED TO AND DULY APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI THIS _____ DAY OF _____ 20____ BY ORDINANCE NO. _____

RANDALL L. RHOADS, MAYOR DATE

DENISE R. CHISUM, MMC, CITY CLERK DATE

IN TESTIMONY WHEREOF:
SILVER STONE DEVELOPMENT, L.L.C., A MISSOURI LIMITED LIABILITY COMPANY, HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS MEMBER THIS _____ DAY OF _____, 2017.

SILVER STONE DEVELOPMENT, L.L.C.
TROY BELLAH
MEMBER

NOTARY CERTIFICATION:
STATE OF _____
COUNTY OF _____

ON THIS _____ DAY OF _____, 2017, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED TROY BELLAH, TO ME PERSONALLY KNOWN AND WHO BEING BY ME DULY SWORN BY ME DID SAY THAT HE IS A MEMBER OF SILVERSTONE DEVELOPMENT, L.L.C., A MISSOURI LIMITED LIABILITY COMPANY, AND THAT SAID INSTRUMENT WAS SIGNED ON BEHALF OF SAID COMPANY AND AS THE FREE AGENT AND DEED OF SAID COMPANY.

I IN WITNESS THEREOF:
I HAVE HEREIN SET MY HAND AND AFFIXED MY SEAL THE DATE LAST WRITTEN ABOVE.

NOTARY PUBLIC MY COMMISSION EXPIRES: _____ DATE: _____

SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY THAT I HAVE MADE A SURVEY OF THE PREMISES DESCRIBED HEREIN WHICH MEETS OR EXCEEDS THE CURRENT "MISSOURI MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS" AS JOINTLY ESTABLISHED BY THE MISSOURI BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, AND LANDSCAPE ARCHITECTS AND THE MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF GEOLOGICAL SURVEY AND RESOURCE ASSESSMENT AND THAT THE RESULTS OF SAID SURVEY ARE REPRESENTED ON THIS PLAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF.

MATTHEW J. SCHLICHT, MOPLS 2012000102
ENGINEERING SOLUTIONS, L.L.C., MO CORP LS 2005008319-D

DEDICATION:

THE UNDERSIGNED OWNERS OF THE TRACT OF LAND DESCRIBED HEREIN HAS CAUSED THE SAME TO BE SUBDIVIDED IN THE MANNER SHOWN ON THE ACCOMPANYING PLAT. SAID SUBDIVISION AND PLAT SHALL HEREAFTER BE KNOWN AS: **MONTICELLO 2ND PLAT - LOTS 33 - 67 & TRACTS D - F**

EASEMENTS:

AN EASEMENT OR LICENSE IS HEREBY GRANTED TO CITY OF LEE'S SUMMIT, MISSOURI TO LOCATE, CONSTRUCT, AND MAINTAIN, OR TO AUTHORIZE THE LOCATION, CONSTRUCTION AND MAINTENANCE OF POLES, WIRES, ANCHORS, CONDUITS, AND/OR STRUCTURES FOR WATER, GAS, SANITARY SEWER, STORM SEWER, SURFACE DRAINAGE CHANNEL, ELECTRICITY, TELEPHONE, CABLE TELEVISION, OR ANY OTHER NECESSARY PUBLIC UTILITY OR SERVICES, ANY OR ALL OF THEM, UPON, OVER, OR UNDER THOSE AREAS OUTLINED OR DESIGNATED UPON THIS PLAT AS "UTILITY EASEMENTS" (U.E.) OR WITHIN ANY STREET OR THOROUGHFARE DEDICATED TO PUBLIC USE ON THIS PLAT. GRANTOR, ON BEHALF OF HIMSELF, HIS HEIRS, HIS ASSIGNS AND SUCCESSORS IN INTEREST, HEREBY WAIVES, TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING, WITHOUT LIMITATION, SECTION 527.1888 RSMo. (2006), ANY RIGHT TO REQUEST RESTORATION OF RIGHTS PREVIOUSLY TRANSFERRED AND VACATION OF THE EASEMENT HEREIN GRANTED.

ACCESS EASEMENT:

AN ACCESS EASEMENT "A/E" IS HEREBY GRANTED TO THE RESIDENTS OF THE MONTICELLO PROPERTY OWNER'S ASSOCIATION, TO ACCESS THE TRAIL FOR RECREATIONAL USE.

BUILDING LINES:

BUILDING LINES OR SETBACK LINES ARE HEREBY ESTABLISHED AS SHOWN ON THE ACCOMPANYING PLAT AND NO BUILDING OR PORTION THEREOF SHALL BE CONSTRUCTED BETWEEN THIS LINE AND THE STREET RIGHT OF WAY LINE.

STREETS:

THE STREETS AND/OR THOROUGHFARES SHOWN ON THIS PLAT AND NOT HERETOFORE DEDICATED TO PUBLIC USE ARE HEREBY SO DEDICATED.

MASTER DRAINAGE PLAN

INDIVIDUAL LOT OWNER(S) SHALL NOT CHANGE OR OBSTRUCT THE DRAINAGE FLOW PATHS ON THE LOTS AS SHOWN ON THE MASTER DRAINAGE PLAN, UNLESS SPECIFIC APPLICATION IS MADE AND APPROVED BY THE CITY ENGINEER.

SIDEWALKS

THE SIDEWALK ADJACENT TO TRACTS D - F SHALL BE INSTALLED, BY DEVELOPER, AT THE TIME OF THE INSTALLATION OF INFRASTRUCTURE.

COMMON AREA

TRACTS D - F ARE COMMON AREA TO BE OWNED AND MAINTAINED BY MONTICELLO PROPERTY OWNER'S ASSOCIATION. THESE AREA ARE TO BE USED FOR COMMON AREAS AND TRAIL.

SURVEYOR'S GENERAL NOTES:

- 1) This survey is based upon the following information provided by the client or researched by this surveyor.
 - A) Final Plat of Dalton's Ridge 10th Plat, Doc. No. 2009E008869
 - B) Minor Plat of Executive Lakes Center Lots 9-A & 9-B, Doc. No. 2002I0025209
 - C) Final Plat of Lake Ridge Meadows 1st Plat
 - D) Final Plat of Lake Ridge Meadows 5th Plat
 - E) Final Plat of Lake Ridge Meadows 2nd Plat
 - F) Final Plat of Dalton Ridge 9th Plat, Doc. No. 2007E0052936
 - G) Minor Plat of Executive Lakes Center
- 2) No title report was furnished.
- 3) The subject property lies within a flood zone designation of (X), defined as areas to be outside of the 100 year floodplain, as shown on the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency for the City of Lee's Summit, Jackson County, Missouri, Community Map No. 2909SC0305F and 2909SC0188F, with an effective date of September 29, 2006
- 4) Bearings shown hereon are based the Missouri State Plane Coordinate System (West Zone) utilizing GPS observations. Distances shown hereon are ground distances in U.S. Survey Feet.
- 5) This company assumes no responsibility in the location of existing utilities within the subject premises. This is an above-ground survey. The underground utilities, if shown, are based on information provided by the various utility companies and these locations should be considered approximate. There may be additional underground utilities not shown on this drawing.
- 6) The surveyed parcel has ingress/egress to Bowlin Road
- 7) No oil or gas wells are known to exist on this property, per the "Environmental Impact Study of Abandoned Oil and Gas Wells in Lee's Summit, Missouri" by Edward Alton May, JR., P.E., 1995.

NOTE:

1. HOA WILL MAINTAIN ALL TRACTS.
2. *LOT 33 SHALL HAVE NO ACCESS TO NE GOSHEN DRIVE, LOT 43 SHALL HAVE NO ACCESS TO ACCESS TO NE POCONO CIRCLE, AND LOTS 47 AND 60 SHALL HAVE NO ACCESS TO NE GATEWAY DRIVE.

PROPERTY DESCRIPTION:

A tract of land located in part of the Southwest 1/4 of Section 4, Township 48 North, Range 31 West, more particularly described as follows: Commencing at the West 1/4 corner of said Section 4, thence South 87° 55' 43" East, along the north line of said Southwest 1/4 a distance of 989.01 feet; thence South 02° 12' 15" West, along the west line of property owned by the United States Army Corps of Engineers, a distance of 1339.93 feet; thence South 77° 58' 48" East, a distance of 1052.90 feet; thence South 01° 47' 06" West, a distance of 313.68 feet, to the Point of Beginning; thence South 01° 47' 06" West, a distance of 1005.25 feet; thence North 88° 01' 51" West, a distance of 833.84 feet; thence North 01° 55' 48" East, a distance of 125.26 feet; thence North 88° 04' 12" West, a distance of 52.84 feet; thence North 01° 55' 48" East, a distance of 138.29 feet; thence North 02° 28' 44" West, a distance of 97.46 feet; thence North 07° 59' 17" West, a distance of 89.97 feet; thence North 13° 16' 37" West, a distance of 89.97 feet; thence North 04° 50' 35" West, a distance of 230.63 feet; thence North 49° 59' 17" West, a distance of 57.28 feet; thence South 65° 59' 57" East, a distance of 92.71 feet; thence South 72° 37' 57" East, a distance of 91.30 feet; thence South 79° 04' 25" East, a distance of 91.30 feet; thence South 85° 35' 18" East, a distance of 91.30 feet; thence North 87° 54' 36" East, a distance of 230.63 feet; thence North 81° 24' 30" East, a distance of 91.30 feet; thence North 74° 54' 24" East, a distance of 91.30 feet; thence North 86° 36' 10" East, a distance of 95.72 feet; thence North 62° 04' 36" East, a distance of 52.82 feet; thence North 60° 32' 07" East, a distance of 106.55 feet; thence North 68° 03' 25" East, a distance of 191.18 feet, returning to the Point of Beginning.

Containing 719,275.11 sq. ft. 16.51 acres more or less

Missouri State Plane Coordinate System
1983, Missouri West Zone

(2003 Adjustment)
Reference Monument: CA-08
Combined Scale Factor: 0.9998997

POINT	NORTHING	EASTING
1	314409.6471	863420.9327
2	314103.3955	863411.3887
3	314112.9665	863133.0127
4	314357.7502	863113.2903

Coordinates Shown in Meters

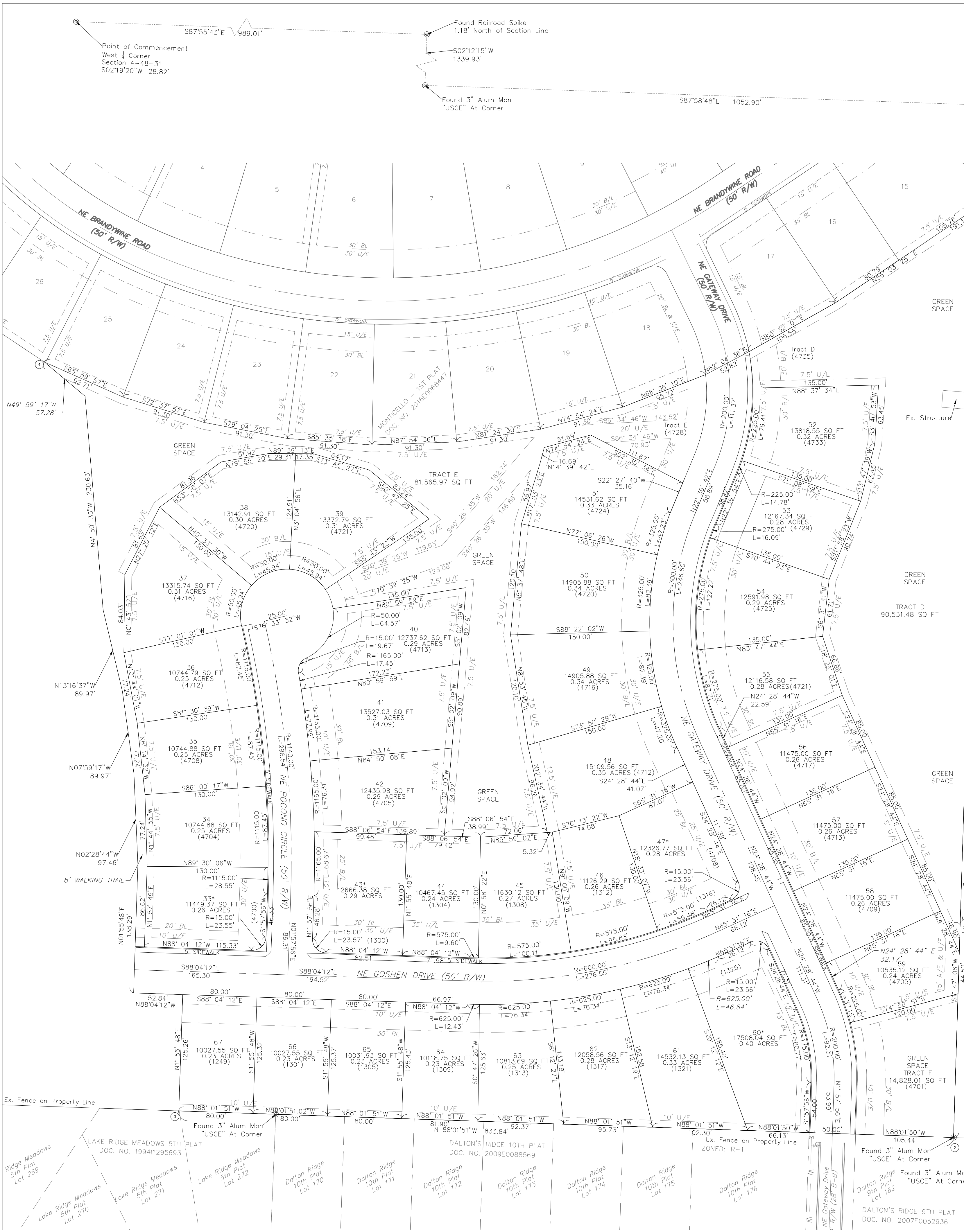
REVISIONS	
DATE	

Monticello - 2nd Plat
Section 4, Township 48 North, Range 31 West
Lee's Summit, Jackson County, Missouri

SHEET	SECTION	TOWNSHIP	RANGE	COUNTY	JOB NO.
1 OF 1	4	48 N	31 W	Jackson	Monticello
					DATE OF PREPARATION
					March 23, 2016

PROFESSIONAL SEAL

ENGINEERING & SURVEYING SOLUTIONS
 50 SE 10TH STREET
 LEE'S SUMMIT, MO 64082
 P: (816) 625-9888 F: (816) 625-9849





Application No. PL2016-062
Monticello 2nd Plat

Estimated cost to complete the public improvement for Monticello 2nd Plat

Land Surveying

Construction Staking
As-Builts

Total \$4,000

General Construction

ADA Ramps
Street Signage

\$3,750
\$1,050
Total \$4,800

Sanitary Repairs

Invert

Total \$2,000

Asphalt Repairs

Asphalt Pavement

Total \$3,000

Water Line

8" Watermain

Total \$23,525.00

Seeding

Seed and Final ESC per plans

Total \$12,500

Total to Completed

\$49,825.00

Bonding

\$996.50

Letter of Credit Total Requested

\$50,821.50



Matthew Schlicht, PE 20060019708

This is to certify the above amount is the portion of the project that is not completed as of November 28,

2016



IRREVOCABLE STANDBY LETTER OF CREDIT

11-30-16

City of Lee's Summit
Finance Department
Attn: Conrad Lamb, Finance Director
220 SE Green Street
Lee's Summit, MO 64063

Issue Date 11-30-16

Expiration Date: 11-30-17 unless extended as outlined below

We hereby issue our IRREVOCABLE STANDBY LETTER OF CREDIT ("Letter of Credit") in favor for the City of Lee's Summit, MO (the city) for the account of (Silverstone Development, LLC) ("Obligee") for a maximum aggregate amount not exceeding

Fifty Thousand Eight Hundred Twenty One Dollars and Fifty Cents (\$50,821.50) representing the following:

Land Surveying

General Construction

Sanitary Repairs

Water lines

Land Surveying

Asphalt Repairs

Seeding

Required for [Monticello Subdivision] ("Project") and according to application No. PL2015-182

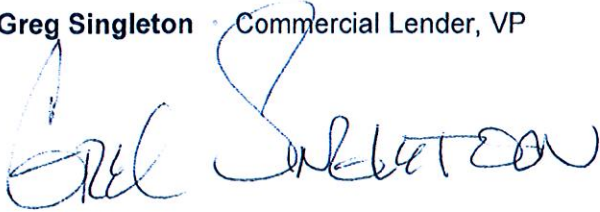
The City may draw upon this Letter of Credit upon written notification (the "Written Draw Request") to the Bank that the Obligee had defaulted in its obligation to the City construct, install and / or complete the development related improvements required for the Project by 6-24-17 ("Initial Expiration Date") or if the Obligee has failed to post a new Letter of Credit or other sufficient security approved by the City's Director of Finance, prior to initial Expiration Date, securing the construction, installation and / per completion of the improvements.

The written draw request shall be on official City letterhead, signed by the City Manager, the City's Finance Director, or other authorized official of the City. The amount of the Letter of Credit shall be reduced automatically by the amount of any draw hereunder. A copy of this Letter of Credit must accompany any presented documents.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon the presentation and delivery of documents as specified to us at the address specified above, no later than the initial Expiration Date.

It is a condition of the letter of credit that it shall be deemed automatically extended, without amendment, for one year from the initial expiration date hereof, unless at least 60 days prior to such date, we shall send you written notice, via certified mail, that we elect not to consider this letter of credit renewed for such additional one-year period.

Greg Singleton Commercial Lender, VP

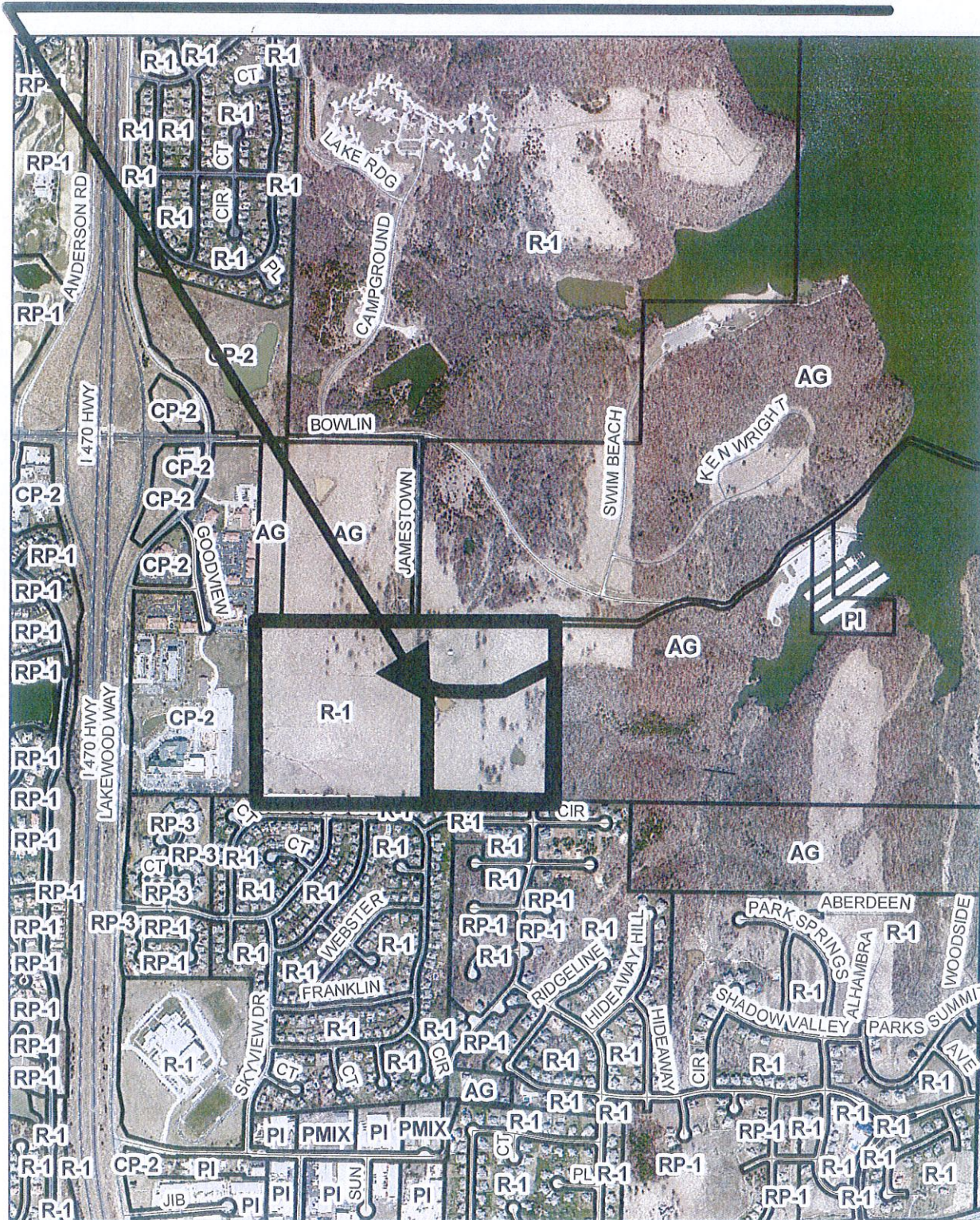
A handwritten signature in black ink, appearing to read "Greg Singleton". The signature is written in a cursive style with a large, stylized "S".

NBKC Bank

913-253-0134

Greg.singleton@nbkc.com

PL#2016-062 - FINAL PLAT MONTICELLO, 2ND PLAT LOTS 33-68, & TRACTS D-F ENGINEERING SOLUTIONS, APPLICANT



Packet Information

File #: RES. NO. 17-02, **Version:** 1

A RESOLUTION DIRECTING STAFF TO EXTEND THE TIME PERIOD FOR THE SUSPENSION AND DELAY OF THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND APPLICATIONS FOR BUILDING PERMITS IN AN AREA GENERALLY BOUNDED BY PINE TREE PLAZA, 50 HIGHWAY, ADESA PROPERTY, JEFFERSON STREET, PERSELS (WEST OF M-291), 16TH STREET (EAST OF M-291) THE UNION PACIFIC RAILROAD RIGHT-OF-WAY AND SOUTH M-291 HIGHWAY TO A DATE OF MARCH 17, 2017.

It was determined that the EnVision LS Area Development Plan (ADP) Design Standards are required to be processed through public hearings at both the Planning Commission and City Council. Therefore, public hearings have been scheduled for February 14th for the Planning Commission and March 2nd for City Council which is beyond the current administrative delay due to expire February 3rd, 2017.

The requested time extension to March 17, 2017 provides sufficient time to be processed through both public hearings which are anticipated to be completed on March 2, 2017. The remaining two weeks allows for any continuances that may be requested for further consideration.

Recommendation: Staff recommends authorizing the administrative delay extension to March 17, 2017.

RESOLUTION NO. 17-02

A RESOLUTION DIRECTING STAFF TO EXTEND THE TIME PERIOD FOR THE SUSPENSION AND DELAY OF THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND APPLICATIONS FOR BUILDING PERMITS IN AN AREA GENERALLY BOUNDED BY PINE TREE PLAZA, 50 HIGHWAY, ADESA PROPERTY, JEFFERSON STREET, PERSELS (WEST OF M-291), 16TH STREET (EAST OF M-291) THE UNION PACIFIC RAILROAD RIGHT-OF-WAY AND SOUTH M-291 HIGHWAY TO A DATE OF MARCH 17, 2017.

WHEREAS, the City of Lee's Summit, Missouri (City) is a community of approximately 93,000 residents located within 65 square miles in Jackson and Cass Counties which has seen greater than a 150% population increase in the last two decades; and,

WHEREAS, a new interchange at 50 Highway and South M-291 will begin construction Fall of 2016 bringing new development growth opportunities to major redevelopment areas north and south of the new interchange; and,

WHEREAS, the City is presently in the process of preparing a revised land use and master development plan for the properties located within the respective administrative delay area that will provide a refined development vision taking advantage of the opportunities provided by the newly constructed interchange; and

WHEREAS, the rate of commercial and industrial growth has created redevelopment pressures that threaten to erode the potential development vision being prepared for this area; and,

WHEREAS, the geographic area included in this Administrative Delay is an area generally bounded by Pine Tree Plaza, 50 Highway, Adesa Property, Jefferson Street, Persels (west of M-291), Bailey (east of M-291), 16th Street (east of M-291), Union Pacific Railroad Right-of-Way and South M-291 Highway; and,

WHEREAS, March 31, 2016, the City Council directed staff to prepare a resolution for an administrative delay to prepare a land use and master redevelopment plan; and,

WHEREAS, the City Council is elected and is duty-bound to promote the community's health, safety, morals and the general welfare, which duty includes the preparation of plans and ordinances designed to effectuate the coordinated development of the City, and that, in accordance with existing and future needs, will best promote the general welfare, as well as conserve property values and encourage the most appropriate use of land throughout the City; and,

WHEREAS, generally, when it becomes apparent that there is a need to amend existing plans or ordinances to promote the health, safety and general welfare, a "race of diligence" sometimes ensues between landowners seeking to establish vested rights under existing law and the City Council seeking to enact an amended plan or ordinance before such vested rights are established, thereby creating additional safety and general welfare problems; and,

WHEREAS, this "race of diligence" is counterproductive to both individual landowners and the City as a whole, because landowners rush to submit applications that may not have received adequate consideration and to gain approval of such applications, and the City rushes to adopt plan or ordinance amendments that may not have received thorough analysis or been subject to full

RESOLUTION NO. 17-02

public debate with respect to the issues, goals, and policies of the proposed development controls, and therefore, may not be as responsive to either the City's or the applicant's goals and needs or received the degree of community input and debate as would otherwise be possible and appropriate; and,

WHEREAS, Section 1.070 of the Unified Development Ordinance ("UDO") provides for the administrative delay of development applications and building permit applications within a defined geographic location of the City by resolution of the City Council, based upon the likelihood that proposed amendments to the UDO or planning policies may impact the nature of development applications, if the Council determines that development applications related to property within the defined geographic area covered by the resolution will be impacted by the proposed Chapter text amendment or planning policy; and,

WHEREAS, this resolution is adopted pursuant to the authority granted to the Council by section 1.070 of the UDO because the Council has determined that development applications and building permit applications will be impacted by the pending land use and master development plan being prepared and considered by the City; and,

WHEREAS, the City Council also recognizes that administrative delay is an extraordinary remedy that should be used judiciously and only after serious evaluation and analysis by staff and the City Council, and based upon staff's carefully considered recommendation; and,

WHEREAS, to ensure that the City Council successfully, fairly and rationally fulfills this duty it is necessary to delay all development applications and building permit applications for the construction of new buildings or expansion of existing buildings in the administrative area herein defined to preserve the development vision currently under consideration until the completion of the revised land use and master development plan amendments that establish such goals, objectives and recommendations which may result therefrom; and,

WHEREAS, the City Council also recognizes that it has an equally important duty to fully consider applications for the issuance of building permits whenever such applications are consistent with the City's Comprehensive Plan and the City's Code of Ordinances, and that it is necessary that the status quo be preserved in the City for the shortest amount of time that will allow the City to complete the land use and master development plan and establish policies necessary for the preservation of the redevelopment vision; and,

WHEREAS, the City Council has determined that it is appropriate and necessary to provide an appeal process to individuals or entities affected by this administrative delay; and

WHEREAS, the City Council recognizes that it is appropriate to extend the duration of the Administrative Delay for good cause; and

WHEREAS, sufficient good cause has been demonstrated to continue the duration of the Administrative Delay to allow the Design Standards that will become applicable for all development within the area of delay to continue to completion.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT,

RESOLUTION NO. 17-02

MISSOURI, as follows:

SECTION 1. Authorization of Administrative Delay.

A. Initiation of Delay, Geographic Area and Duration of Delay. The City Council finds that development applications and building permit applications which authorize construction of new buildings or expansion of existing buildings within the geographic area defined as an area generally bounded by Pine Tree Plaza, 50 Highway, Adesa Property, Jefferson Street, Persels (west of M-291), Bailey (east of M-291), 16th Street (east of M-291), Union Pacific Railroad Right-of-Way and South M-291 Highway, as depicted in Exhibit A attached hereto and incorporated by reference as if fully set forth herein, will be impacted by the pending land use and master development plan policy deliberations, and approval of such applications may adversely affect the character of this newly refined redevelopment area while the appropriate land uses and development plans are prepared and considered by the City. The City Council hereby directs that no development application or building permit application which authorize construction of new buildings or expansion of existing buildings (the "Affected Permits") shall be processed, while the City undergoes deliberations and until the adoption of the land use and master development plan implementing such policies and establish such goals, objectives and recommendations which may result therefrom. Provided that, in no event shall this direction extend beyond March 17, 2017, unless the City Council, by motion approved by a majority vote of the Councilmembers present at a duly noticed meeting, extends the date of this administrative delay.

B. Determination for Delayed Permits. Any application for an Affected Permit in the area geographically defined in section 1.A of this resolution received during the effective period of this resolution shall be held in suspension and delayed by the Planning and Codes Administration Department.

SECTION 2. Appeal.

A. Filing with City Clerk. If an applicant believes that the City's determination not to accept or to process an Affected Permit is unreasonable, the applicant may file a written appeal of the determination with the City Clerk within ten (10) business days after receiving written notice of the determination.

B. City Council Hearing. If an appeal is timely and properly filed, the City Clerk shall schedule a hearing before the City Council at its next regularly scheduled meeting, or as soon thereafter as practicable in the normal course of managing Council agendas, at which the applicant shall bear the burden of establishing by a preponderance of the evidence that processing the Affected Permit will not undermine the spirit and intent of the pending study including pending policies, goals or objectives. If the City Council determines that such action will not undermine the spirit and intent, it shall direct that the application be processed.

C. Standards for Determining Spirit and Intent. The City Council shall consider the following in determining whether applications, with respect to which an appeal has properly been filed, if approved, will undermine the spirit and intent of the pending land use and master development plan:

- (a) the City's interest in protecting the public's health, safety, and general welfare;
- (b) the adverse effect upon the future vision of the redevelopment area being considered;

RESOLUTION NO. 17-02

- (c) the City's interest in avoiding the creation of conflicts with the future redevelopment plan;
- (d) the extent to which the proposed use, if applicable, will negatively affect the continuity of the redevelopment plan;
- (e) the economic impact and hardship of the delay upon the owner.

SECTION 3. No Amendment of Code. This Resolution is not intended as, and should not be interpreted as, an amendment to the City's Comprehensive Plan, the Code of Ordinances or the Unified Development Ordinance, but is merely direction to staff with respect to the acceptance of and processing of applications for Affected Permits within the geographic area as defined herein and as depicted in Exhibit A.

PASSED and ADOPTED by the City Council for the City of Lee's Summit, Missouri this _____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

Packet Information

File #: RES. NO. 17-03, **Version:** 1

A RESOLUTION AUTHORIZING THE MAYOR TO APPOINT SUCCESSOR DIRECTORS TO THE BLUE PARKWAY AND COLBERN ROAD COMMUNITY IMPROVEMENT DISTRICT.

Proposed City Council Motion:

MOTION: I move for adoption of A RESOLUTION AUTHORIZING THE MAYOR TO APPOINT SUCCESSOR DIRECTORS TO THE BLUE PARKWAY AND COLBERN ROAD COMMUNITY IMPROVEMENT DISTRICT.

RESOLUTION NO. 17-03

A RESOLUTION AUTHORIZING THE MAYOR TO APPOINT SUCCESSOR DIRECTORS TO THE BLUE PARKWAY AND COLBERN ROAD COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, the Blue Parkway and Colbern Road Community Improvement District (the "District"), established on March 26, 2012, by Ordinance No. 7165 of the City Council of the City of Lee's Summit, Missouri, is a political subdivision of the State of Missouri and is transacting business and exercising powers granted to it pursuant to the Community Improvement District Act, Sections 67.1401 through 67.1571 of the RSMo, as amended (the "CID Act"); and,

WHEREAS, the CID Act and Article III Section 6 of the District Bylaws provide for the Mayor of the City to appoint Successor Directors of the District, with the consent of the City Council, and the District Bylaws set forth that Successor Directors shall serve for a term of three years.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT AS FOLLOWS:

SECTION 1. That the Mayor hereby appoints, and the City Council approves the appointments of, Conrad Lamb, Michael VanBuskirk, and Guy Swanson as Successor Directors to each serve for the term of March 26, 2017 through March 25, 2020.

SECTION 2. That this Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____ 2017.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Denise R. Chisum

APPROVED AS TO FORM:

City Attorney Brian W. Head

Packet Information

File #: 2016-0501, **Version:** 1

CONTINUED PUBLIC HEARING - Appl. #PL2016-114 - PRELIMINARY DEVELOPMENT PLAN - Approximately 7.11 acres located at the southeast corner of NW Blue Parkway and NW Colbern Road for the proposed Summit Village; Newmark Grubb Zimmer, applicant.

(NOTE: This Public Hearing is to be **CONTINUED** to a date certain of **February 9, 2017** per staff's request.)

Issue/Request:

This preliminary development plan application is for the proposed Summit Village development located on land that was annexed into the city in 2011. The subject preliminary development plan covers two lots on 7.11 acres that yield a total building area of 38,500 square feet. The project is proposed to be completed in multiple phases. Phase I is composed of Lot 1, which contains an 18,500 sq. ft. eye care and surgery center that has its own phasing option for construction. Construction of the 18,500 square foot building may be divided into a 6,500 sq. ft. Phase IA and a 12,000 sq. ft. Phase IB. Phase II is composed of Lot 2, which contains two office/retail buildings that will be 10,000 square feet each. The proposed building elevations incorporate a significant amount of brick, block and stucco, plus the use of an architectural metal panel system to accentuate the entrances to the buildings on Lot 2.

A conceptual master plan for the surrounding 61 acres has also been submitted to illustrate how the subject 7-acre development ties into and relates to the long-term vision for the area. The conceptual master plan consists of 17 additional office/commercial use buildings totaling approximately 542,500 sq. ft. The future development of the area under the conceptual master plan will require separate preliminary development plan approval as additional phases of the development are implemented.

The applicant requests modifications to the high impact screening along the eastern property line of Lot 2. Staff supports the requested modification.

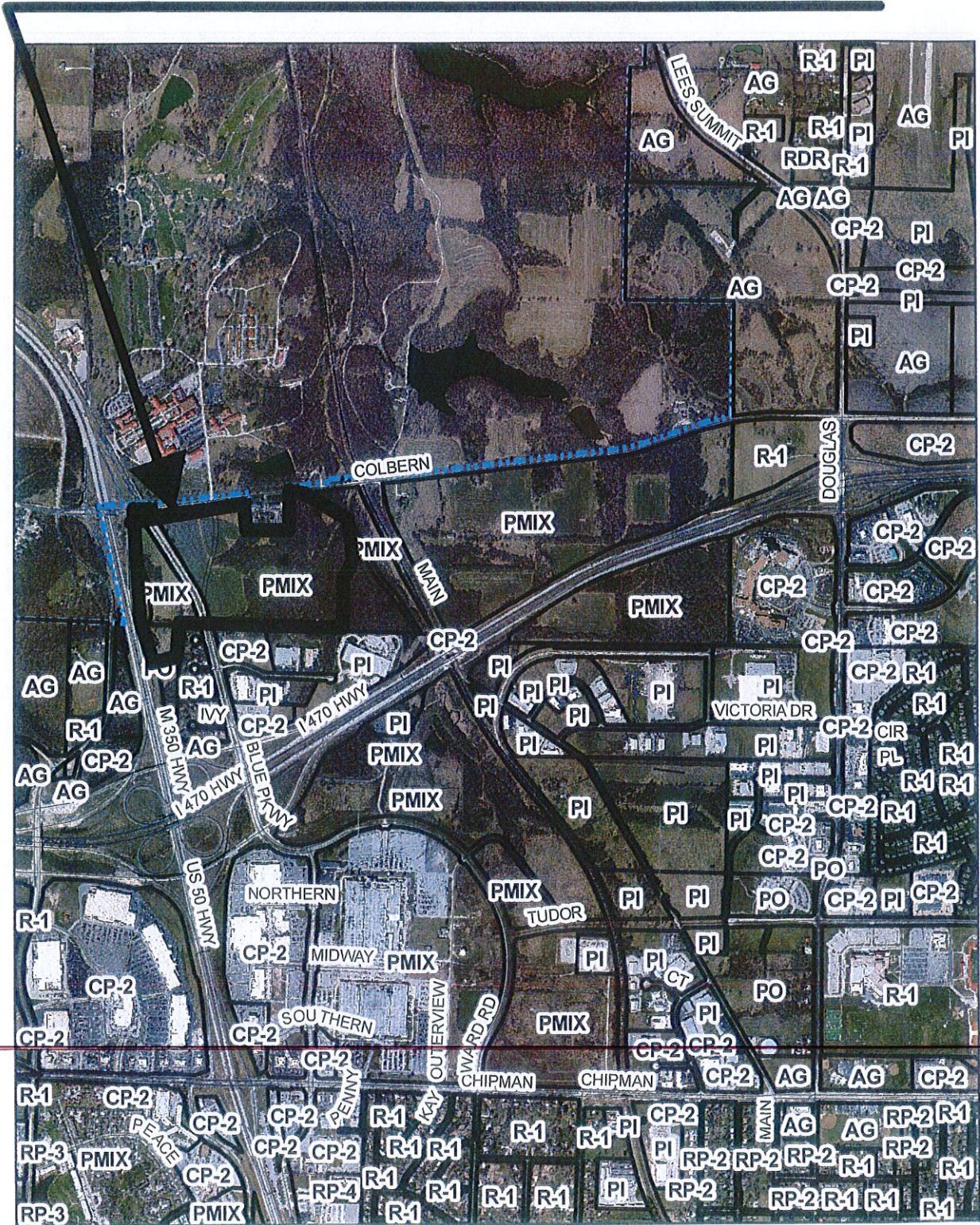
- 2 lots and 1 common area tract on 7.11 acres
- 55% proposed overall impervious coverage - 80% maximum allowed impervious coverage
- 45% proposed overall open area - 20% minimum required open area
- 0.15 proposed overall FAR - 0.55 maximum allowed FAR
- 193 parking spaces required - 203 parking spaces provided

Recommendation: Staff recommends **APPROVAL** of the preliminary development plan, subject to the following:

1. A modification shall be granted to the required 20 foot wide high-impact landscape screen between the proposed site and the adjacent apartment development to the east of Lot 2, to allow medium impact landscape screening within a 10 foot wide buffer yard, plus a 6' vinyl fence with masonry piers along a portion of the the eastern property line of Lot 2 as requested.
2. Development shall be in accordance with the preliminary development plan, date stamped December 6, 2016.
3. Approval of the preliminary development plan is only for Lots 1 & 2. Development of the conceptual master plan outside of Lots 1 & 2 shall require preliminary development plan approval under separate

application.

**PL#2016-114 -PRELIMINARY DEVELOPMENT PLAN
SUMMIT VILLAGE
NEWMARK GRUBB ZIMER, APPLICANT**



Packet Information

File #: 2016-0805, Version: 1

CONTINUED PUBLIC HEARING - Appl. #PL2016-184 - SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers - Walmart, 1000 NE Sam Walton Lane; Walmart Real Estate Business Trust, applicant.

Issue/Request:

The applicant requests renewal of the special use permit to allow for the continued use of 25 temporary storage containers located on the west and southwest areas of the property, to the rear of the building. The applicant requests use of the containers on the property from October 1st to December 31st each year for a period of 10 years. The containers are used for storage of additional inventory during the holiday season.

The original special use permit was approved on October 8, 1996, for a period of 10 years. The original approval granted the use of 18 temporary storage containers from October 15th to December 10th each year. The special use permit was renewed in 2007 for an additional 10 years from the date of the original expiration. As part of the renewal, the number of containers allowed on the property was increased from 18 to 25, and the date range that the containers were allowed to be used on the property was expanded to span from October 1st to December 31st.

Proposed City Council Motion:

I move to direct staff to present an ordinance approving Continued PUBLIC HEARING - Appl. #PL2016-184 - SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers - Walmart, 1000 NE Sam Walton Ln; Walmart Real Estate Business Trust, applicant

Recommendation: Staff recommends **APPROVAL** of the special use permit, subject to the following:

1. The special use permit shall be granted for a period of 10 years, from the previous expiration date, to expire on October 8, 2026.
2. No more than twenty-five (25) 8 foot x 40 foot storage containers shall be allowed.
3. Containers shall be allowed for a period of twelve weeks. The containers shall not be placed on the premises prior to October 1st, and shall be removed no later than December 31st of each calendar year during which the special use permit is effective.
4. The container storage areas shall be as shown on the original site plan dated August 7, 2007, and shall remain outside the fire lanes.

Committee Recommendation:

PLANNING COMMISSION ACTION: On motion of Mr. DeMoro and seconded by Mr. Funk, the Planning Commission voted four "yes" (Mr. Lopez, Mr. Norbury, Mr. Funk and Mr. DeMoro) and two "no" (Mr. Gustafson and Ms. Roberts) by voice vote to **APPROVE Appl. #PL2016-184 - SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers - Walmart, 1000 NE Sam Walton Ln; Walmart Real Estate Business Trust, applicant, subject to staff's letter, dated January 6, 2017,**

recommendation items 1-4.

On the motion of Mr. DeMoro, seconded by Mr. Lopez, the Planning Commission members voted by roll call vote of three "yes" (Mr. DeMoro, Mr. Lopez, Mr. Gustafson) and three "no" (Chairperson Norbury, Ms. Roberts, Mr. Funk) to recommend **APPROVAL** of continued Application PL2016-114, Preliminary Development Plan: approximately 7.11 acres located at the southeast corner of NW Blue Pkwy. and NW Colbern Rd. for the proposed Summit Village; Newmark Grubb Zimmer, applicant; subject to staff's letter of January 6, 2017, specifically Recommendation Items 1 through 3.

Ms. Heanue confirmed that since the vote was tied, the matter would go to the City Council. She added that the Legal Department had confirmed the title of the applicant in the motion, since the agenda had given something different.

Chairperson Norbury stated for the record that he had not been expressing disapproval of the project's concept in requesting the changes.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained.)

3. Continued Application #PL2016-184 - SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers - Walmart, 1000 NE Sam Walton Lane, Walmart Real Estate Business Trust, applicant

Chairperson Norbury opened the hearing at 5:33 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Ms. Callie Butts stated that she was a co-manager at the Walmart retail store at 1000 NE Sam Walton Lane in Lee's Summit. They were requesting renewal of the ten-year Special Use Permit that allowed the use of the temporary storage containers during the entire month of December. They also wanted to expand the time period for holiday season storage to 12 weeks: from October 1st through December 31st. The containers were used for overflow inventory for holiday sales.

Chairperson Norbury noted that staff's letter included four Recommendation Items and asked Ms. Butts if the applicant agreed with these, and Ms. Butts answered that they did.

Following Ms. Butts' presentation, Chairperson Norbury asked for staff comments.

Mr. Soto entered Exhibit (A), list of exhibits 1-15 into the record. He stated that the requested SUP renewal would be the second one, as it had been originally approved in October of 1996. The proposed location of the storage containers, along the west (back) side of the store, were shown on the displayed site plan in yellow. A solid masonry fence spanned the entire Independence Avenue frontage, from Tudor Road to the back driveway, on that side. That part of the property also sat below the roadway. The containers were only used during the holiday period, from the first of October through the end of the year. Temporary storage containers needed for projects like remodeling were allowed by the ordinance. The request was for an additional ten years, and up to 25 containers.

Staff had not received any complaints from nearby property owners including any complaints about noise, trash or debris. A residential neighborhood existed directly to the west of the store's back lot. Staff recommended approval of the Special Use Permit renewal, subject to Recommendation Items 1 through 4.

Following Mr. Soto's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. Seeing none, he then asked if the Commission had questions for the applicant or staff.

Ms. Roberts asked if anyone else had an SUP for storage containers. Mr. Soto replied that Walmart was the only one at present. They had not needed them during the holiday season that just ended; but had in recent years. He confirmed for Ms. Roberts that no one had complained about the containers being a nuisance or eyesore.

Mr. DeMoro asked if the containers had merchandise in them when they were delivered and set up. Ms. Butts answered that they were not. The merchandise was transferred from the store to the containers. While the store might use all 25, the containers were only ordered as needed. They were kept locked and only members of management had keys. Mr. DeMoro then asked if the containers arrived in good condition and if store management had the right of refusal if they were not. Ms. Butts answered that they did, and could require the company leasing them to pick them back up.

Chairperson Norbury noted that this application was continued from the December 13, 2016 meeting, at which the applicant had not shown up. Ms. Butts answered that she was new to this store and had not been aware of the previous meeting. Mr. Soto related that there had been a misunderstanding on the part of the store manager, who had thought they would need to be present for the City Council hearing but not for the Planning Commission.

Mr. Gustafson asked about the setbacks in the back of the Walmart lot. He also wanted to know if it was a paved area and if it had parking. Mr. Soto answered that it was paved, and no parking was available on that part of the lot, as it was a loading dock area. The setback would apply only to a permanent structure, not for a temporary use. Mr. Gustafson then asked if the containers were needed because of a shortage of storage space in the store, or because the building was too small; and Ms. Butts answered that they were not. The freight overflow peaked sharply on high-volume days like Black Friday. It was a common practice at every Walmart.

Mr. Funk asked if the temporary storage would have any impact on fire lanes, and Fire Chief Eden answered that it would not. Fire lanes were maintained any time they brought stock on site; and they had to have access to their shipping containers not only for stocking shelves but also adequate circulation for fire access.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:43 p.m. and asked for discussion among the Commission members.

Ms. Roberts noted that these storage methods had been used since October of 1996 and so Walmart had 20 years to come up with a better solution. She did not like the idea of 30 years of storage containers. Chairperson Norbury pointed out that they were actually building a solution on M-150. He added that he drove by on Independence Avenue every day and really could not

see the containers. Moreover, there had been no complaints and one of the near neighbors was a senior living center. Mr. Lopez said that he worked nearby as well, and he did not think the containers would be a problem.

Hearing no further discussion, Chairperson Norbury called for a motion.

Mr. DeMoro made a motion to recommend approval of continued Application PL2016-184, Special Use Permit renewal for outdoor storage of temporary storage containers: Walmart, 1000 NE Sam Walton Lane; Walmart Real Estate Business Trust, applicant; subject to staff's letter of January 6, 2017, specifically Recommendation Items 1 through 4. Mr. Funk seconded.

Chairperson-Norbury asked if there was any discussion of the motion. Hearing none, he called for a vote.

On the motion of Mr. DeMoro seconded by Mr. Funk, the Planning Commission members voted by roll call vote of four "yes" (Chairperson Norbury, Mr. DeMoro, Mr. Lopez, Mr. Funk) and two "no" (Ms. Roberts, Mr. Gustafson) to recommend **APPROVAL** of continued Application PL2016-184, Special Use Permit renewal for outdoor storage of temporary storage containers: Walmart, 1000 NE Sam Walton Lane; Walmart Real Estate Business Trust, applicant; subject to staff's letter of January 6, 2017, specifically Recommendation Items 1 through 4.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained.)

4. Application #PL2016-206 - REZONING from R-1 & CP-2 to PMIX and CONCEPTUAL DEVELOPMENT PLAN - West Pryor Village, approximately 70 acres generally bounded by I-470 on the north, NW Pryor Rd on the east and NW Lowenstein Dr. on the southwest, City of Lee's Summit, applicant

Chairperson Norbury opened the hearing at 5:48 p.m. and stated that Application PL 2016-206 was being continued to a date certain of January 24, 2017, at the applicant's request. He asked for a motion to continue.

Ms. Roberts made a motion to continue Application PL2016-206 to a date certain of January 10, 2017. Mr. Gustafson seconded.

Chairperson Norbury asked if there was any discussion of the motion. Hearing none, he called for a vote.

On the motion of Ms. Roberts, seconded by Mr. Gustafson, the Planning Commission members voted unanimously by voice vote to **CONTINUE** Application PL2016-206 to a date certain of January 10, 2017.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained.)

City of Lee's Summit

Development Services Department

January 6, 2017

TO: Planning Commission

FROM: Robert G. McKay, AICP, Director of Planning and Special Projects 

RE: **Continued PUBLIC HEARING – Appl. #PL2016-184 – SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers – Walmart, 1000 NE Sam Walton Ln; Walmart Real Estate Business Trust, applicant**

Commentary

The applicant requests renewal of the special use permit to allow for the continued use of 25 temporary storage containers located on the west and southwest areas of the property, to the rear of the building. The applicant requests use of the containers on the property from October 1st to December 31st each year for a period of 10 years. The containers are used for storage of additional inventory during the holiday season.

The original special use permit was approved on October 8, 1996, for a period of 10 years. The original approval granted the use of 18 temporary storage containers from October 15th to December 10th each year. The special use permit was renewed in 2007 for an additional 10 years from the date of the original expiration. As part of the renewal, the number of containers allowed on the property was increased from 18 to 25, and the date range that the containers were allowed to be used on the property was expanded to span from October 1st to December 31st.

Recommendation

Staff recommends **APPROVAL** of the special use permit, subject to the following:

1. The special use permit shall be granted for a period of 10 years, from the previous expiration date, to expire on October 8, 2026.
2. No more than twenty-five (25) 8 foot x 40 foot storage containers shall be allowed.
3. Containers shall be allowed for a period of twelve weeks. The containers shall not be placed on the premises prior to October 1st, and shall be removed no later than December 31st of each calendar year during which the special use permit is effective.
4. The container storage areas shall be as shown on the original site plan dated August 7, 2007, and shall remain outside the fire lanes.

Project Information

Proposed Use: outdoor storage of temporary storage containers

Location: 1000 NE Sam Walton Lane

Zoning: CP-2 (Planned Community Commercial District)

Surrounding zoning and use:

North (across NE Tudor Road): R-1 (Single-family Residential) – Community of Christ Church; PMIX – (Planned Mixed Use) – senior housing facility; and CP-1 (Planned Neighborhood Commercial District) – Lee's Summit Christian Church

South: R-1 – medical office facility; and CP-2 – vacant

West (across NE Independence Avenue): RP-3 (Planned Residential Mixed use District) and CP-2 – senior housing facility

East: CP-2 – retail

Background

- October 8, 1996 – The City Council approved a special use permit for a period of ten (10) years for the use of 18 temporary storage containers structures from October 15th through December 10th of every calendar year of the permit, by Ordinance No. 4355.
- November 15, 2007 – The City Council approved a special use permit for a period of ten (10) years for the use of 25 temporary storage containers structures from October 1st through December 31st of every calendar year of the permit, by Ordinance No. 6534.

Analysis of the Special Use Permit

Ordinance Requirement. The Unified Development Ordinance (UDO) Section 10.020.B., states that uses not specifically set forth as “permitted uses”, “prohibited uses” or as “uses subject to conditions” elsewhere in this Chapter shall be deemed to be “special uses” unless otherwise determined. The Commission and Governing Body may consider granting a special use permit for such uses in accordance with the requirements of Article 4.”

Previously Approved. The previous special use permit renewal for outdoor storage of temporary storage containers on the property was approved with the following conditions:

1. No more than twenty-five (25) 8 foot x 40 foot storage units shall be allowed.
2. Containers shall be allowed for a period of twelve (12) weeks; cannot be placed on the premises prior to October 1st; and shall be removed no later than December 31st of each calendar year of the permit.
3. Six (6) evergreen trees shall be added along the southwest corner of the property to better screen the temporary storage containers from the neighboring properties to the south and west. Trees shall have a minimum height of eight (8) feet at the time of planting, and shall be installed within thirty (30) days of final approval.
4. The storage units shall be located as shown on the site plan dated August 7, 2007, and shall remain outside of the fire lanes.

To staff’s knowledge, the applicant has complied with all of the conditions associated with the previously approved special use permits.

Time Period. The applicant requests renewal of the special use permit for a period of 10 years. Staff recommends a time period of 10 years from the previous expiration date, to expire on October 8, 2026.

Code and Ordinance Requirements

The items in the box below are specific to this development and must be satisfactorily addressed in order to be in compliance with the Codes and Ordinances of the City.

Fire

1. All issues pertaining to life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to the safety to fire fighters and emergency responders during emergency operations, shall be in accordance with the 2012 International Fire Code.

2. Fire Department access around the rear of the structure and to the FDC shall be maintained.
3. Combustible waste material creating a fire hazard shall not be allowed to accumulate in buildings or structures or upon premises. A minimum 10 feet of clearance shall be maintained between storage containers and baled cardboard stored in the lot.

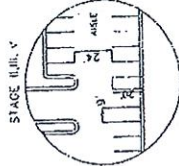
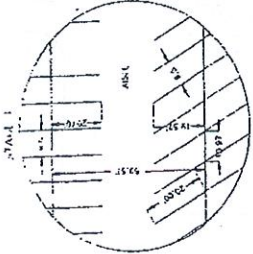
RGM/hsj

Attachments:

1. Site Plan, date stamped August 7, 2007 (2 pages)
2. Pictures of Surrounding Properties, dated December 9, 2016 – 3 pages
3. Location Map

PRELIMINARY SITE DEVELOPMENT PLAN, DISTRICT C-1

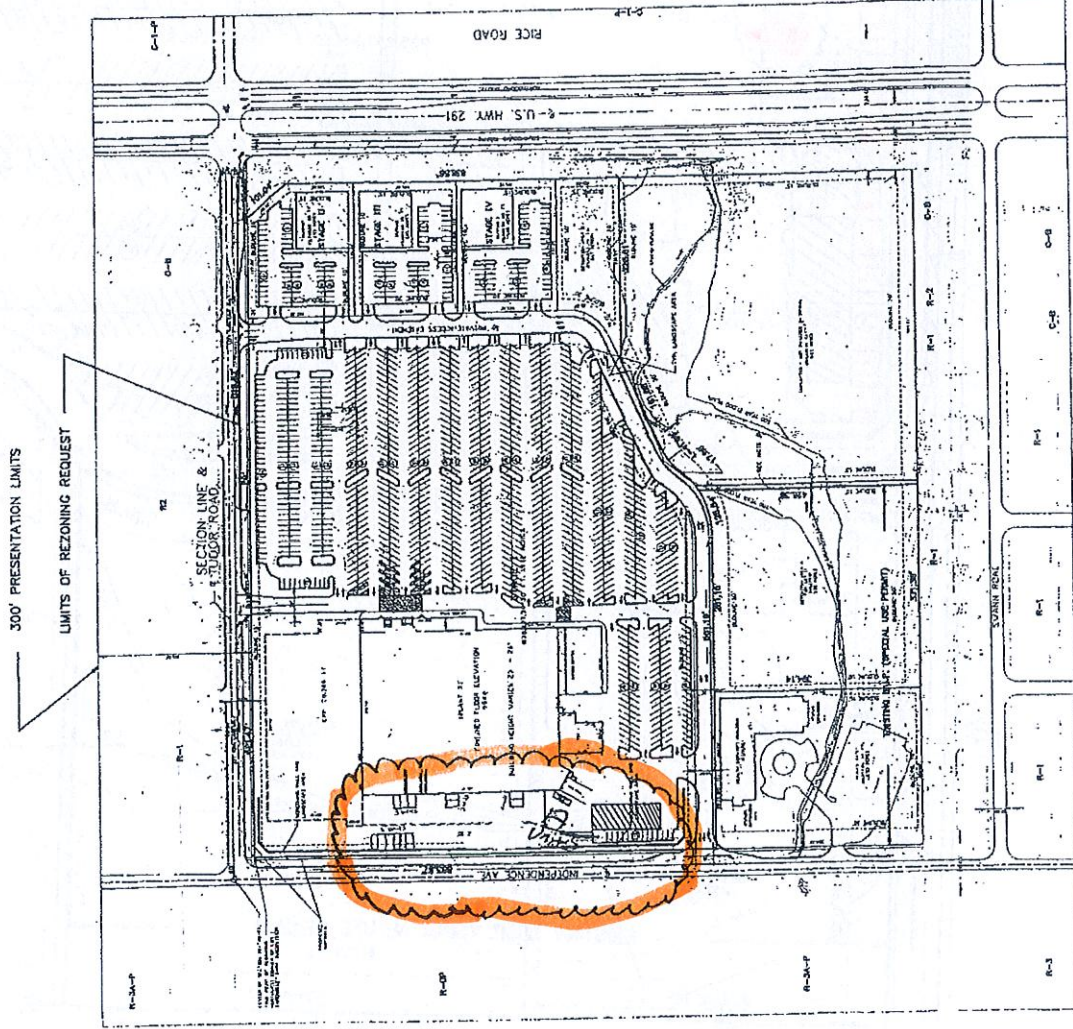
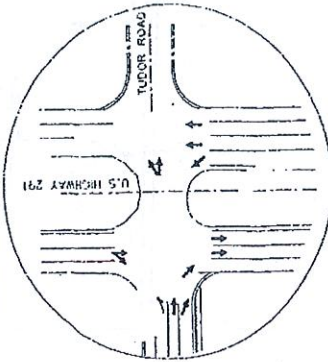
PARKING LAYOUT IMPROVEMENTS



STAGE III/IV



HIGHWAY 291 AND TUDOR ROAD GEOMETRICS & TURNING MOVEMENTS



LOT AREA:

STAGE I	14,323 SQ. FT. 0.33 ACRES
STAGE II	14,323 SQ. FT. 0.33 ACRES
TOTAL	28,646 SQ. FT. 0.66 ACRES
STAGE III	52,426 SQ. FT. 1.20 ACRES
STAGE IV	52,426 SQ. FT. 1.20 ACRES
TOTAL	104,852 SQ. FT. 2.40 ACRES

NOTES:
 1. ALL LOT AREAS OF DISTRICT C-1 ARE ZONED C-1.
 2. THE EAST QUARTER OF THE SECTION 30, TOWNSHIP 35 NORTH, RANGE 12 WEST IS NOT INTENDED TO BE FINAL PLAN.

OWNER:
 LEES SUMMIT HOSPITAL FOUNDATION AND RESEARCH MENTAL HEALTH SERVICES
 WILLIAM G. DIETRICH

LEGEND:
 PARKING STAGE I - REQUIRED BY CODE
 Requires 107.5 spaces for 100,000 SF, 100' frontage
 Requires 6.875 spaces for 1,000 SF, 10' frontage
 See the table below for the rest of the code.
 PARKING PROVIDED:
 1,000 SPAK
 100' frontage
 6.875 SPAK
 10' frontage

STAGES:
 STAGE I: THESE SITES ARE ONLY IN A CONCEPTUAL, TENTATIVE SPECIFIC USE AND DETERMINING COMPARTMENTS CANNOT BE DETERMINED.
 STAGE II: REQUIRED BY CODE
 50 SPACES
 50' FRONTAGE
 STAGE III: REQUIRED BY CODE
 50 SPACES
 50' FRONTAGE
 STAGE IV: REQUIRED BY CODE
 50 SPACES
 50' FRONTAGE

FLOOR AREA RATIO:
 STAGE I THROUGH IV = 0.50
 MINIMUM USE NOT YET ESTABLISHED - EXACT FLOOR AREA AND LOCATION TO BE SET LATER.
 STAGE II (ASSUMING 1000 SQ FT. BLDG) = 219
 STAGE III (ASSUMING 1000 SQ FT. BLDG) = 219
 F.A.R. WILL NEVER BE PERMITTED TO EXCEED 0.50

STREETS:
 PARALLEL STREET TO BE AS FRONTAGE
 PARALLEL ACCESS ROAD WITH 40' RIGHT OF WAY
 PARALLEL DRIVEWAY WITH 20' RIGHT OF WAY
 PARALLEL DRIVEWAY WITH 10' RIGHT OF WAY
 PARALLEL DRIVEWAY WITH 5' RIGHT OF WAY
 PARALLEL DRIVEWAY WITH 3' RIGHT OF WAY

LOT COVERAGE (MINIMUMS):
 10% of lot area covered with any structure
 10% of lot area covered with any structure
 10% of lot area covered with any structure

INDICATES STORAGE CONTAINERS:
 STAGE I - 342
 STAGE II - 476
 STAGE III - 484
 STAGE IV - 496

RECEIVED
 AUG - 7 2007

PLANNING AND DEVELOPMENT

LEES SUMMIT - PRELIM. SITE DEVELOPMENT

OWNER:
 LEES SUMMIT HOSPITAL FOUNDATION AND RESEARCH MENTAL HEALTH SERVICES
 WILLIAM G. DIETRICH

SCALE: 1" = 100 FT.

LEES SUMMIT - PRELIM. SITE DEVELOPMENT

LEES SUMMIT - PRELIM. SITE DEVELOPMENT

CENTER OF GRAVITY
TRUE POINT OF BEGINNING
NORTHWEST CORNER OF LOT 1
CARONDELET PARK SUBDIVISION

PROPOSED
SIDEWALK

SCREENING WALL AND
LANDSCAPE AREA

EXP. 22,280 SF

R-OP

INDEPENDENCE AVE.

121,267 SF
FINISHED FLOOR ELEVATION
994.0

BUILDING HEIGHT VARIES 23' - 26'

835,297.34 SQ. FT. 19.12 ACRES

SCREENING WALL AND
LANDSCAPE AREA

BLDLINE 25

R-3A-P

HEALTH SERVICES BUILDING
(FUTURE)
FUTURE DEVELOPMENT

DETENTION AREA A
ON LOT 11
146,178.01
3.25 ACRES

ROADS SITE
116,377.06 SQ. FT.
2.53 ACRES

EXISTING S.U.P. (SPECIAL USE PERMIT)
BLDLINE 30

R-1

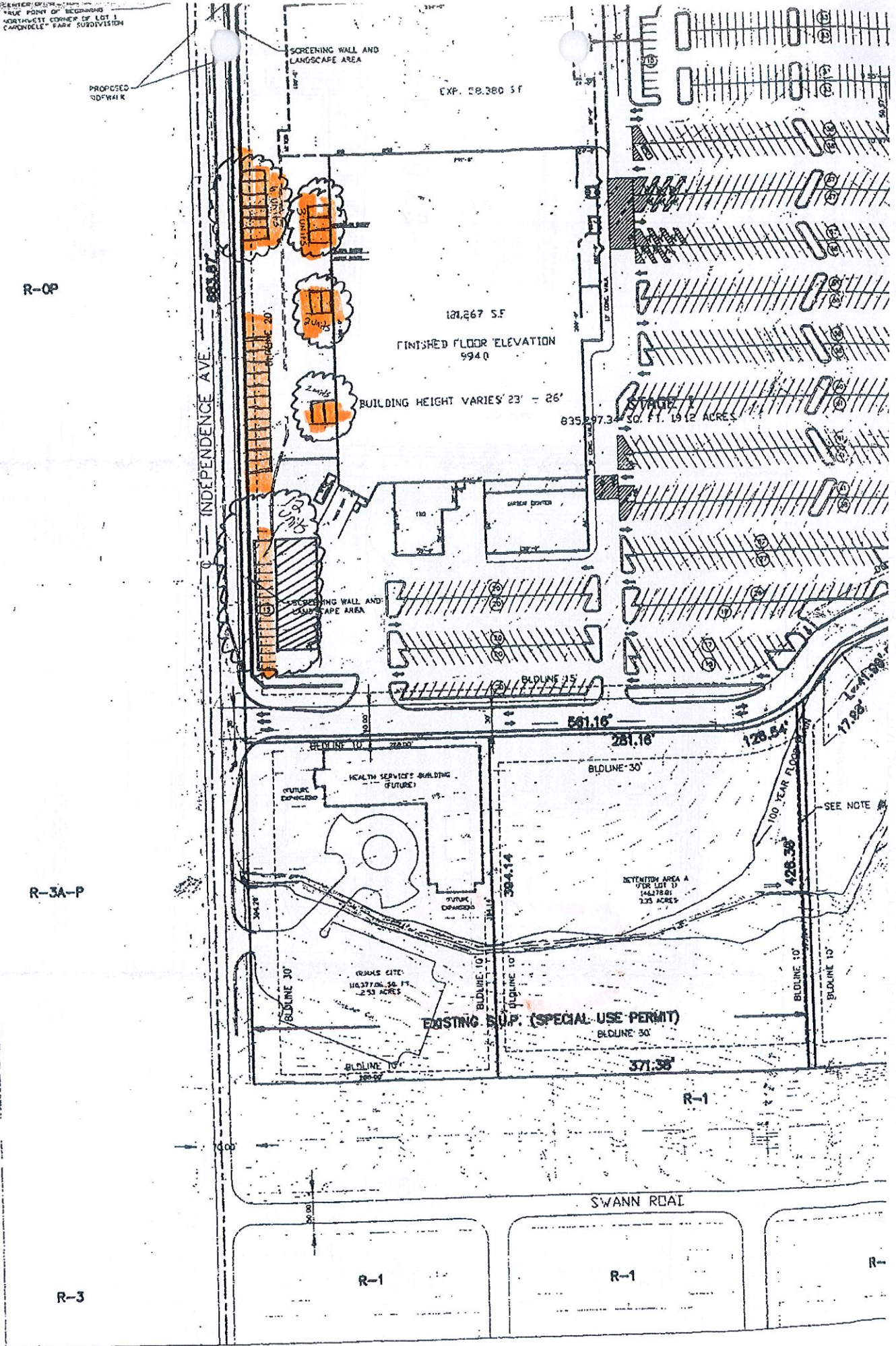
SWANN ROAD

R-3

R-1

R-1

R-



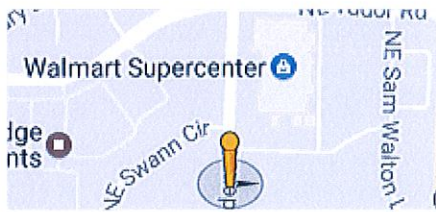
Google Maps 887 NE Independence Ave



Image capture: Apr 2015 © 2016 Google

Lee's Summit, Missouri

Street View - Apr 2015



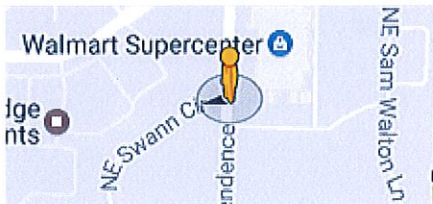
Google Maps 1003 NE Independence Ave



Image capture: Apr 2015 © 2016 Google

Lee's Summit, Missouri

Street View - Apr 2015

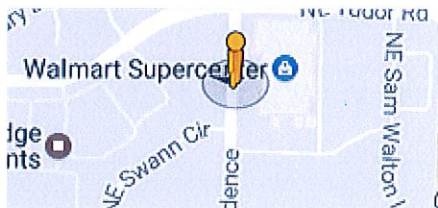


Google Maps 1039 NE Independence Ave



Image capture: Apr 2015 © 2016 Google

Lee's Summit, Missouri
Street View - Apr 2015



**Appl. #PL2016-184 SUP RENEWAL
temporary storage containers for Walmart;
Walmart Real Estate Business Trust, applicant**



Packet Information

File #: 2016-0837, Version: 1

PUBLIC HEARING - Plan for an Industrial Development Project for Archview Properties, LLC, for the Village at View High Apartments

Issue/Request:

Public Hearing - Plan for an Industrial Development Project for Archview Properties, LLC, for the Village at View High Apartments

Key Issues:

This is a Plan for an Industrial Development Project as required under Section 100.010 to 100.200 RsMO (Chapter 100). The public hearing is conducted to consider the approval of the plan which is attached along with the cost benefit analysis. If approved, the ordinance approving the Lease Agreement, Bond Purchase Agreement, Indenture, and Performance Agreement is provided later on the February 2, 2017 agenda. Notice of the public hearing was sent to all affected taxing jurisdictions regarding the Plan.

The project consists of the design and construction of the Village at View High Apartments, a 312 unit luxury apartment development with on-site amenities on approximately 21 acres in the vicinity of the northeast intersection of SW 3rd Street and View High Drive. The Company will receive tax abatement under the Chapter 100 on the real property included in the project, however the Company will make fixed Payments in Lieu of Taxes (PILOTS) in accordance with the following schedule:

2017-2018	\$ 1,149.00
2019-2021	\$327,912.00
2022-2026	\$336,110.00
2027-2028	\$344,513.00

The PILOT schedule was set based on information presented to the Council by City staff regarding tax payments and assessments on comparable properties based on 2015 assessment data at the December 15, 2016 City Council meeting. City staff received direction from the City Council to prepare these Chapter 100 plans for multi-family projects with a per unit PILOT amount of \$1,051 per unit. Based on the direction given at that time, staff advised applicants of the direction given, therefore this plan reflects the \$1,051 per unit PILOT beginning in 2019.

It is also anticipated that the construction material used to construct the project will be exempt from state and local sales taxes.

Proposed City Council Motion:

I move to direct staff to present an AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE

INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

Background:

On October 20, 2016, the City Council approved a rezoning and preliminary development plan for the Village at View High Apartments. Also on October 20, 2016 and November 17, 2016 the City Council considered the Chapter 100 conceptual economic development incentive proposal for the project and provided the applicant and staff direction to proceed with preparing the Chapter 100 incentive request for formal consideration.

Timeline:

The project is expected to be constructed during the years 2017 and 2018.

Presenters:

Mark Dunning, Assistant City Manager

Curtis Peterson, Developer's Attorney, Polsinelli Law Firm

Rich Wood, City's Economic Development Counsel, Gilmore & Bell, P.C.

CITY OF LEE'S SUMMIT, MISSOURI

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
AND
COST-BENEFIT ANALYSIS**

FOR

VILLAGE AT VIEW HIGH

JANUARY 12, 2017

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ATTACHMENT A – SUMMARY OF KEY ASSUMPTIONS

EXHIBIT 1 - PROJECT ASSUMPTIONS

EXHIBIT 2 - SUMMARY OF COST BENEFIT ANALYSIS

EXHIBIT 3 - PROJECTED TAX REVENUES ON PROJECT SITE WITHOUT PROJECT (NO ABATEMENT)

EXHIBIT 4 - PROJECTED PILOT AMOUNTS

* * *

CITY OF LEE'S SUMMIT, MISSOURI

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT AND COST-BENEFIT ANALYSIS FOR VILLAGE AT VIEW HIGH

I. PURPOSE OF THIS PLAN

The City Council of the City of Lee's Summit, Missouri (the "City") will consider an ordinance approving this Plan (defined below) and authorizing the issuance by the City of its taxable industrial development revenue bonds in the aggregate principal amount of not to exceed \$39,500,000 (the "Bonds"), to finance costs of an industrial development project (the "Project") for Archview Properties, LLC, an Indiana limited liability company, or its assigns (the "Company") as more fully described and defined herein. The Bonds will be issued pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended and Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended (collectively, the "Act").

This Plan for an Industrial Development Project and Cost-Benefit Analysis (the "Plan") has been prepared to satisfy requirements of the Act and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using industrial development revenue bonds to finance the Project and to facilitate abatement of ad valorem taxes on the bond-financed property.

II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS

General. The Act authorizes cities, counties, towns and villages to issue industrial development revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants and other commercial facilities.

Issuance and Sale of Bonds. Revenue bonds issued pursuant to the Act do not require voter approval and are payable solely from revenues received from the project. The municipality issues its bonds and in exchange, the benefited company promises to make payments that are sufficient to pay the principal of and interest on the bonds as they become due. Thus, the municipality merely acts as a conduit for the financing.

Concurrently with the closing of the bonds, the company will convey to the municipality title to the property included in the project. (The municipality must be the legal owner of the property while the bonds are outstanding for the property to be eligible for tax abatement, as further described below.) At the same time, the municipality will lease the property, including the project, back to the benefited company pursuant to a lease agreement. The lease agreement will require the company, acting on behalf of the municipality, to use the bond proceeds to pay the costs or reimburse the costs of purchasing, constructing and installing the project, as applicable.

Under the lease agreement, the company typically: (1) will unconditionally agree to make payments sufficient to pay the principal of and interest on the bonds as they become due; (2) will agree, at its own expense, to maintain the project, to pay all taxes and assessments with respect to the project, and to maintain adequate insurance; (3) has the right, at its own expense, to make certain additions,

modifications or improvements to the project; (4) may assign its interests under the lease agreement or sublease the project while remaining responsible for payments under the lease agreement; (5) will covenant to maintain its corporate existence during the term of the bond issue; and (6) will agree to indemnify the municipality for any liability the municipality might incur as a result of its participation in the transaction.

Property Tax Abatement. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from taxation. In a typical transaction, the municipality holds fee title to the project and leases the project to the benefited company.

If the municipality and the company determine that partial tax abatement is desirable, the company may agree to make “payments in lieu of taxes.” The amount of payments in lieu of taxes is negotiable. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the municipality and to each political subdivision within the boundaries of the project in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

III. DESCRIPTION OF THE PARTIES

Archview Properties, LLC. The Company is a limited liability company organized and existing under the laws of the State of Indiana.

City of Lee’s Summit, Missouri. The City is a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri. The City is authorized and empowered pursuant to the provisions of the Act to purchase, construct, extend and improve certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable.

IV. REQUIREMENTS OF THE ACT

Description of the Project. The Project to be financed by the Bonds consists of (1) the design and construction of the Village at View High apartments, an approximately 312-unit high-end multi-family complex and (2) associated site work and infrastructure. The Project being financed by the Bonds will be constructed on approximately 21.34 acres in the vicinity of the northeast intersection of 3rd Street and View High Drive, which is referred to as the “Project Site.”

Estimate of the Costs of the Project. The Project is expected to cost approximately \$39,500,000 and to be constructed during the years 2017 and 2018.

Source of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Bonds in a principal amount not to exceed \$39,500,000, to be issued by the City and purchased by the Company or its designee (the “Bondholder”) and, if needed, other available funds of the Company. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. The City will hold title to the Project Site under the Chapter 100 Transaction. The City will

lease the Project to the Company for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement with the City, the Company will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease. The lease between the City and the Company will terminate in 2028, unless terminated sooner pursuant to the terms of the lease.

Affected School District, Community College District, County and City. The Lee's Summit R-7 School District is the school district affected by the Project. Jackson County, Missouri is the county affected by the Project. Metropolitan Community College is the community college district affected by the Project. The City is the city affected by the Project. The Cost-Benefit Analysis attached hereto identifies all other taxing districts affected by the Project (other than those taxing entities solely affected by the Project with respect to receipt of tax revenues from the commercial surcharge tax).

Assessed Valuation. The most recent equalized assessed valuation of the Project Site is \$13,099.¹ The estimated total equalized assessed valuation of the Project Site after construction of the Project (2019) is \$3,721,613. This valuation was calculated based upon an assumed appraised value of \$19,587,434 for the Project Site in year 2019, multiplied by the assessment rate of 19%.

Payments in Lieu of Taxes. If this Plan is approved by the City Council, the City intends to issue the Bonds in 2017 and to provide tax abatement to the Company for the Project for a period of ten years beginning in 2019. During years 2017 and 2018, the Project will be under construction and the Company will pay a partial payment in lieu of taxes as set forth below. For all the years that the Project Site is subject to tax abatement as provided herein, the Company will make a fixed PILOT payment in December of each year in accordance with the following schedule:

2017-18	\$ 1,149
2019-21	\$ 327,912
2022-26	\$ 336,110
2027-28	\$ 344,513

Sales Tax Exemption on Construction Materials. It is anticipated that the construction materials used to construct the Project will be exempt from state and local sales taxes.

Cost-Benefit Analysis and Discussion of Exhibits. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Project. The following is a summary of the exhibits attached to this Plan that show the direct tax impact the Project is

¹ The Project Site consists of two separate parcels, both of which are currently part of larger tracts. The first parcel (Parcel I.D. No. 62-330-99-98-01-0-00-000) is owned by Parrot Properties Inc. and is approximately 24.89 acres. The Company is purchasing approximately 18.46 acres from Parrot Properties Inc. Based on information received from Jackson County, it is assumed that the most recent equalized assessed valuation of the land for the larger 24.89 acres tract is \$17,416. The land owned by the Company is approximately 74.47% of the acreage of the 24.89 acre site and it is therefore assumed that the most recent equalized assessed valuation of the land owned by the Company is \$12,969. The second parcel (Parcel I.D. No. 62-330-99-98-02-1-00-000) is owned by Mike's Farm Inc. and is approximately 11.13 acres. The Company is purchasing approximately 3.29 acres from Mike's Farm Inc. Based on information received from Jackson County, it is assumed that the most recent equalized assessed valuation of the land for the larger 11.13 acres is \$441. The land owned by the Company is approximately 29.53% of the acreage of the approximately 11.13 acre site and it is therefore assumed that the most recent equalized assessed valuation of the land owned by the Company is \$130.

expected to have on each taxing jurisdiction. This Plan does not attempt to quantify the overall economic impact of the Project.

Project Assumptions. **Exhibit 1** presents a list of the assumptions related to the determination of assessed valuations and the tax formulas.

Summary of Cost-Benefit Analysis. **Exhibit 2** presents a summary for each affected taxing district of (1) the total estimated tax revenues that would be generated if the Project did not occur and (2) the total estimated value of the payments in lieu of taxes (“PILOT Amounts”) to be made by the Company for the proposed abatement period.

Real Property. **Exhibit 3** provides the projected tax revenues which would be paid on the Project Site without tax abatement and without the Project. **Exhibit 4** provides the projected value of PILOT Amounts to be paid by the Company.

V. ASSUMPTIONS AND BASIS OF PLAN

In preparing this Plan, key assumptions have been made to estimate the fiscal impact of the abatement and exemptions proposed for the Project. See **ATTACHMENT A** for a summary of these assumptions.

Information necessary to complete this Plan, has been furnished by representatives of the City, representatives of the Company and its counsel, the Bondholder and other persons deemed appropriate and such information has not been independently verified for accuracy, completeness or fairness.

* * *

ATTACHMENT A

SUMMARY OF KEY ASSUMPTIONS

1. The cost of designing and constructing the Project is estimated to be approximately \$39,500,000.

2. The Project will be owned by the City and leased to the Company with an option to purchase. As long as the Project is owned by the City, it will be exempt from ad valorem taxes.

3. The Project Site will be excluded from the calculation of ad valorem property taxes for a period of twelve years beginning in 2017.

4. During the entire term of the Bonds through 2028, the Company will make payments in lieu of taxes in accordance with that portion of Section IV above in the Plan entitled "Payments in Lieu of Taxes."

5. Commercial real property taxes are calculated using the following formula:

$$(\text{Assessed Value} * \text{Tax Rate})/100$$

6. The assessed value of the Project Site is calculated using the following formula:

$$\text{Estimated Value} * \text{Assessment Ratio of 19\%}$$

7. The tax rates used in this Plan reflect the rates in effect for the tax year 2016. The tax rates were held constant through the 2028 tax year.

* * *

**City of Lee's Summit, Missouri
(Village at View High)**

**COST BENEFIT ANALYSIS
PLAN FOR INDUSTRIAL DEVELOPMENT PROJECT**

Table of Contents

I	Project Assumptions	1
II	Summary of Cost Benefit Analysis	2
III	Projected Tax Revenues on Project Site Without Project (No Abatement)	3
IV	Projected PILOT Amounts	4

**Exhibit 1
Project Assumptions**

♦ Current assessed value of project site	\$	13,099
♦ Projected assessed value as a percentage of appraised value		19.0%
♦ Investment in the new project	2017-2018	\$39,500,000
♦ Projected appraised value (2019)		\$19,587,434
♦ Projected assessed value (2019)	\$	3,721,613
♦ Fixed PILOT as described below:		
	Year(s)	Amount
	2017-2018	\$1,149
	2019-2021	\$327,915
	2022-2026	\$336,110
	2027-2028	\$344,513

Exhibit 2
Summary of Cost Benefit Analysis

Tax Distribution	Tax Rate	Projected Tax Revenues on Project Site Without Project	Projected PILOT Amounts
Board of Disabled Services	0.0738	\$ 116	\$ 28,106
City - Lees Summit	1.5398	2,420	586,417
Jackson County	0.5025	790	191,372
Lees Summit R-VII	5.9957	9,425	2,283,402
Mental Health	0.1201	189	45,739
Metro Junior College	0.2339	368	89,078
Mid-Continent Library	0.3153	496	120,079
State Blind Pension	0.0300	47	11,425
	<u>8.8111</u>	<u>\$ 13,850</u>	<u>\$ 3,355,619</u>

Exhibit 3
Projected Tax Revenues on Project Site Without Project (No Abatement)

Assessed Value of Project Site Without Project		\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099
Taxing Jurisdiction	Tax Rate per														
	\$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total	
Board of Disabled Services	0.0738	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 116
City - Lees Summit	1.5398	202	202	202	202	202	202	202	202	202	202	202	202	202	2,420
Jackson County	0.5025	66	66	66	66	66	66	66	66	66	66	66	66	66	790
Lees Summit R-VII	5.9957	785	785	785	785	785	785	785	785	785	785	785	785	785	9,425
Mental Health	0.1201	16	16	16	16	16	16	16	16	16	16	16	16	16	189
Metro Junior College	0.2339	31	31	31	31	31	31	31	31	31	31	31	31	31	368
Mid-Continent Library	0.3153	41	41	41	41	41	41	41	41	41	41	41	41	41	496
State Blind Pension	0.0300	4	4	4	4	4	4	4	4	4	4	4	4	4	47
	8.8111	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 13,850

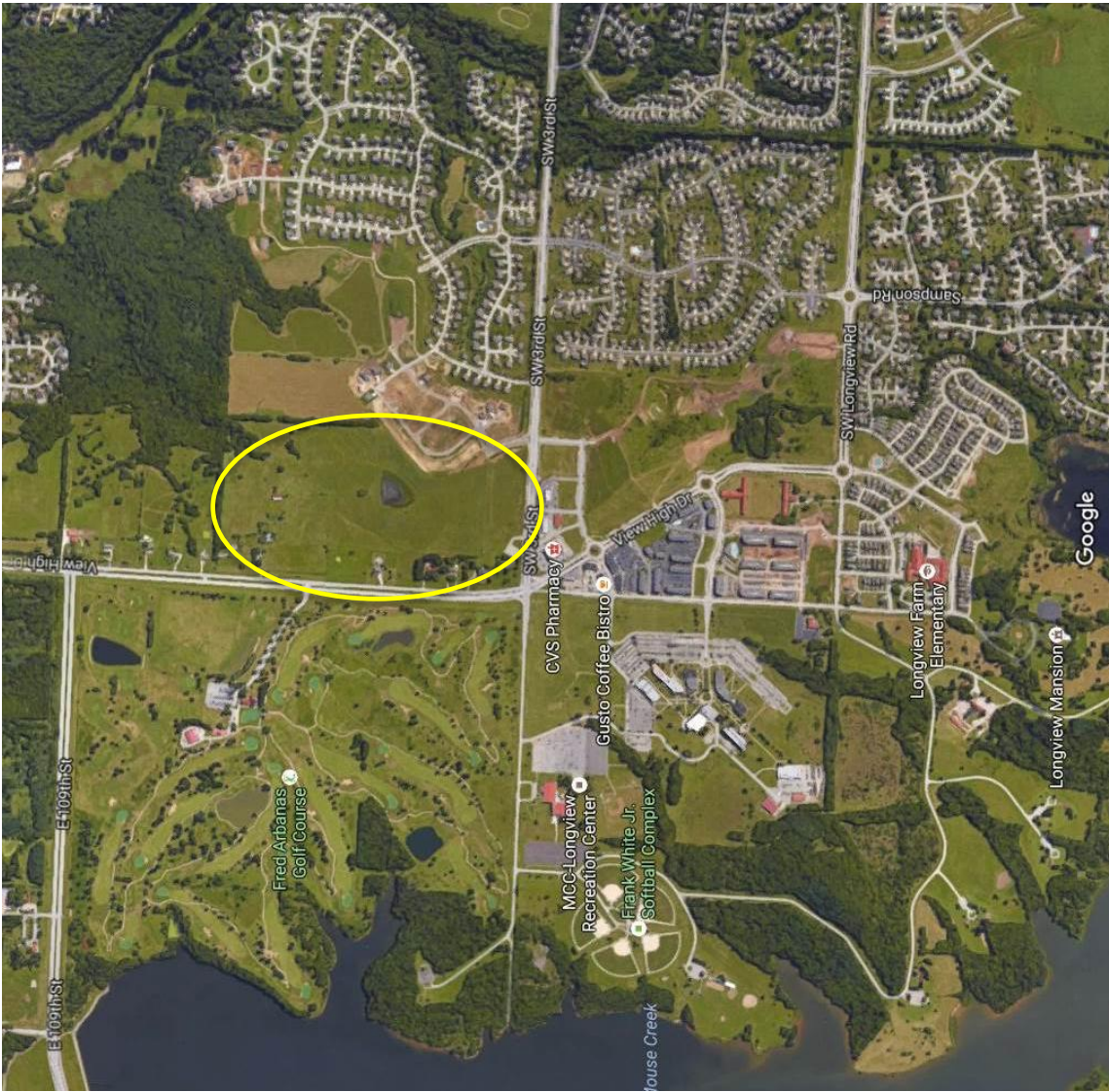
**Exhibit 4
Projected PILOT Amounts**

Estimated Assessed Value of the Project Site with New Project		\$ 13,040	\$ 13,040	\$ 3,721,613	\$3,721,613	\$3,721,613	\$3,814,620	\$3,814,620	\$3,814,620	\$3,814,620	\$3,814,620	\$3,909,989	\$3,909,989	
PILOT Payment		\$1,149	\$1,149	\$327,915	\$327,915	\$327,915	\$336,110	\$336,110	\$336,110	\$336,110	\$336,110	\$344,513	\$344,513	
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total
Board of Disabled Services	0.0738	\$ 10	\$ 10	\$ 2,747	\$ 2,747	\$ 2,747	\$ 2,815	\$ 2,815	\$ 2,815	\$ 2,815	\$ 2,815	\$ 2,886	\$ 2,886	\$ 28,106
City - Lees Summit	1.5398	201	201	57,305	57,305	57,305	58,738	58,738	58,738	58,738	58,738	60,206	60,206	586,417
Jackson County	0.5025	66	66	18,701	18,701	18,701	19,168	19,168	19,168	19,168	19,168	19,648	19,648	191,372
Lees Summit R-VII	5.9957	782	782	223,137	223,137	223,137	228,713	228,713	228,713	228,713	228,713	234,431	234,431	2,283,402
Mental Health	0.1201	16	16	4,470	4,470	4,470	4,581	4,581	4,581	4,581	4,581	4,696	4,696	45,739
Metro Junior College	0.2339	31	31	8,705	8,705	8,705	8,922	8,922	8,922	8,922	8,922	9,145	9,145	89,078
Mid-Continent Library	0.3153	41	41	11,734	11,734	11,734	12,027	12,027	12,027	12,027	12,027	12,328	12,328	120,079
State Blind Pension	0.0300	4	4	1,116	1,116	1,116	1,144	1,144	1,144	1,144	1,144	1,173	1,173	11,425
	8.8111	\$ 1,149	\$ 1,149	\$ 327,915	\$ 327,915	\$ 327,915	\$ 336,110	\$ 336,110	\$ 336,110	\$ 336,110	\$ 336,110	\$ 344,513	\$ 344,513	\$3,355,619

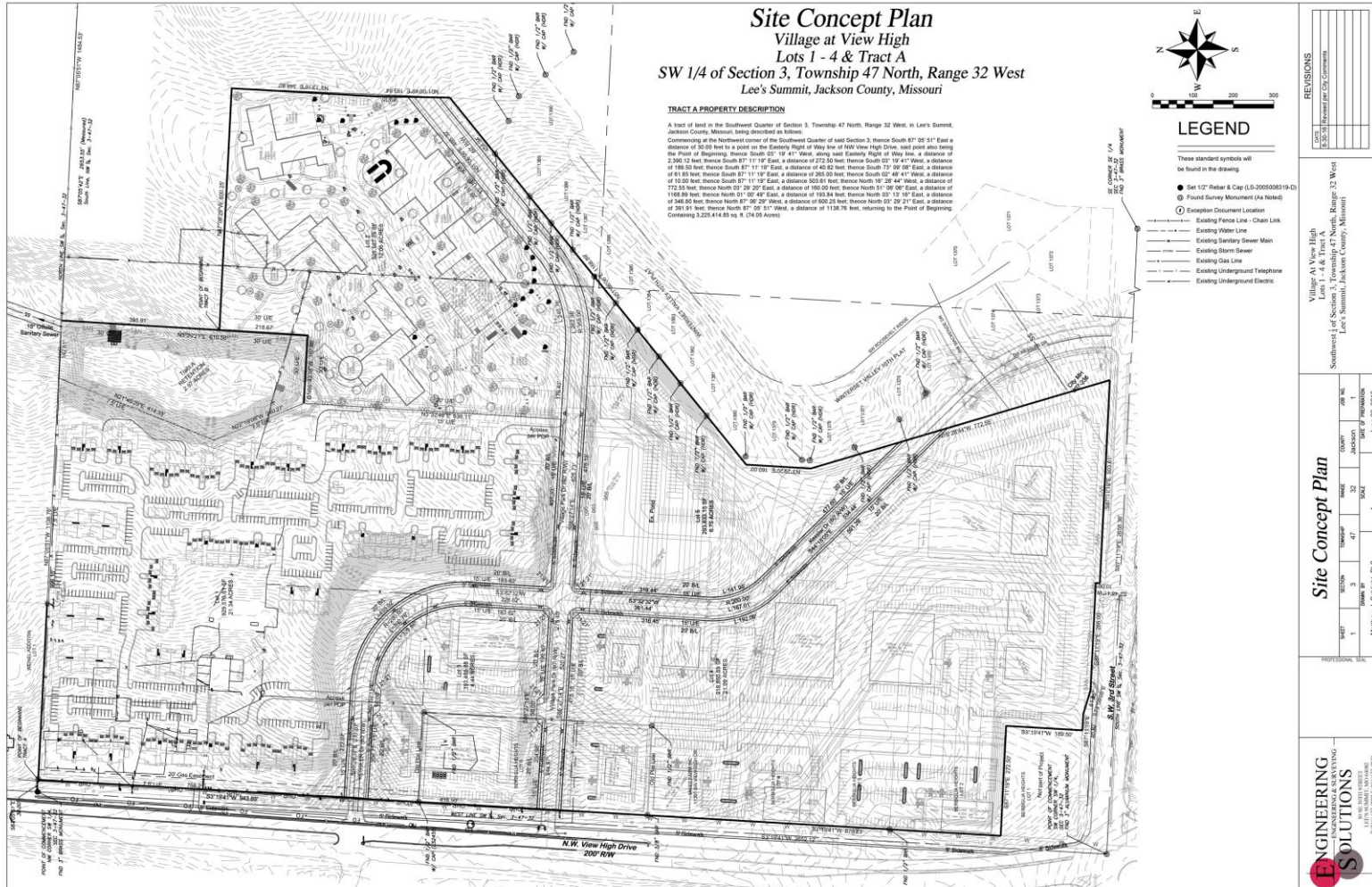
VILLAGE AT VIEW HIGH APARTMENTS

Jim Thomas
Partner

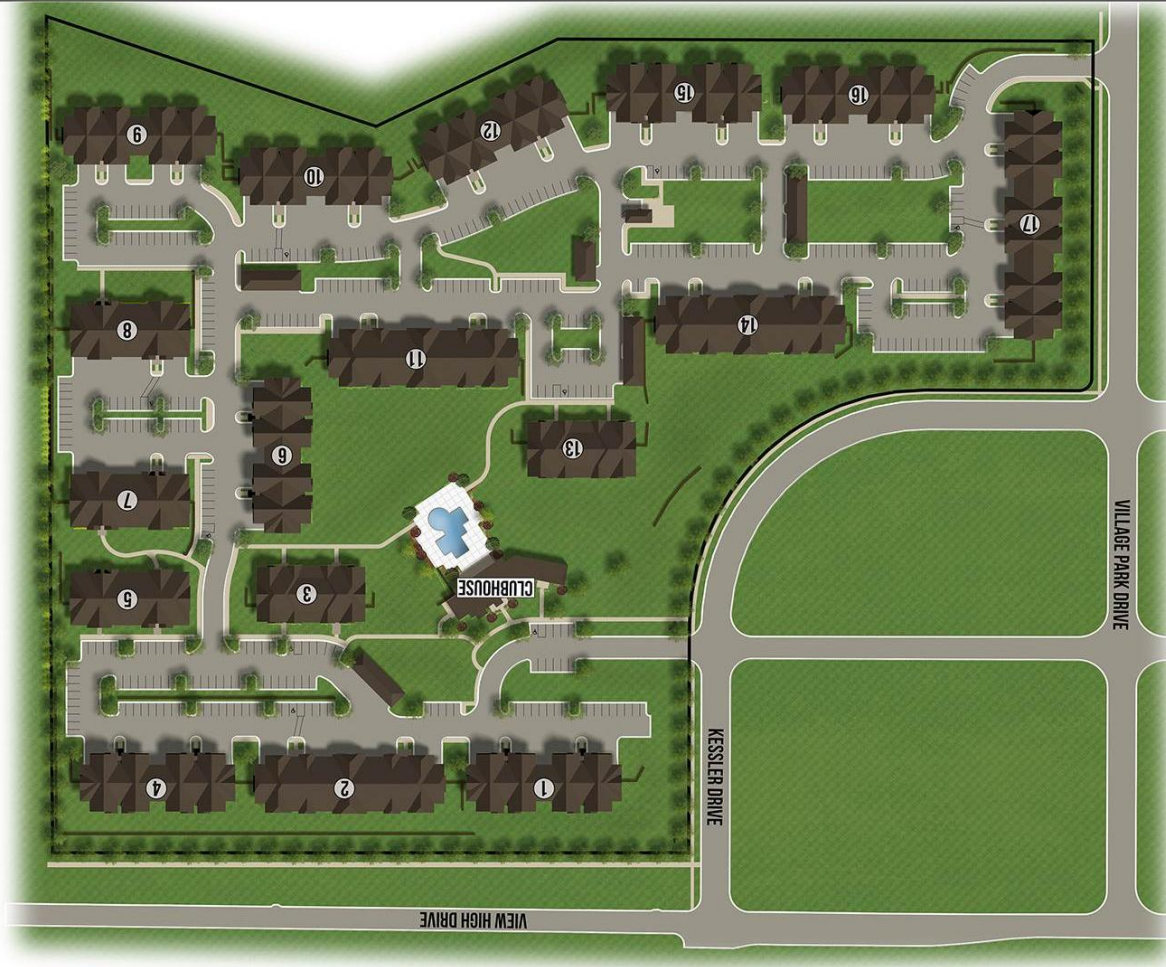
Village at View High



Village at View High



Village at View High - Apartments



NOT TO SCALE
FOR INFORMATION ONLY
DO NOT CONSIDER THIS PLAN AS A CONTRACT
OR A COMMITMENT TO ANY PART OF THE PROJECT
OR ANY OTHER DEVELOPMENT OR SERVICE OFFERED
BY CITYSCAPE RESIDENTIAL WITHOUT THE WRITTEN
AGREEMENT OF CITYSCAPE RESIDENTIAL AND ITS
AFFILIATES.



Village at View High



Building Type I

Building #'s 1, 4, 6 & 15, similar

Village at View High



Building Type I

Building #'s 1, 4, 6 & 15, similar

Village at View High



Building Types III & IV

Building #'s 9, 10, 12 & 16

Village at View High



Building Types III & IV

Building #'s 9, 10, 12 & 16

Village at View High

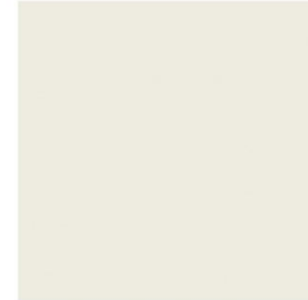


Village at View High



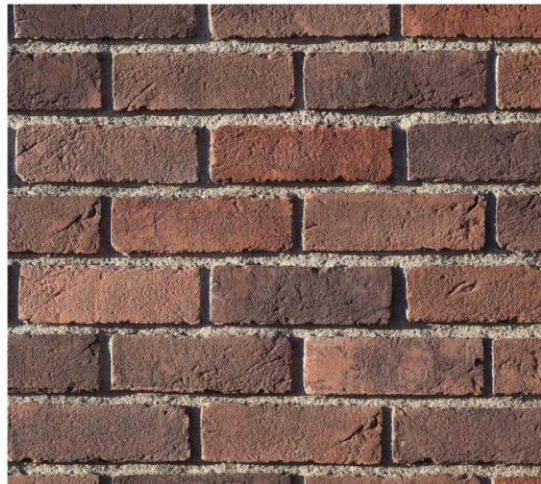
Certainteed, Landmark, Burnt Sienna

Roof Shingles



Sherwin Williams, Alabaster
SW 7008

Siding Color



Coronado, Antique Red



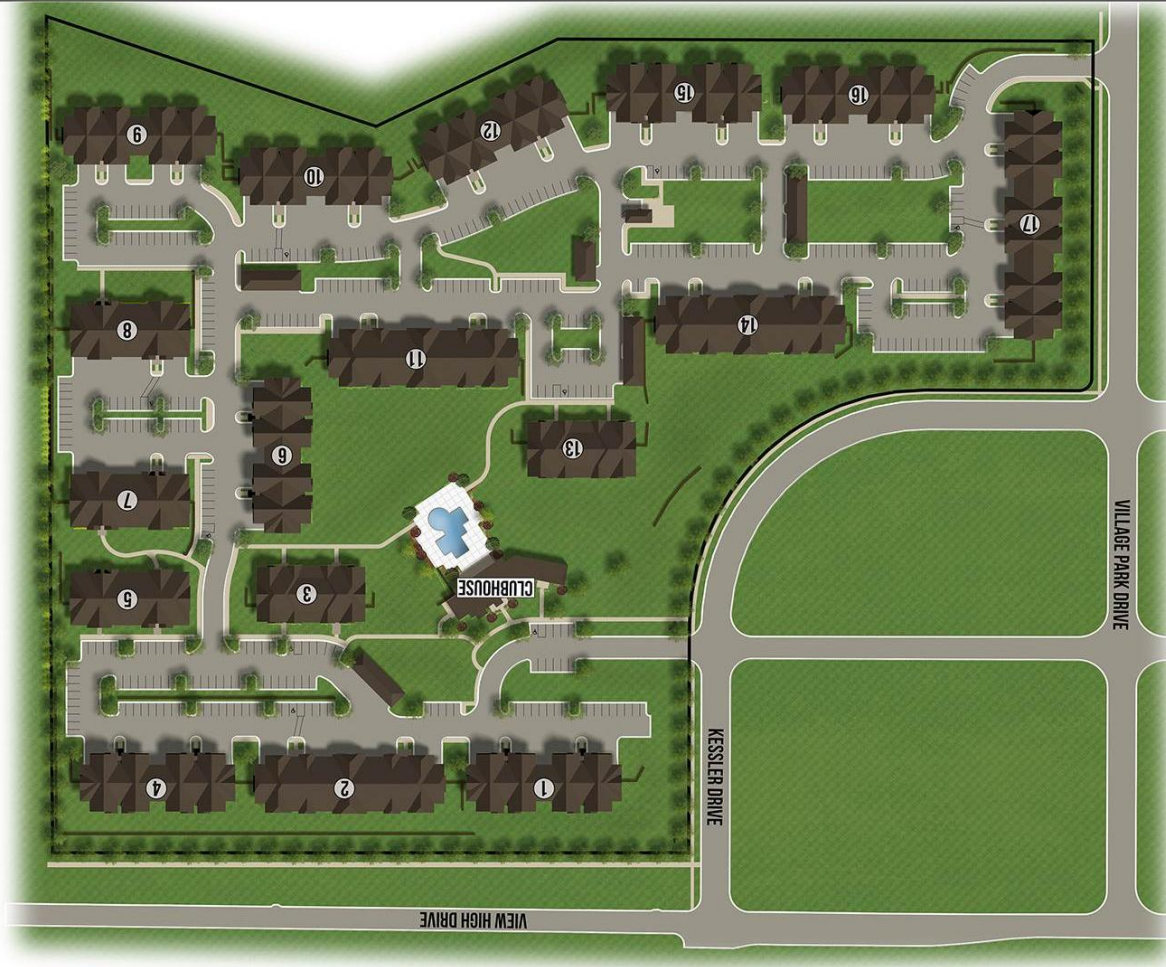
Sherwin Williams, French Roast
SW 6069

Trim Color

Village at View High



Village at View High - Apartments



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AFFILIATES.



A decorative graphic consisting of three overlapping, horizontal brushstrokes. The top stroke is yellow, the middle is light purple, and the bottom is dark blue. They all taper to the left.

Cityscape

Residential

WWW.CITYSCAPERESIDENTIAL.COM

Packet Information

File #: BILL NO. 17-27, **Version:** 1

AN ORDINANCE GRANTING A SPECIAL USE PERMIT RENEWAL FOR OUTDOOR STORAGE OF TEMPORARY STORAGE CONTAINERS IN DISTRICT CP-2 ON LAND LOCATED AT 1000 NE SAM WALTON LANE FOR A PERIOD OF TEN (10) YEARS FROM THE PREVIOUS EXPIRATION DATE, ALL IN ACCORDANCE WITH ARTICLE 10 WITHIN THE UNIFIED DEVELOPMENT ORDINANCE, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

Proposed City Council Motion:

First Motion: I move for a second reading of AN ORDINANCE GRANTING A SPECIAL USE PERMIT RENEWAL FOR OUTDOOR STORAGE OF TEMPORARY STORAGE CONTAINERS IN DISTRICT CP-2 ON LAND LOCATED AT 1000 NE SAM WALTON LANE FOR A PERIOD OF TEN (10) YEARS FROM THE PREVIOUS EXPIRATION DATE, ALL IN ACCORDANCE WITH ARTICLE 10 WITHIN THE UNIFIED DEVELOPMENT ORDINANCE, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

Second Motion: I move for adoption of AN ORDINANCE GRANTING A SPECIAL USE PERMIT RENEWAL FOR OUTDOOR STORAGE OF TEMPORARY STORAGE CONTAINERS IN DISTRICT CP-2 ON LAND LOCATED AT 1000 NE SAM WALTON LANE FOR A PERIOD OF TEN (10) YEARS FROM THE PREVIOUS EXPIRATION DATE, ALL IN ACCORDANCE WITH ARTICLE 10 WITHIN THE UNIFIED DEVELOPMENT ORDINANCE, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

BILL NO. 17-27

AN ORDINANCE GRANTING A SPECIAL USE PERMIT RENEWAL FOR OUTDOOR STORAGE OF TEMPORARY STORAGE CONTAINERS IN DISTRICT CP-2 ON LAND LOCATED AT 1000 NE SAM WALTON LANE FOR A PERIOD OF TEN (10) YEARS FROM THE PREVIOUS EXPIRATION DATE, ALL IN ACCORDANCE WITH ARTICLE 10 WITHIN THE UNIFIED DEVELOPMENT ORDINANCE, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2016-184, submitted by Wal-Mart Real Estate Business Trust, requesting a special use permit renewal for outdoor storage of temporary storage containers in District CP-2 on land located at 1000 NE Sam Walton Lane, was referred to the Planning Commission to hold a public hearing; and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for the request on January 10, 2017, and rendered a report to the City Council containing findings of fact and a recommendation that the special use permit be approved; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on February 2, 2017, and rendered a decision to grant said special use permit.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the application pursuant to Section 10.020.B. of the Unified Development Ordinance to allow outdoor storage of temporary storage containers in District CP-2 with a Special Use Permit is hereby granted for a period of ten (10) years from the previous expiration date, with respect to the following described property:

Lot 1, Ritter Plaza, a subdivision in Lee's Summit, Jackson County, Missouri,, according to the recorded plat thereof.

SECTION 2. That the following conditions of approval apply:

1. The special use permit shall be granted for a period of 10 years, from the previous expiration date, to expire on October 8, 2026.
2. No more than twenty-five (25) 8 foot x 40 foot storage units shall be allowed.
3. Containers shall be allowed for a period of twelve weeks. The containers shall not be placed on the premises prior to October 1st, and shall be removed no later than December 31st of each calendar year during which the special use permit is effective.
4. The container storage areas shall be as shown on the original site plan dated August 7, 2007, and shall remain outside the fire lanes.

SECTION 3. Nonseverability. All provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, each other that no such provision would be enacted without all others. If a court of competent jurisdiction enters a final judgment on the merits that is not subject to appeal and that declares any provision or part of this ordinance void,

BILL NO. 17-27

unconstitutional, or unenforceable, then this ordinance, in its collective entirety, is invalid and shall have no legal effect as of the date of such judgment.

SECTION 4. That failure to comply with all of the provisions contained in this ordinance shall constitute violations of both this ordinance and the City Unified Development Ordinance, No. 5209.

SECTION 5. That this ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED by the Mayor of said city this ____ day of _____, 2017.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

City of Lee's Summit

Development Services Department

January 6, 2017

TO: Planning Commission

FROM: Robert G. McKay, AICP, Director of Planning and Special Projects 

RE: **Continued PUBLIC HEARING – Appl. #PL2016-184 – SPECIAL USE PERMIT renewal for outdoor storage of temporary storage containers – Walmart, 1000 NE Sam Walton Ln; Walmart Real Estate Business Trust, applicant**

Commentary

The applicant requests renewal of the special use permit to allow for the continued use of 25 temporary storage containers located on the west and southwest areas of the property, to the rear of the building. The applicant requests use of the containers on the property from October 1st to December 31st each year for a period of 10 years. The containers are used for storage of additional inventory during the holiday season.

The original special use permit was approved on October 8, 1996, for a period of 10 years. The original approval granted the use of 18 temporary storage containers from October 15th to December 10th each year. The special use permit was renewed in 2007 for an additional 10 years from the date of the original expiration. As part of the renewal, the number of containers allowed on the property was increased from 18 to 25, and the date range that the containers were allowed to be used on the property was expanded to span from October 1st to December 31st.

Recommendation

Staff recommends **APPROVAL** of the special use permit, subject to the following:

1. The special use permit shall be granted for a period of 10 years, from the previous expiration date, to expire on October 8, 2026.
2. No more than twenty-five (25) 8 foot x 40 foot storage containers shall be allowed.
3. Containers shall be allowed for a period of twelve weeks. The containers shall not be placed on the premises prior to October 1st, and shall be removed no later than December 31st of each calendar year during which the special use permit is effective.
4. The container storage areas shall be as shown on the original site plan dated August 7, 2007, and shall remain outside the fire lanes.

Project Information

Proposed Use: outdoor storage of temporary storage containers

Location: 1000 NE Sam Walton Lane

Zoning: CP-2 (Planned Community Commercial District)

Surrounding zoning and use:

North (across NE Tudor Road): R-1 (Single-family Residential) – Community of Christ Church; PMIX – (Planned Mixed Use) – senior housing facility; and CP-1 (Planned Neighborhood Commercial District) – Lee's Summit Christian Church

South: R-1 – medical office facility; and CP-2 – vacant

West (across NE Independence Avenue): RP-3 (Planned Residential Mixed use District) and CP-2 – senior housing facility

East: CP-2 – retail

Background

- October 8, 1996 – The City Council approved a special use permit for a period of ten (10) years for the use of 18 temporary storage containers structures from October 15th through December 10th of every calendar year of the permit, by Ordinance No. 4355.
- November 15, 2007 – The City Council approved a special use permit for a period of ten (10) years for the use of 25 temporary storage containers structures from October 1st through December 31st of every calendar year of the permit, by Ordinance No. 6534.

Analysis of the Special Use Permit

Ordinance Requirement. The Unified Development Ordinance (UDO) Section 10.020.B., states that uses not specifically set forth as “permitted uses”, “prohibited uses” or as “uses subject to conditions” elsewhere in this Chapter shall be deemed to be “special uses” unless otherwise determined. The Commission and Governing Body may consider granting a special use permit for such uses in accordance with the requirements of Article 4.”

Previously Approved. The previous special use permit renewal for outdoor storage of temporary storage containers on the property was approved with the following conditions:

1. No more than twenty-five (25) 8 foot x 40 foot storage units shall be allowed.
2. Containers shall be allowed for a period of twelve (12) weeks; cannot be placed on the premises prior to October 1st; and shall be removed no later than December 31st of each calendar year of the permit.
3. Six (6) evergreen trees shall be added along the southwest corner of the property to better screen the temporary storage containers from the neighboring properties to the south and west. Trees shall have a minimum height of eight (8) feet at the time of planting, and shall be installed within thirty (30) days of final approval.
4. The storage units shall be located as shown on the site plan dated August 7, 2007, and shall remain outside of the fire lanes.

To staff’s knowledge, the applicant has complied with all of the conditions associated with the previously approved special use permits.

Time Period. The applicant requests renewal of the special use permit for a period of 10 years. Staff recommends a time period of 10 years from the previous expiration date, to expire on October 8, 2026.

Code and Ordinance Requirements

The items in the box below are specific to this development and must be satisfactorily addressed in order to be in compliance with the Codes and Ordinances of the City.

Fire

1. All issues pertaining to life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to the safety to fire fighters and emergency responders during emergency operations, shall be in accordance with the 2012 International Fire Code.

2. Fire Department access around the rear of the structure and to the FDC shall be maintained.
3. Combustible waste material creating a fire hazard shall not be allowed to accumulate in buildings or structures or upon premises. A minimum 10 feet of clearance shall be maintained between storage containers and baled cardboard stored in the lot.

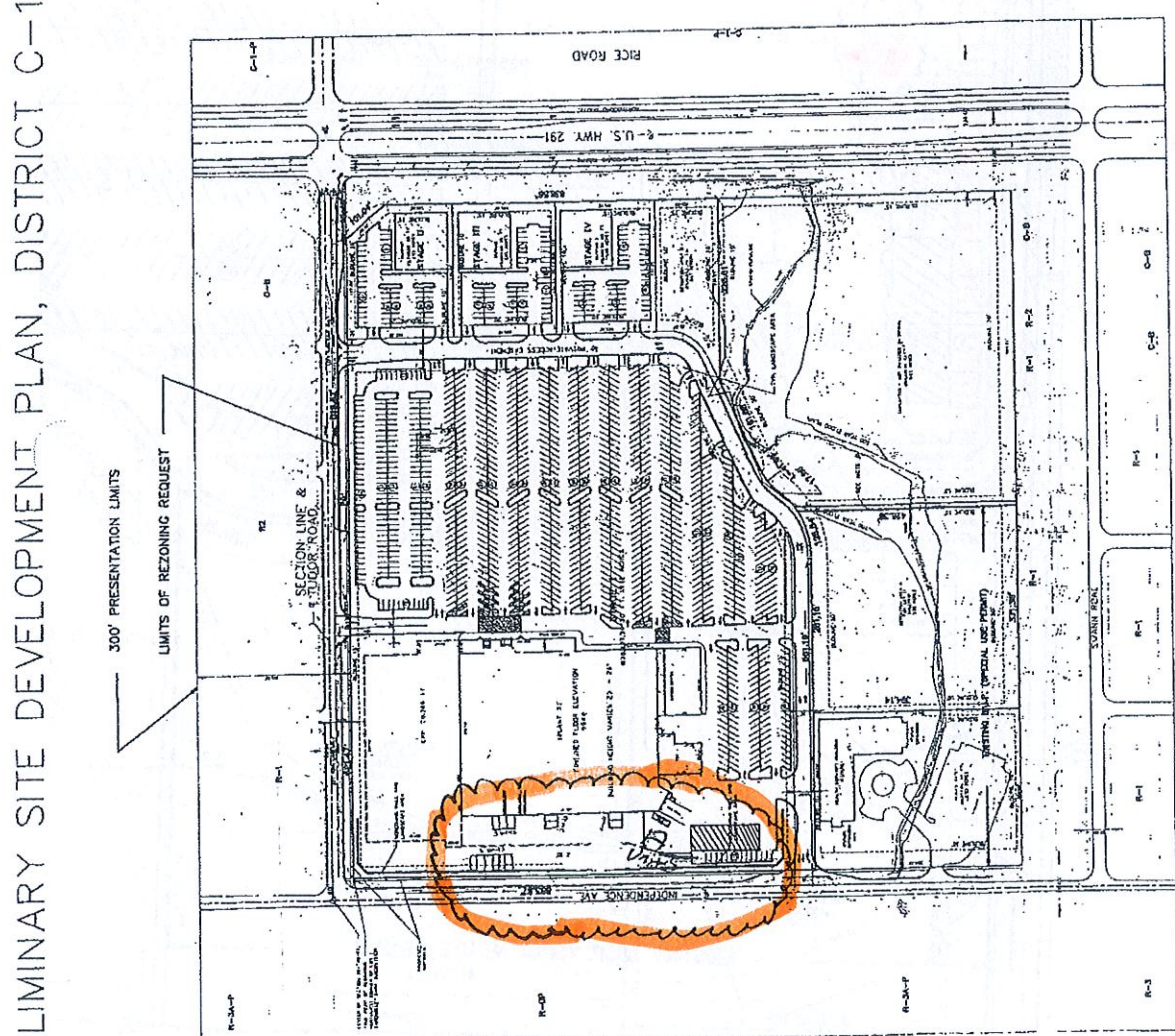
RGM/hsj

Attachments:

1. Site Plan, date stamped August 7, 2007 (2 pages)
2. Pictures of Surrounding Properties, dated December 9, 2016 – 3 pages
3. Location Map

PRELIMINARY SITE DEVELOPMENT PLAN, DISTRICT C-1

LEGEND:
 STAGE I: 100' x 100' x 100' x 100'
 STAGE II: 100' x 100' x 100' x 100'
 STAGE III: 100' x 100' x 100' x 100'
 STAGE IV: 100' x 100' x 100' x 100'
 PARKING: 100' x 100' x 100' x 100'
 LOT AREA: 100' x 100' x 100' x 100'



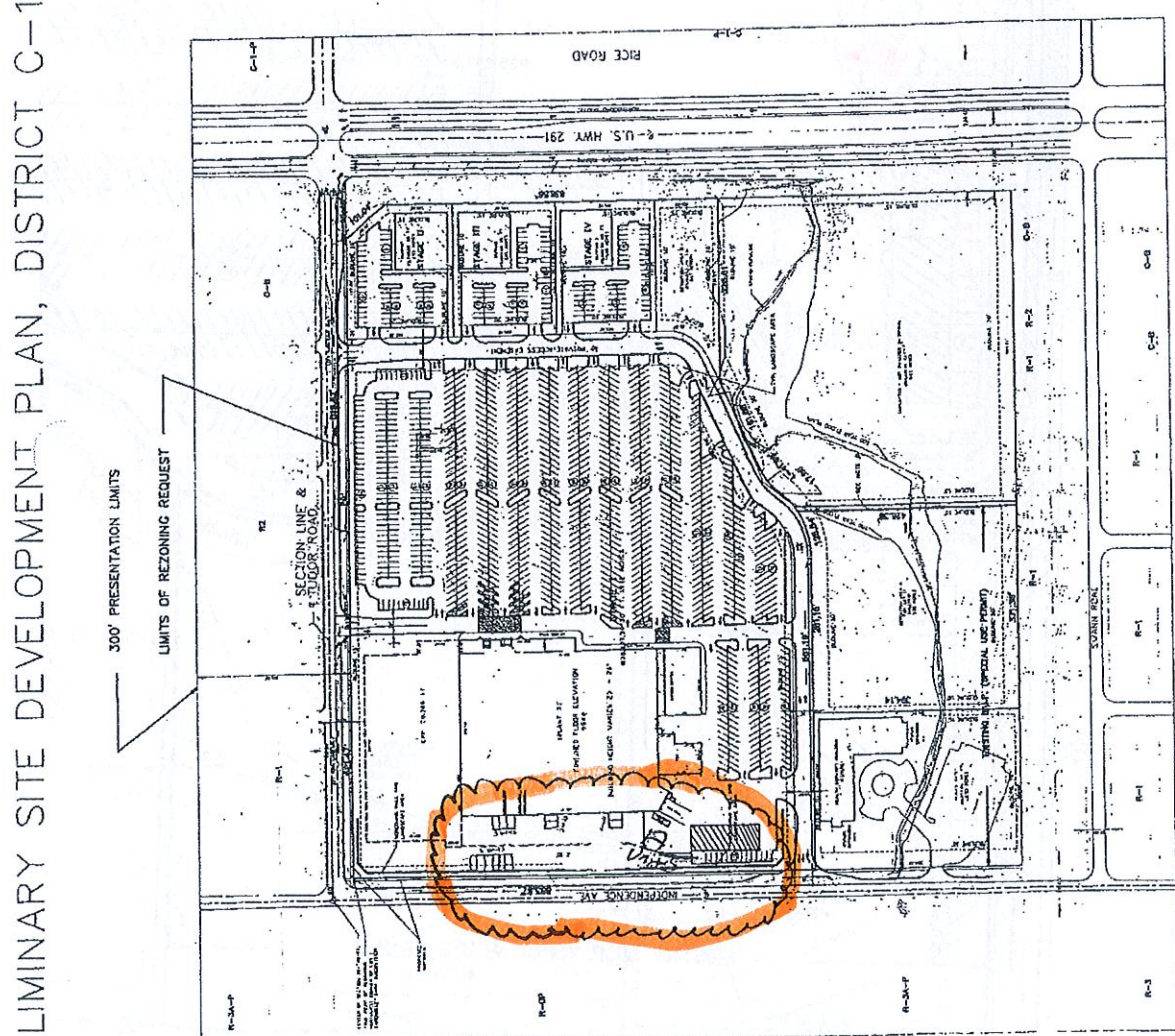
LOT AREA:

STAGE	REQUIREMENTS	TOTAL AREA
STAGE I	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE II	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE III	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE IV	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
TOTAL		40,000 SQ. FT. (0.92 ACRES)

NOTE: ALL USES OF DISTRICT C-1 ARE PERMITTED UNLESS OTHERWISE SPECIFIED IN THE ZONING ORDINANCE.
 THE LOT AREA OF THIS PLAN IS APPROXIMATE AND SUBJECT TO SURVEY.
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LEGEND:
 STAGE I: 100' x 100' x 100' x 100'
 STAGE II: 100' x 100' x 100' x 100'
 STAGE III: 100' x 100' x 100' x 100'
 STAGE IV: 100' x 100' x 100' x 100'
 PARKING: 100' x 100' x 100' x 100'
 LOT AREA: 100' x 100' x 100' x 100'

LEGEND:
 STAGE I: 100' x 100' x 100' x 100'
 STAGE II: 100' x 100' x 100' x 100'
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 PARKING: 100' x 100' x 100' x 100'
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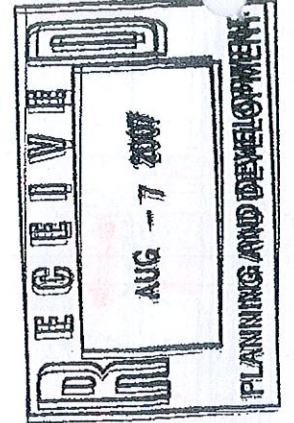


LOT AREA:

STAGE	REQUIREMENTS	TOTAL AREA
STAGE I	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE II	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE III	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE IV	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
TOTAL		40,000 SQ. FT. (0.92 ACRES)

NOTE: ALL USES OF DISTRICT C-1 ARE PERMITTED UNLESS OTHERWISE SPECIFIED IN THE ZONING ORDINANCE.
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2007-140



OWNER: LEE'S SUMMIT HOSPITAL FOUNDATION AND RESEARCH MENTAL HEALTH SERVICES
 WILLIAM C. DIETRICH
 LEE'S SUMMIT - PRELIM. SITE DEVELOPMENT
 KAW VALLEY ENGINEERING

LOT AREA:

STAGE	REQUIREMENTS	TOTAL AREA
STAGE I	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE II	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE III	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
STAGE IV	100' x 100' x 100' x 100'	10,000 SQ. FT. (0.23 ACRES)
TOTAL		40,000 SQ. FT. (0.92 ACRES)

NOTE: ALL USES OF DISTRICT C-1 ARE PERMITTED UNLESS OTHERWISE SPECIFIED IN THE ZONING ORDINANCE.
 THE LOT AREA OF THIS PLAN IS APPROXIMATE AND SUBJECT TO SURVEY.
 THE LOT AREA OF THIS PLAN IS APPROXIMATE AND SUBJECT TO SURVEY.
 THE LOT AREA OF THIS PLAN IS APPROXIMATE AND SUBJECT TO SURVEY.

CENTER OF GRAVITY
TRUE POINT OF BEGINNING
NORTHWEST CORNER OF LOT 1
CARONDELET PARK SUBDIVISION

PROPOSED
SIDEWALK

SCREENING WALL AND
LANDSCAPE AREA

EXP. 22,280 SF

R-OP

INDEPENDENCE AVE.

121,267 SF
FINISHED FLOOR ELEVATION
994.0

BUILDING HEIGHT VARIES 23' - 26'

835,297.34 SQ. FT. 19.12 ACRES

SCREENING WALL AND
LANDSCAPE AREA

BLDLINE 25

R-3A-P

HEALTH SERVICES BUILDING
(FUTURE)
FUTURE DEVELOPMENT

DETENTION AREA A
ON LOT 11
146,178.01
3.25 ACRES

ROADS SITE
116,377.06 SQ. FT.
2.53 ACRES

EXISTING S.U.P. (SPECIAL USE PERMIT)
BLDLINE 30

R-1

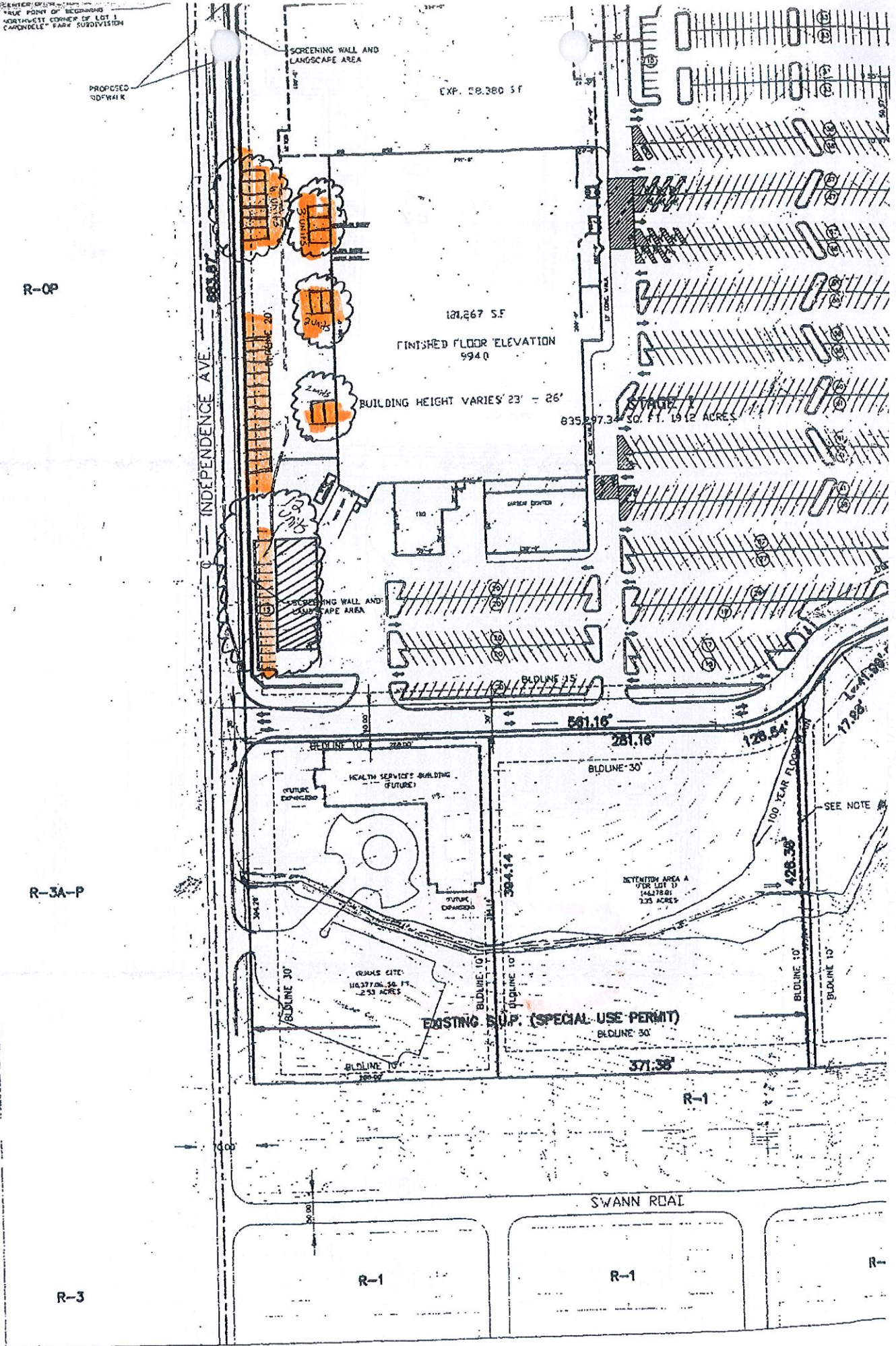
SWANN ROAD

R-3

R-1

R-1

R-



**Appl. #PL2016-184 SUP RENEWAL
temporary storage containers for Walmart;
Walmart Real Estate Business Trust, applicant**



Packet Information

File #: BILL NO. 17-28, **Version:** 1

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

Issue/Request:

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

Key Issues:

This ordinance will approve a Plan for an industrial development project for Archview Properties, LLC, an Indiana limited liability company ("Archview"), with respect to the development of a luxury multi-family apartment development (the "Project"), authorize the City to issue Chapter 100 bonds in a principal amount not to exceed \$39,500,000 to finance the costs of the Project, authorize and approve the Bond Purchase Agreement, Lease, and Performance Agreement between the City and an affiliated company to be named by Archview (the "Company"), and authorize and approve the Indenture between the City and BOKF, N.A. (the "Trustee").

Proposed City Council Motion:

First Motion: AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS, I move for second reading.

Second Motion: AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE

OF THE BONDS, I move for adoption.

Background:

On October 20, 2016, the City Council approved a rezoning and preliminary development plan for the Village at View High Apartments. Also on October 20, 2016 and November 17, 2016 the City Council considered the Chapter 100 conceptual economic development incentive proposal for the project and provided the applicant and staff direction to proceed with preparing the Chapter 100 incentive request for formal consideration.

Timeline:

The Project is expected to be constructed during the years 2017 and 2018.

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AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR VILLAGE AT VIEW HIGH, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (VILLAGE AT VIEW HIGH PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$39,500,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Lee's Summit, Missouri (the "City") is a constitutional charter city and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and,

WHEREAS, the City is authorized under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and,

WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared a Plan for an Industrial Development Project and Cost-Benefit Analysis for Village at View High (the "Plan") for Archview Properties, LLC, an Indiana limited liability company ("Archview"), with respect to a project consisting of the construction and improvement of a high-end multi-family complex in the City (the "Project"), notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City now desires to approve the Plan; and,

WHEREAS, the City desires to finance the costs of the Project out of the proceeds of industrial development revenue bonds to be issued under the Act (the "Bonds"); and,

WHEREAS, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City proceed with the issuance of the Bonds for the purpose described above; and,

WHEREAS, because the Bonds will be payable solely out of payments, revenues and receipts derived by the City from the lease of the Project to an affiliated company to be named by Archview for such purpose (the "Company") and from no other source, the City has determined that it is appropriate that the Bonds be sold to the Company pursuant to Section 108.170 of the Revised Statutes of Missouri, as amended, which provides that notwithstanding any other provisions of any law or any charter provision to the contrary, industrial development revenue bonds may be sold at private sale; and,

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with approval of the Plan and the issuance of the Bonds that the City enter into certain

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documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided; and,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, AS FOLLOWS:

SECTION 1. Promotion of Economic Development. The Council hereby finds and determines that the Project will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

SECTION 2. Approval of Plan. The Council hereby approves the Plan attached hereto as Exhibit A in accordance with Section 100.050 of the Act.

SECTION 3. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017, in an aggregate principal amount not to exceed \$39,500,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate, shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof. The sale of the Bonds to the Company at private sale pursuant to the provisions of Section 108.170 of Revised Statutes of Missouri, as amended, at the interest rate and upon the terms set forth in the Trust Indenture is hereby approved.

SECTION 4. Limited Obligations. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of the payments, revenues and receipts derived by the City from the herein authorized Lease Agreement, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Trust Indenture. The Bonds and the interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City Charter provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

SECTION 5. Approval and Authorization of Documents. The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

- (a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and BOFK, N.A., as trustee (the "Trustee"), pursuant to which the

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Bonds shall be issued and the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Trust Indenture;

- (b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Company, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds; and,
- (c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds; and,
- (d) Performance Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the City has granted the Company certain rights with respect to the abatement of *ad valorem* real property taxes on the Project in consideration for the Company's agreement to pay certain payments in lieu of taxes.

SECTION 6. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor, City Manager or Director of Finance of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 7. Further Authority. The Mayor, City Manager, Director of Finance and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents.

SECTION 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and adoption by the City Council and approval by the Mayor.

BILL NO. 17-28

PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2017.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Denise R. Chisum

APPROVED by the Mayor of said city this ____ day of _____, 2017.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Denise R. Chisum

APPROVED AS TO FORM:

City Attorney Brian W. Head

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

CITY OF LEE'S SUMMIT, MISSOURI

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
AND
COST-BENEFIT ANALYSIS**

FOR

VILLAGE AT VIEW HIGH

JANUARY 12, 2017

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EXHIBIT 3 - PROJECTED TAX REVENUES ON PROJECT SITE WITHOUT PROJECT (NO ABATEMENT)

EXHIBIT 4 - PROJECTED PILOT AMOUNTS

* * *

CITY OF LEE'S SUMMIT, MISSOURI

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT AND COST-BENEFIT ANALYSIS FOR VILLAGE AT VIEW HIGH

I. PURPOSE OF THIS PLAN

The City Council of the City of Lee's Summit, Missouri (the "City") will consider an ordinance approving this Plan (defined below) and authorizing the issuance by the City of its taxable industrial development revenue bonds in the aggregate principal amount of not to exceed \$39,500,000 (the "Bonds"), to finance costs of an industrial development project (the "Project") for Archview Properties, LLC, an Indiana limited liability company, or its assigns (the "Company") as more fully described and defined herein. The Bonds will be issued pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended and Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended (collectively, the "Act").

This Plan for an Industrial Development Project and Cost-Benefit Analysis (the "Plan") has been prepared to satisfy requirements of the Act and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using industrial development revenue bonds to finance the Project and to facilitate abatement of ad valorem taxes on the bond-financed property.

II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS

General. The Act authorizes cities, counties, towns and villages to issue industrial development revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants and other commercial facilities.

Issuance and Sale of Bonds. Revenue bonds issued pursuant to the Act do not require voter approval and are payable solely from revenues received from the project. The municipality issues its bonds and in exchange, the benefited company promises to make payments that are sufficient to pay the principal of and interest on the bonds as they become due. Thus, the municipality merely acts as a conduit for the financing.

Concurrently with the closing of the bonds, the company will convey to the municipality title to the property included in the project. (The municipality must be the legal owner of the property while the bonds are outstanding for the property to be eligible for tax abatement, as further described below.) At the same time, the municipality will lease the property, including the project, back to the benefited company pursuant to a lease agreement. The lease agreement will require the company, acting on behalf of the municipality, to use the bond proceeds to pay the costs or reimburse the costs of purchasing, constructing and installing the project, as applicable.

Under the lease agreement, the company typically: (1) will unconditionally agree to make payments sufficient to pay the principal of and interest on the bonds as they become due; (2) will agree, at its own expense, to maintain the project, to pay all taxes and assessments with respect to the project, and to maintain adequate insurance; (3) has the right, at its own expense, to make certain additions,

modifications or improvements to the project; (4) may assign its interests under the lease agreement or sublease the project while remaining responsible for payments under the lease agreement; (5) will covenant to maintain its corporate existence during the term of the bond issue; and (6) will agree to indemnify the municipality for any liability the municipality might incur as a result of its participation in the transaction.

Property Tax Abatement. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from taxation. In a typical transaction, the municipality holds fee title to the project and leases the project to the benefited company.

If the municipality and the company determine that partial tax abatement is desirable, the company may agree to make “payments in lieu of taxes.” The amount of payments in lieu of taxes is negotiable. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the municipality and to each political subdivision within the boundaries of the project in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

III. DESCRIPTION OF THE PARTIES

Archview Properties, LLC. The Company is a limited liability company organized and existing under the laws of the State of Indiana.

City of Lee’s Summit, Missouri. The City is a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri. The City is authorized and empowered pursuant to the provisions of the Act to purchase, construct, extend and improve certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable.

IV. REQUIREMENTS OF THE ACT

Description of the Project. The Project to be financed by the Bonds consists of (1) the design and construction of the Village at View High apartments, an approximately 312-unit high-end multi-family complex and (2) associated site work and infrastructure. The Project being financed by the Bonds will be constructed on approximately 21.34 acres in the vicinity of the northeast intersection of 3rd Street and View High Drive, which is referred to as the “Project Site.”

Estimate of the Costs of the Project. The Project is expected to cost approximately \$39,500,000 and to be constructed during the years 2017 and 2018.

Source of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Bonds in a principal amount not to exceed \$39,500,000, to be issued by the City and purchased by the Company or its designee (the “Bondholder”) and, if needed, other available funds of the Company. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. The City will hold title to the Project Site under the Chapter 100 Transaction. The City will

lease the Project to the Company for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement with the City, the Company will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease. The lease between the City and the Company will terminate in 2028, unless terminated sooner pursuant to the terms of the lease.

Affected School District, Community College District, County and City. The Lee’s Summit R-7 School District is the school district affected by the Project. Jackson County, Missouri is the county affected by the Project. Metropolitan Community College is the community college district affected by the Project. The City is the city affected by the Project. The Cost-Benefit Analysis attached hereto identifies all other taxing districts affected by the Project (other than those taxing entities solely affected by the Project with respect to receipt of tax revenues from the commercial surcharge tax).

Assessed Valuation. The most recent equalized assessed valuation of the Project Site is \$13,099.¹ The estimated total equalized assessed valuation of the Project Site after construction of the Project (2019) is \$3,721,613. This valuation was calculated based upon an assumed appraised value of \$19,587,434 for the Project Site in year 2019, multiplied by the assessment rate of 19%.

Payments in Lieu of Taxes. If this Plan is approved by the City Council, the City intends to issue the Bonds in 2017 and to provide tax abatement to the Company for the Project for a period of ten years beginning in 2019. During years 2017 and 2018, the Project will be under construction and the Company will pay a partial payment in lieu of taxes as set forth below. For all the years that the Project Site is subject to tax abatement as provided herein, the Company will make a fixed PILOT payment in December of each year in accordance with the following schedule:

2017-18	\$ 1,149
2019-21	\$ 327,912
2022-26	\$ 336,110
2027-28	\$ 344,513

Sales Tax Exemption on Construction Materials. It is anticipated that the construction materials used to construct the Project will be exempt from state and local sales taxes.

Cost-Benefit Analysis and Discussion of Exhibits. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Project. The following is a summary of the exhibits attached to this Plan that show the direct tax impact the Project is

¹ The Project Site consists of two separate parcels, both of which are currently part of larger tracts. The first parcel (Parcel I.D. No. 62-330-99-98-01-0-00-000) is owned by Parrot Properties Inc. and is approximately 24.89 acres. The Company is purchasing approximately 18.46 acres from Parrot Properties Inc. Based on information received from Jackson County, it is assumed that the most recent equalized assessed valuation of the land for the larger 24.89 acres tract is \$17,416. The land owned by the Company is approximately 74.47% of the acreage of the 24.89 acre site and it is therefore assumed that the most recent equalized assessed valuation of the land owned by the Company is \$12,969. The second parcel (Parcel I.D. No. 62-330-99-98-02-1-00-000) is owned by Mike’s Farm Inc. and is approximately 11.13 acres. The Company is purchasing approximately 3.29 acres from Mike’s Farm Inc. Based on information received from Jackson County, it is assumed that the most recent equalized assessed valuation of the land for the larger 11.13 acres is \$441. The land owned by the Company is approximately 29.53% of the acreage of the approximately 11.13 acre site and it is therefore assumed that the most recent equalized assessed valuation of the land owned by the Company is \$130.

expected to have on each taxing jurisdiction. This Plan does not attempt to quantify the overall economic impact of the Project.

Project Assumptions. **Exhibit 1** presents a list of the assumptions related to the determination of assessed valuations and the tax formulas.

Summary of Cost-Benefit Analysis. **Exhibit 2** presents a summary for each affected taxing district of (1) the total estimated tax revenues that would be generated if the Project did not occur and (2) the total estimated value of the payments in lieu of taxes (“PILOT Amounts”) to be made by the Company for the proposed abatement period.

Real Property. **Exhibit 3** provides the projected tax revenues which would be paid on the Project Site without tax abatement and without the Project. **Exhibit 4** provides the projected value of PILOT Amounts to be paid by the Company.

V. **ASSUMPTIONS AND BASIS OF PLAN**

In preparing this Plan, key assumptions have been made to estimate the fiscal impact of the abatement and exemptions proposed for the Project. See **ATTACHMENT A** for a summary of these assumptions.

Information necessary to complete this Plan, has been furnished by representatives of the City, representatives of the Company and its counsel, the Bondholder and other persons deemed appropriate and such information has not been independently verified for accuracy, completeness or fairness.

* * *

ATTACHMENT A

SUMMARY OF KEY ASSUMPTIONS

1. The cost of designing and constructing the Project is estimated to be approximately \$39,500,000.

2. The Project will be owned by the City and leased to the Company with an option to purchase. As long as the Project is owned by the City, it will be exempt from ad valorem taxes.

3. The Project Site will be excluded from the calculation of ad valorem property taxes for a period of twelve years beginning in 2017.

4. During the entire term of the Bonds through 2028, the Company will make payments in lieu of taxes in accordance with that portion of Section IV above in the Plan entitled "Payments in Lieu of Taxes."

5. Commercial real property taxes are calculated using the following formula:

$$(\text{Assessed Value} * \text{Tax Rate})/100$$

6. The assessed value of the Project Site is calculated using the following formula:

$$\text{Estimated Value} * \text{Assessment Ratio of 19\%}$$

7. The tax rates used in this Plan reflect the rates in effect for the tax year 2016. The tax rates were held constant through the 2028 tax year.

* * *

**City of Lee's Summit, Missouri
(Village at View High)**

**COST BENEFIT ANALYSIS
PLAN FOR INDUSTRIAL DEVELOPMENT PROJECT**

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**Exhibit 1
Project Assumptions**

♦ Current assessed value of project site		\$ 13,099
♦ Projected assessed value as a percentage of appraised value		19.0%
♦ Investment in the new project	2017-2018	\$39,500,000
♦ Projected appraised value (2019)		\$19,587,434
♦ Projected assessed value (2019)		\$ 3,721,613
♦ Fixed PILOT as described below:		
	Year(s)	Amount
	2017-2018	\$1,149
	2019-2021	\$327,915
	2022-2026	\$336,110
	2027-2028	\$344,513

Exhibit 2
Summary of Cost Benefit Analysis

Tax Distribution	Tax Rate	Projected Tax Revenues on Project Site Without Project	Projected PILOT Amounts
Board of Disabled Services	0.0738	\$ 116	\$ 28,106
City - Lees Summit	1.5398	2,420	586,417
Jackson County	0.5025	790	191,372
Lees Summit R-VII	5.9957	9,425	2,283,402
Mental Health	0.1201	189	45,739
Metro Junior College	0.2339	368	89,078
Mid-Continent Library	0.3153	496	120,079
State Blind Pension	0.0300	47	11,425
	<u>8.8111</u>	<u>\$ 13,850</u>	<u>\$ 3,355,619</u>

Exhibit 3
Projected Tax Revenues on Project Site Without Project (No Abatement)

Assessed Value of Project Site Without Project	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099	\$ 13,099
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total
Board of Disabled Services	0.0738	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 116
City - Lees Summit	1.5398	202	202	202	202	202	202	202	202	202	202	202	202	2,420
Jackson County	0.5025	66	66	66	66	66	66	66	66	66	66	66	66	790
Lees Summit R-VII	5.9957	785	785	785	785	785	785	785	785	785	785	785	785	9,425
Mental Health	0.1201	16	16	16	16	16	16	16	16	16	16	16	16	189
Metro Junior College	0.2339	31	31	31	31	31	31	31	31	31	31	31	31	368
Mid-Continent Library	0.3153	41	41	41	41	41	41	41	41	41	41	41	41	496
State Blind Pension	0.0300	4	4	4	4	4	4	4	4	4	4	4	4	47
	8.8111	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 1,154	\$ 13,850

**Exhibit 4
Projected PILOT Amounts**

Estimated Assessed Value of the Project Site with New Project		\$ 13,040	\$ 13,040	\$ 3,721,613	\$3,721,613	\$3,721,613	\$3,814,620	\$3,814,620	\$3,814,620	\$3,814,620	\$3,814,620	\$3,909,989	\$3,909,989	
PILOT Payment		\$1,149	\$1,149	\$327,915	\$327,915	\$327,915	\$336,110	\$336,110	\$336,110	\$336,110	\$336,110	\$344,513	\$344,513	
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total
Board of Disabled Services	0.0738	\$ 10	\$ 10	\$ 2,747	\$ 2,747	\$ 2,747	\$ 2,815	\$ 2,815	\$ 2,815	\$ 2,815	\$ 2,815	\$ 2,886	\$ 2,886	\$ 28,106
City - Lees Summit	1.5398	201	201	57,305	57,305	57,305	58,738	58,738	58,738	58,738	58,738	60,206	60,206	586,417
Jackson County	0.5025	66	66	18,701	18,701	18,701	19,168	19,168	19,168	19,168	19,168	19,648	19,648	191,372
Lees Summit R-VII	5.9957	782	782	223,137	223,137	223,137	228,713	228,713	228,713	228,713	228,713	234,431	234,431	2,283,402
Mental Health	0.1201	16	16	4,470	4,470	4,470	4,581	4,581	4,581	4,581	4,581	4,696	4,696	45,739
Metro Junior College	0.2339	31	31	8,705	8,705	8,705	8,922	8,922	8,922	8,922	8,922	9,145	9,145	89,078
Mid-Continent Library	0.3153	41	41	11,734	11,734	11,734	12,027	12,027	12,027	12,027	12,027	12,328	12,328	120,079
State Blind Pension	0.0300	4	4	1,116	1,116	1,116	1,144	1,144	1,144	1,144	1,144	1,173	1,173	11,425
	8.8111	\$ 1,149	\$ 1,149	\$ 327,915	\$ 327,915	\$ 327,915	\$ 336,110	\$ 336,110	\$ 336,110	\$ 336,110	\$ 336,110	\$ 344,513	\$ 344,513	\$3,355,619

\$39,500,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(VILLAGE AT VIEW HIGH PROJECT)
SERIES 2017

DATED AS OF [DATE], 2017

BOND PURCHASE AGREEMENT

Mayor and City Council
Lee's Summit, Missouri

Ladies and Gentlemen:

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, [Archview Properties, LLC], an Indiana limited liability company (the "Purchaser"), offers to purchase from the City of Lee's Summit, Missouri (the "City"), the above-referenced series of Taxable Industrial Development Revenue Bonds (the "Bonds"), to be issued by the City, under and pursuant to Ordinance No. [____] passed by the governing body of the City on February 2, 2017 (the "Ordinance") and a Trust Indenture dated as of [DATE], 2017 (the "Indenture"), by and between the City and BOKF, N.A., Kansas City, Missouri, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings set forth in **Section 101** of the Indenture.

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City's acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, and its Charter to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease, the Performance Agreement and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for [Archview Properties, LLC], an Indiana limited liability company (the "Company"), and to pay for the costs incurred in connection with the issuance of the Bonds;

(2) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease, the Indenture or the Performance Agreement; and

(3) Any certificate signed by an authorized representative of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana and is authorized to conduct business and is in good standing in the State of Missouri;

(2) The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound;

(3) When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies; and

(4) Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such party as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined) for the Bonds, which amount shall be deposited in the Project Fund as provided in **Section 502** of the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in **Section 4.4** of the Lease. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser may make additional payments with respect to the Bonds ("Additional Payments") to the Trustee, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs and the outstanding principal amount of the Bonds shall increase by each such Additional Payment; provided that the sum of the Closing Price and all such Additional Payments for the Bonds shall not, in the aggregate, exceed \$39,500,000.

As used herein, the term "Closing Date" shall mean [DATE], 2017, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean, with respect to the Bonds, that certain amount specified in writing by the Purchaser and agreed to by the City as the amount required to fund the initial disbursement from the Project Fund on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of \$39,500,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the City, the Trustee, and any member, officer, official or employee of the City or of the Trustee and any person controlling the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent caused by any violation by the Company of, or failure by the Company to comply with, any federal or state securities laws in connection with the Bonds; provided, however, the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability or expense is (a) the result of the Indemnified Party's negligence or willful misconduct, or (b) the Indemnified Party is not following the written instructions of the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER'S OBLIGATIONS

The Purchaser's obligations hereunder shall be subject to the due performance by the City of the City's obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the City's representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance, the Indenture, the Performance Agreement, this Agreement and the Lease and any other instrument contemplated thereby shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser;

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds,

or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof;

(c) The Company shall execute a certificate, dated the Closing Date, to the effect that (i) no litigation, proceeding or investigation is pending against the Company or its affiliates or, to the knowledge of the Company, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Company, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Company, threatened against the Company that could reasonably be expected to adversely affect its ability to perform its obligations hereunder, (iii) the representations and warranties of the Company herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (iv) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds; and

(d) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., in form and substance satisfactory to the Purchaser and the Company.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the City in writing of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds. To the best of the City's knowledge and belief, the only expenses payable by the Company in connection with the issuance of the Bonds are the following: (1) the legal fees of Gilmore & Bell, P.C., in the amount of \$[AMOUNT] plus reimbursement for out-of-pocket expenses (\$[AMOUNT]), (2) mailing costs and filing fees in the amount of \$[AMOUNT], and (3) the Trustee's initial acceptance fee and first year's administrative fee totaling \$[AMOUNT].

SECTION 8. NOTICE

Any notice or other communication to be given to the City under this Agreement may be given by mailing or delivering the same in writing to the City of Lee's Summit, Missouri, 220 SE Green Street, Lee's Summit, Missouri 64063, Attention: City Clerk; any notice or other communication to be given to

the Purchaser or the Company under this Agreement may be given by delivering the same in writing to the following:

[Archview Properties, LLC]
8335 Keystone Crossing, Suite 200
Indianapolis, IN 46240
Attention: Jim Thomas

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri and may be assigned by the Purchaser to any party to which the Lease is assigned, or otherwise may be assigned with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 10. EXECUTION OF COUNTERPARTS; ELECTRONIC STORAGE

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of this page intentionally left blank]

Executed as of the date first written above.

Very truly yours,

[ARCHVIEW PROPERTIES, LLC],
as Purchaser

By: _____

Accepted and Agreed to as of the date first written above.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Randall L. Rhoads
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Denise Chisum
Title: City Clerk

Accepted and Agreed to as of the date first written above.

[ARCHVIEW PROPERTIES, LLC],
as Company

By: _____

**CITY OF LEE'S SUMMIT, MISSOURI,
the City**

AND

**BOKF, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of [DATE], 2017

Relating to:

**\$39,500,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Village at View High Project)
Series 2017**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of [DATE], 2017 (the “Indenture”), is between the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the “City”), and **BOKEF, N.A.**, Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in Kansas City, Missouri, as Trustee (the “Trustee”);

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “**Act**”), to purchase, construct, extend and improve certain “projects” (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed Ordinance No. [____] (the “Ordinance”) on February 2, 2017, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017, in the maximum principal amount of \$39,500,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located generally in the vicinity of the northeast intersection of 3rd Street and View High Drive in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site (the “Project Improvements,” as more fully described on **Exhibit B** hereto).

3. The Ordinance authorizes the City to lease the Project Site and the Project Improvements (collectively, the “Project”) to [Archview Properties, LLC], an Indiana limited liability company (the “Company”).

4. Pursuant to the Ordinance, the City is authorized to execute and deliver (a) this Indenture for the purpose of issuing and securing the Bonds, (b) the Lease Agreement of even date herewith (the “Lease”) with the Company, under which the City, as lessor, will, or will cause the Company to, construct and improve the Project and will lease the Project to the Company, as lessee, in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds, and (c) the Performance Agreement for the purpose of setting forth the terms and conditions of the Project’s exemption from ad valorem real property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

5. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns until this Indenture has been satisfied and discharged, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Lease (excluding the City's right to receive moneys for its own account and the City's rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided therein or herein), and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights thereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined in **Section 1.1** of the Lease, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of the Lease.

“Authorized City Representative” means the Mayor, the City Manager, the Director of Finance, the City Clerk or such other person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized City Representative.

“Authorized Company Representative” means the Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Company Representative.

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017, in the maximum aggregate principal amount of \$39,500,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Lee’s Summit, Missouri, Bond Fund – [Archview Properties, LLC]” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds, dated as of [DATE], 2017, by and between the City and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the corporate trust office or the payment office of the Trustee are required or authorized by law to remain closed.

“City” means the City of Lee’s Summit, Missouri, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, and its successors and assigns.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds before the Closing Date.

“Company” means [Archview Properties, LLC], an Indiana limited liability company, and its successors or assigns.

“Completion Date” means the date of execution of the certificate required pursuant to **Section 504** hereof.

“Costs of Issuance Fund” means the “City of Lee’s Summit, Missouri, Costs of Issuance Fund – [Archview Properties, LLC]” created in **Section 501** hereof.

“Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the provisions of this Indenture, the Bond Purchase Agreement and the Lease, as reflected in the bond registration records maintained by the Trustee or in the Table of Cumulative Outstanding Principal Amount set forth in the form of Bond in **Section 402** hereof.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“Government Securities” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** hereof.

“Investment Securities” means any of the following securities:

(a) Government Securities;

(b) obligations of Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;

(d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by S&P and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

“Lease” means the Lease Agreement dated as of [DATE], 2017, between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Moody’s” will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

“Outstanding” means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered, except:

(a) Bonds subsequently cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“**Owner**” or “**Bondowner**” means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

“**Paying Agent**” means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“**Payment Date**” means the date on which principal or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“**Performance Agreement**” means the Performance Agreement dated as of [DATE], 2017, between the City and the Company, as amended and supplemented from time to time.

“**Person**” means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“**Project**” means the Project Site and the Project Improvements as they may at any time exist.

“**Project Costs**” means all costs of construction and improvement of the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition of the Project Site and the construction and improvement of the Project Improvements located on the Project Site;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of professionals and consultants in relation to the construction and improvement of the Project or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in constructing and improving the Project Improvements and otherwise improving the Project Site, including the actual cost of labor and materials as payable to contractors, builders and materialmen in connection with the construction and improvement of the Project;

(d) interest accruing on the Bonds during the construction period of the Project;

(e) the cost of title insurance policies, if any, and the cost of any other insurance maintained during the construction period in accordance with **Article VII** of the Lease;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the

extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the construction and improvement of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the construction and improvement of the Project; and (3) the financing thereof; and

(h) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

“Project Fund” means the “City of Lee’s Summit, Missouri, Project Fund – [Archview Properties, LLC]” created in **Section 501** hereof.

“Project Improvements” means the buildings, structures, improvements and fixtures to be purchased, constructed, installed and otherwise improved on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Project Site” means all of the real estate as described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Purchaser” means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds.

“S&P” means Standard & Poor’s Ratings Services, a division of McGraw Hill Financial, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “S&P” will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

“State” means the State of Missouri.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI** hereof.

“Supplemental Lease” means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means BOKF, N.A., Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

Section 102. Rules of Interpretation.

(a) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$39,500,000.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State or related political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit C** hereto, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206** hereof. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company is the sole Owner of the Bonds, then the Company may set-off its obligation to the City as lessee under the Lease against the City's obligations to the Company as the bondholder under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the

execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit C** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit D** hereto. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) The Bonds are authorized in the aggregate maximum principal amount of \$39,500,000 for the purpose of providing funds to pay the costs of the Project, which Bonds shall be designated “City of Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017.” The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 1, 2028 (subject to prior redemption as provided in **Article III** hereof) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit C** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance passed by the City Council authorizing the issuance of the Bonds and the execution of this Indenture, the Performance Agreement, the Bond Purchase Agreement and the Lease;

(2) Original executed counterparts of this Indenture, the Lease, the Performance Agreement and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds constitute valid and legally binding limited and special revenue obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall authenticate and endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to the Company (or another purchaser designated by the Company).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Closing Price.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease, and the Trustee shall, based solely of the amount set forth in the requisition, endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced (as defined in subsection (g) below) as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted, and shall notify the City if the requisitions submitted exceed the maximum Cumulative Outstanding Principal Amount of the Bonds permitted hereunder.

(f) The Bonds shall bear interest at the rate of 2.00% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2017, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$39,500,000 and further provided that the Bonds shall be paid in full no later than December 1, 2028. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount." On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit C** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company on a monthly basis. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504** hereof, the Trustee, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the

Trustee to save each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 210. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (1) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (2) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) In connection with a redemption under paragraphs (a) or (b) of this Section, at its option, the Company may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company shall receive a credit against the amounts payable by the Company for

the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to direct the City to redeem all or a portion of the Bonds at least 40 days (10 days if the Company is the Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if the Company is the Owner) prior to the scheduled redemption date by facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit C** hereto. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

- (a) "City of Lee's Summit, Missouri, Project Fund – [Archview Properties, LLC]" (herein called the "Project Fund");
- (b) "City of Lee's Summit, Missouri, Costs of Issuance Fund – [Archview Properties, LLC]" (herein called the "Costs of Issuance Fund"); and

(c) “City of Lee’s Summit, Missouri, Bond Fund – [Archview Properties, LLC]” (herein called the “Bond Fund”).

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)** and **(e)** hereof), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and improving the Project shall pursuant to any directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)** and **(e)** hereof, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative and shall not be required to make any independent inspection or investigation in connection therewith. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the construction and improvement of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Deposits into and Disbursements from the Costs of Issuance Fund. Money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum provided to the Trustee on or before the date of delivery of the Bonds, which shall have attached thereto the statements, invoices and related items described in said closing memorandum. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance on or before the date that is 180 days after the Closing Date shall be refunded to the Company.

Section 506. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as provided in **Article IX** hereof, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits Into the Bond Fund.

(a) The Trustee shall deposit into the Bond Fund, as and when received, (a) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (b) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (c) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 506** hereof upon acceleration of the Bonds; (d) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (e) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (f) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (g) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) The Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

Section 602. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6(a)** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption

notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture, the Lease and the Performance Agreement, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 604. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 605. Repayment to the Company from the Bond Fund. After payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the reasonable fees, charges and expenses of the Trustee and the City and any other amounts required to be paid under this Indenture and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the

Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee is authorized to invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on

its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 803. Performance of Covenants. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

Section 804. Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The City shall file or cause to be kept and filed all financing statements, and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder.

Section 806. Inspection of Project Books. The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The City covenants and agrees that it will enforce all of its rights and all of the obligations of the Company (at the expense of the Company) under the Lease to the extent necessary to preserve the Project in good repair and reasonably safe operating condition, and to protect the rights of the Trustee and the Owners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease; provided that, the City and the Trustee, as its assignee, shall refrain from enforcing any such right or obligation (except for the rights of the City or the Trustee to receive payments owing to either of them for their own account under the Indenture, the Lease, the Performance Agreement or any other agreement related to the Bonds or for their rights of indemnification or to be protected from liabilities by insurance policies required by the Lease) if so directed in writing by the Owners of 100% of the Outstanding Bonds. The City agrees that the Trustee, as assignee of the rentals and other amounts to be received by the City and paid by the Company under the Lease, or in its name or in the name of the City, may enforce all rights of the City to receive such rentals and other amounts and all obligations of the Company to pay such rentals and other amounts under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

Section 808. Subordination of Indenture to the Lease. This Indenture and the rights and privileges hereunder of the Trustee and the Owners of the Bonds are specifically made subject and subordinate to the rights and privileges of the Company (as long as no default by the Company under the Lease is continuing beyond any applicable grace period) set forth in the Lease. So long as not otherwise provided in this Indenture, the Company shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease. Nothing contained in this Section shall be interpreted as eliminating, modifying or affecting in any manner the rights, privileges or immunities granted to the Trustee in **Article X** hereof.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an “Event of Default”:

- (a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at the date fixed for redemption thereof for a period of 5 days following written notice to the City and the Company by the Trustee or by the Owners of 25% in aggregate principal amount of the Bonds Outstanding;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at the date fixed for redemption thereof for a period of 5 days following written notice to the City and the Company by the Trustee or by the Owners of 25% in aggregate principal amount of the Bonds Outstanding;
- (c) Default as specified in **Section 12.1** of the Lease has occurred; or
- (d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail to the Company, and the Company has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company or the City (as the case may be) within such period and diligently pursued until the default is corrected.

Section 902. Acceleration of Maturity in Event of Default; Rescission. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. At any time after such a declaration of acceleration has been made, but before any judgment or decree for

payment of money due on any Bonds has been obtained by the Trustee as provided in this Article, the Owners of a majority in principal amount of the Bonds Outstanding may, by written notice to the Company and Trustee but with the written consent of the City, rescind and annul such declaration and its consequences if: (a) there is deposited with the Trustee a sum sufficient to pay: (1) all overdue installments of interest on all Bonds; (2) the principal of (and premium, if any, on) any Bonds which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Bonds; and (3) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and (b) all events of default, other than the non-payment of the principal of Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in **Section 910** of this Indenture.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** hereof elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges having a lien that is senior to the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable under the Performance Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(b), (c), (d), (e) or (f)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** hereof or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(l)** hereof, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) Subject to the approval of the Financing Party (as defined in the Lease), the Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(b)** (to the extent that such Event of Default stems from a payment obligation owed to the City or the Trustee) or **(d)** of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of any obligations outstanding under the Lease and the Performance Agreement, of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys fees and expenses) or amounts to be paid pursuant to **Section 903** hereof, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910** hereof, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in

the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602** hereof.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds, and only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(b), (c), (d) (e) or (f)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(i)** hereof, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or inaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by

the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be

put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(i)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor trustee become effective until such time as a successor trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the Company and the Owners and signed by the City.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust with a corporate trust office in the State, and having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year, within 90 days following the end of such year, to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to any such party, showing in reasonable detail all financial transactions

relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners;
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;
- (c) To more precisely identify any portion of the Project or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Company; or
- (e) To subject to this Indenture additional revenues, properties or collateral.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding and the consent of the Financing Party (as defined in the Lease), nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding, (or in the case of a Supplemental Indenture concerning the matters described in (1) through (4) of subparagraph (a) above, the Owners of 100% of the principal amount of the Bonds then Outstanding) at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article that affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners.

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a

majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease and the Performance Agreement, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** hereof or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(i) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Company or any affiliate thereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of Lee's Summit, Missouri
220 SE Green Street
Lee's Summit, Missouri 64063
Attention: City Clerk

(b) To the Trustee:

BOKF, N.A.
4600 Madison Ave., Ste. 800
Kansas City, MO 64112
Attention: Corporate Trust Department

(c) To the Company:

[Archview Properties, LLC]
8335 Keystone Crossing, Suite 200
Indianapolis, IN 46240
Attention: Jim Thomas

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, City of Lee's Summit, Missouri, has caused this Indenture to be signed in its name and behalf by its Mayor and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Randall L. Rhoads
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Denise Chisum
Title: City Clerk

[Trust Indenture]

BOKF, N.A.,
as Trustee

[SEAL]

By _____
Name: Victor Zarrilli
Title: Senior Vice President

ATTEST:

By _____
Name: M. Deborah King
Title: Trust Officer

[Trust Indenture]

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[To be provided]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

The Project Improvements shall consist of an approximately 312-unit high-end multi-family complex and associated site work and infrastructure.

EXHIBIT C

FORM OF BONDS

THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.

No. 1

**Not to Exceed
\$39,500,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(VILLAGE AT VIEW HIGH PROJECT)
SERIES 2017**

Interest Rate

2.00%

Maturity Date

December 1, 2028

Dated Date

_____, 2017

OWNER:

[ARCHVIEW PROPERTIES, LLC]

MAXIMUM PRINCIPAL AMOUNT:

**NOT TO EXCEED THIRY-NINE
MILLION FIVE HUNDRED THOUSAND
DOLLARS**

THE CITY OF LEE'S SUMMIT, MISSOURI, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2017, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the City designated “City of Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017,” in the maximum aggregate principal amount of \$39,500,000 (the “Bonds”), to be issued for the purpose of acquiring and improving certain real property located generally in the vicinity of the northeast intersection of 3rd Street and View High Drive in the City (the “Project Site,” as more fully described on **Exhibit A** to the Lease (defined below)), including the construction and improvement of a high-end multi-family complex (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to [Archview Properties, LLC], an Indiana limited liability company (the “Company”), under the terms of a Lease Agreement dated as of [DATE], 2017 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the Council of the City.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of [DATE], 2017 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and BOKF, N.A., Kansas City, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment prior to maturity as provided in the Indenture.

THE BONDS, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the “City of Lee’s Summit, Missouri, Bond Fund – [Archview Properties, LLC].”

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto,

except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$39,500,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, the City of Lee's Summit, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

CERTIFICATE OF AUTHENTICATION

CITY OF LEE'S SUMMIT, MISSOURI

This Bond is one of the Bonds of the issue described in the within-mentioned Resolution.

By: _____
Mayor

Registration Date: _____

BOKF, N.A.,
as Trustee

ATTEST: _____ (Seal)

By _____
Authorized Signatory

City Clerk

FORM OF ASSIGNMENT

(NOTE RESTRICTIONS ON TRANSFERS)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept by the Trustee for the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15))

By _____
Title: _____

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Lee's Summit, Missouri
220 SE Green Street
Lee's Summit, Missouri 64063
Attention: City Clerk

BOKF, N.A., as Trustee
4600 Madison Ave., Ste. 800
Kansas City, MO 64112
Attention: Corporate Trust Department

Re: \$39,500,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017 of the City of Lee's Summit, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the "Bonds"), the undersigned purchaser of the Bonds (the "Purchaser") hereby represents, warrants and agrees as follows:

1. The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of [DATE], 2017 (the "Indenture"), between the City of Lee's Summit, Missouri (the "City") and BOKF, N.A., Kansas City, Missouri, as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to [Archview Properties, LLC], an Indiana limited liability company (the "Company"), under a Lease Agreement dated as of [DATE], 2017 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

2. The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser set forth herein.

3. The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of any required opinion of counsel acceptable to the City, the Company, the Trustee and the Purchaser that all registration and disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

5. The Company has (a) furnished to the Purchaser such information about itself as the Purchaser deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the Purchaser, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

6. The Purchaser acknowledges that no offering document has been prepared in connection with the sale of the Bonds. The Purchaser further acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to the Purchaser pursuant to the Bond Purchase Agreement prior to or on the date of the delivery of and payment for the Bonds, and that the City and the Company have in all respects complied with and satisfied all of their respective obligations to the Purchaser which are required under the Bond Purchase Agreement to be complied with and satisfied on or before such date.

7. The Purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bonds and that the Purchaser is relying on its own knowledge and investigation of facts and circumstances relating to the purchase of the Bonds. The Purchaser believes that the Bonds being acquired are a security of the type that the Purchaser wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The Purchaser is fully aware of and satisfied with (i) the current status of the title to the Project and any issues related thereto and (ii) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The Purchaser understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The Purchaser hereby directs the Trustee to hold the Bonds in trust for the undersigned pursuant to **Section 204(c)** of the Indenture.

Dated: _____, 20____

[PURCHASER OF BONDS]

By: _____

Name: _____

Title: _____

**CITY OF LEE'S SUMMIT, MISSOURI,
As Lessor,**

AND

**[ARCHVIEW PROPERTIES, LLC],
As Lessee**

LEASE AGREEMENT

Dated as of [DATE], 2017

Relating to:

**\$39,500,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Village at View High Project)
Series 2017**

Certain rights of the City of Lee's Summit, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to BOKF, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of [DATE], 2017, between the City and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of [DATE], 2017 (the “Lease”), is between the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the “City”), and **[ARCHVIEW PROPERTIES, LLC]**, a limited liability company organized and existing under the laws of the State of Indiana, as lessee (the “Company”);

RECITALS:

1. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the “Act”), to purchase, construct, extend and improve certain “projects” (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”) on February 2, 2017, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017, in the maximum principal amount of \$39,500,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located generally in the vicinity of the northeast intersection of 3rd Street and View High Drive in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of a high-end multi-family complex on the Project Site (the “Project Improvements,” as more fully described on **Exhibit B** hereto).

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with BOKF, N.A., Kansas City, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will construct and improve the Project Improvements, and lease the Project Site and the Project Improvements as they may at any time exist (collectively, the “Project”), to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

4. In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Bonds and certain other agreements, the City and the Company have concurrently herewith entered into a Performance Agreement of even date herewith (the “Performance Agreement”), pursuant to which the Company has agreed to make certain payments in lieu of taxes.

5. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Environmental Law” means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

“Financing Document” means any loan agreement, credit agreement, mortgage, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document executed by or on behalf of a Financing Party.

“Financing Party” means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with such financing or hedging arrangements, in connection with the development, construction, ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person’s behalf.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.2(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Leasehold Mortgage” means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** hereof.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, this Lease and the Performance Agreement, (c) utility, access and other easements and rights-of-way,

mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic's liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) liens or security interests granted pursuant to any Leasehold Mortgage or any Financing Documents, (f) any future fee and leasehold deed of trust (delivered pursuant to **Section 10.4(b)** of this Lease), and (i) all exceptions to title set forth in the title report included in the transcript of proceedings relating to the Bonds.

"Plans and Specifications" means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City, the Trustee and their duly appointed representatives.

"Project Site" means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

Section 1.3. Acceptance of Indenture. The Company acknowledges that it has received an executed copy of the Indenture and that it is familiar with the terms and conditions of the Indenture. The Company further covenants that it will comply with all the conditions and covenants contained in the Indenture relating to the Company and the Project, and that it will not take any action which would cause a default thereunder or jeopardize the rights of the Trustee, the City or the Bondowners.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) As of the date of delivery hereof, the City has acquired the Project Site and agrees to construct and improve or cause to be constructed and improved thereon the Project Improvements. The City agrees to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease as provided for herein, all for the purpose of furthering the public purposes of the Act;

(c) The purchase, construction, extension and improvement of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(e) To finance the costs of the Project, the City proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture;

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, including all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to the Lease;

(g) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative; and

(h) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof or potentially as lessee of a portion thereof, except subsequent to an Event of Default hereunder.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana and authorized to conduct business in the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction and improvement of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

(f) The Project is located wholly within the corporate limits of the City of Lee's Summit, Missouri.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 2028.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2(b)** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act, this Lease and the Performance Agreement. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

Section 3.4. Title to the Project. The City shall be the sole owner of the Project during the Lease Term.

ARTICLE IV

CONSTRUCTION AND IMPROVEMENT OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee may, (pursuant to **Section 208(d)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** below. In that event, the

purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

Section 4.2. Construction and Improvement of the Project. The City and the Company agree that the Company, as the agent of the City, shall, but solely from the Project Fund, construct and improve the Project as follows:

(a) The City has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the City and the Trustee;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project; provided, however, that (i) nothing herein shall constitute, or be deemed to be, an agreement or acknowledgment by either the City or the Company that Section 107.170 of the Revised Statutes of Missouri, as amended, is applicable to the construction of the Project or any portion thereof, and (ii) the City and the Company hereby acknowledge and agree that the Project is not a “public work” for purposes of Section 107.170 of the Revised Statutes of Missouri, as amended; and

(d) The Company agrees that it will use reasonable efforts to cause the construction and improvement of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such construction and improvement commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose.

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, and the City hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by

the Trustee of certificates in substantially the form attached hereto as **Exhibit C**, signed by an Authorized Company Representative, which disbursements may be recorded via a transaction entry on the trust records held by the Trustee. The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute unto the Trustee an irrevocable determination that all conditions precedent to the payments requested have been satisfied.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) the construction and improvement of the Project has been completed in accordance with the Plans and Specifications, (b) that all costs and expenses incurred in the construction and improvement of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (c) amounts to be retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the City and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of City. The Project Site and the Project Improvements, which the Company desires to convey to the City, including all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, any Permitted Encumbrances, and the Leasehold Mortgage, if any.

Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company. Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

Section 4.9. Environmental Matters. The Company acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City or the Trustee with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project and the Trustee's acceptance of its duties as Trustee hereunder.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, for deposit in the Bond Fund on or before 10:00 a.m., Trustee's local time, on or before each December 1, commencing December 1, 2017 and continuing until the principal of and interest on the Bonds shall have been fully paid, an amount which, when added to any collected funds then on deposit in the Bond Fund and available on such Payment Date, shall be equal to the total amount payable on each December 1 as interest on the Bonds. On December 1, 2028 (or such earlier date as the Company may elect to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption. All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture, provided that if the Company is the Owner of all the Bonds Outstanding, payment of Basic Rent as provided for in this Section may be made via a transaction entry on the trust records held by the Trustee and the Paying Agent consistent with **Section 204(d)** of the Indenture. Any Basic Rent paid by the Company which exceeds the total amount payable on such payment dates shall be immediately paid to the Company by wire transfer. At its option, on the final Payment Date, the Company may deliver to the Trustee for cancellation Bonds not previously paid and the Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

Notwithstanding anything contained in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, if the Purchaser, or any other affiliate of the Company, is the Owner of all of the Bonds Outstanding, payments of Basic Rent may be made via a transaction entry on the trust records held by the Trustee and the Paying Agent without requiring the Company to wire or otherwise transfer any moneys to such Owner or the Trustee.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts as and when the same become due:

- (a) all reasonable fees, charges and expenses, including agent and counsel fees, of the Trustee incurred under the Indenture, this Lease, or any other document entered into in connection with the Bonds, as and when the same become due;
- (b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all outstanding Bonds;
- (c) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under this Lease, the Indenture or the Performance Agreement by the City, the Trustee or the Bondowners, including counsel fees and expenses;
- (d) all amounts payable under the Performance Agreement; or
- (e) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI** hereof.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and

claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent. The Company may at any time and from time to time prepay a portion of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the redemption of the Bonds. During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

Subject to **Section 301(a)** of the Indenture relating to the redemption of Bonds, the Company, at its option, may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's charter relating to maintenance and appearance.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in

installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City and the Trustee written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City and the Trustee from any costs and expenses the City and the Trustee may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against any payments in lieu of taxes due under the Performance Agreement to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project paid pursuant to this Section.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its Affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Property Tax Exemption. The City and the Company agree that while the Project is owned by the City and is subject to this Lease, the Project and the leasehold interest of the Company in the Project will be exempt from all *ad valorem* real and personal property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties in accordance with the Performance Agreement attached hereto as *Appendix I*. Notwithstanding the foregoing, Company will annually pay to the City the payments with respect to the Project set forth in the Performance Agreement.

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment or Report. Before conveying title to any real property to the City, the Company will purchase, from a title insurance company reasonably acceptable to the City, a commitment for title insurance or provide such other report in a form reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City and the Trustee.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep

the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The term "Full Insurable Value" shall mean the actual replacement cost of the Project, without deduction for physical depreciation. The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City and the Trustee shall be named as loss payees, as their respective interests may appear, and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to, the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2017 with a certificate of an Authorized Company Representative certifying compliance with this Section. The Trustee shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease, or as may be directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds outstanding.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than \$1,000,000 per occurrence (subject to reasonable liability retention amounts not to exceed the amounts normally or generally carried by the Company or its affiliates). The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. The Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2017 with a certificate of an Authorized Company Representative certifying compliance with this Section. The Trustee shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Workers' Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

Section 7.5. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the

Company, or in combination with its parent corporation, has a net worth in excess of \$200,000,000, as determined by accounting principles generally accepted in the United States of America.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and will comply in all material respects with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed on the Project Site by the Company not purchased or acquired from funds deposited with the Trustee hereunder and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to *ad valorem* taxes.

Section 8.2. Additional Improvements on the Project Site. The Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all *ad valorem* taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the County Assessor determines that such additional buildings and improvements are not subject to *ad valorem* taxes, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due under this Section.

Section 8.3. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

Section 8.4. Mechanics' Liens.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within 60 days after the Company becomes aware of any such lien notifies the City and the Trustee in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) make the determination described in subsection (f) below, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any leasehold mortgagee or Financing Party. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Project.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or if the Company does not have the right under any Leasehold Mortgage or Financing Document to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the mortgagee under the Leasehold Mortgage (if any) and the Financing Party under the Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not

practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee, the mortgagee under the Leasehold Mortgage (if any) and the Financing Party under the Financing Documents (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, provided that if the Company is the sole owner of the Bonds and it has determined that acquiring and constructing substitute improvements is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of the mortgagee under the Leasehold Mortgage (if any) and Financing Party under the Financing Documents (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such

restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may prior to the application thereof by the City or the Trustee be applied as directed by the Owners of 100% of the principal amount of Bonds outstanding, subject and subordinate to the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds. For purposes of this Section only, any person to whom Bonds have been pledged in good faith shall be deemed to be the Owner of the Bonds.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's or the Trustee's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)** hereof, the Company shall peacefully surrender possession of the Project to the City in good condition and repair; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City.

Section 10.3. City's Right of Access to the Project. The Company agrees that the City and the Trustee and their duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in **Section 4.2** hereof, (c) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease, and (d) exhibiting the Project to prospective purchasers, lessees or trustees.

Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(b)** and **(c)**, if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(b)** and **(c)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The Company may mortgage the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease, and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)**.

(d) Upon notice by the Company to the City in writing that it has executed one or more Financing Documents under which it has granted rights in this Lease to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Financing Party;

(2) the City shall serve upon each such Financing Party (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Financing Party;

(3) each Financing Party shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Financing Party as timely performance by the Company;

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default;

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such event of default shall continue beyond any period set forth in the Lease to effect said cure so long as the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default; and

(6) the Financing Parties (and their designees, nominees, assignees or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Company's obligations under any mortgage or Financing Documents relating to the Project shall be subordinate to the Company's obligations under this Lease.

Section 10.5. Indemnification of City and Trustee. The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees (collectively, the "Indemnified Parties") from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the issuance of the Bonds and the execution of this Lease, the Indenture or any other documents entered into in connection with the Bonds and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not (i) extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project by employees of the City or the result of negligence or willful misconduct by the City, or (ii) extend to the Trustee if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the negligence or willful misconduct of the Trustee or (iii) the performance or failure to perform by the City or the Trustee of its obligations under this Lease, the Performance Agreement or any related documents. Upon notice from the City or the Trustee, the Company shall defend them or either of them in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to

assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, the provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation either (A) becomes, in connection with the consolidation, merger or sale of assets becomes the Owner of 100% in principal amount of the Bonds outstanding and expressly assumes in writing all of the obligations of the Company contained in this Lease and the Performance Agreement, or (B) if not the Owner of 100% in principal amount of the Bonds outstanding, expressly assumes in writing all the obligations of the Company contained in this Lease and the Performance Agreement; and, further provided, that if not the Owner of 100% in principal amount of the Bonds outstanding, the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (ii) \$100,000,000. The term "net worth," as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In any such consolidation, merger or transfer the Company shall comply with the provisions of **Section 10.1** hereof to the extent applicable.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the City and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City and the Trustee in the Project. Upon the written instructions of the Owner of the Bonds, the Trustee, at the Company's expense, shall file all instruments the Owner of the Bonds shall deem necessary to be

filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The City and the Company shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the forgoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder (a “Remedies Notice”), the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or prior to the 29th and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee’s agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (c) an amount of money equal to all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus
- (d) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Documents, including without limitation a special warranty deed as to the Project Site, conveying to the Company legal title to the Project, as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The options and obligation to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. As additional consideration for the Company's use of the Project, the Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due under the Performance Agreement. The amount of the purchase price under this Section shall be \$100 plus an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "Event of Default" or "default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent for a period of 5 days following written notice to the Company by the City or the Trustee; or

(b) Default in the due and punctual payment of Additional Rent for a period of 30 days following written notice to the Company by the City or the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding provided, however, at any time the Company is the owner of 100% in aggregate principal amount of all Bonds Outstanding, said notice must also have been given by the Owner of 100% in aggregate principal amount of all Bonds Outstanding or it shall not be effective (unless such Event of Default stems from a payment obligation owed to the City or the Trustee, in which case notice given by the City or the Trustee, as applicable, shall be sufficient); or

(c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 30 days after the City or the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default provided that (1) the Company has commenced such cure within said 30-day period, and (2) the Company diligently prosecutes such cure to completion) provided, however, at any time the Company is the owner of 100% in aggregate principal amount of all Bonds Outstanding, said notice must also have been given by the Owner of 100% in aggregate principal amount of all Bonds Outstanding or it shall not be effective (unless such Event of Default stems from a payment or indemnification obligation owed to the City or the Trustee or an obligation to obtain insurance in accordance with **Article VII** of this Lease, in which case notice given by the City or the Trustee, as applicable, shall be sufficient); or

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 90 days; or

(f) The occurrence and continuance of an "Event of Default" by the Company under the Performance Agreement following any applicable notice and grace period provided therein.

With regard to any alleged default concerning which notice is given to the Company under the provisions of this Section, the City hereby grants the Company full authority for account of the City to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the City, with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts in order to remedy such default.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of

this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable after giving ten (10) days prior written notice thereof to the Company, as provided in the Indenture; or

(b) give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof and this Lease shall thereupon be terminated, and the City will promptly convey the Project in accordance with **Section 11.2** hereof.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause.

Section 12.4. Performance of the Company's Obligations by the City. If the Company shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the Trustee, the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Trustee, the City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the Trustee or the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the Trustee or the City's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the Trustee or the City.

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof for any lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

- (1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;
- (2) Such assignment shall include the entire then unexpired term of this Lease; and
- (3) A duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall have the right to sublet all or any part of the Project to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act. Notwithstanding the foregoing, the Company may, in the ordinary course of its business, and without the prior approval of, or notice to, the City, enter into leases or subleases with one or more persons or entities for the various parcels or units within the Project to be used for residential purposes or other uses commonly associated with an apartment complex.

If for any reason this Lease and the leasehold estate of the Company hereunder is terminated by the City by summary proceedings or otherwise in accordance with the terms of this Lease, the City covenants and agrees that such termination of this Lease shall not result in a termination of any sublease affecting the Project or any part or parts thereof and that they shall continue for the duration of their respective terms and any extensions thereof as a direct lease between the City hereunder and the sublessee thereunder, with the same force and effect as if the City had originally entered into such sublease as landlord thereunder. Any such sublessee shall not be named or joined in any action or proceeding by the City under this Lease to recover possession of the Project or for any other relief if such sublessee is not then in default under the terms of its sublease beyond any applicable grace period for curing the same. The City shall, upon request, execute, acknowledge and deliver such agreements evidencing and agreeing to the foregoing in a form reasonably satisfactory to the Company.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease (excluding residential subleases as contemplated in subsection (b) hereof) any interests in this Lease without the prior written consent of the City shall only apply to assignments made (A) to any entity whose long-term debt, or the long-term debt of an entity controlled by, under common control with or controlling such entity has at least a rating in any of the top three long term debt rating categories by any nationally recognized rating agency; (B) so long as the Company shall remain secondarily liable, to any such entity; or (C) to an entity controlled by or under common control with or controlling the Company, so long as such entity has a net worth of at least \$5,000,000 at the time of such assignment or sublease. For any proposed assignment or transfer, other than those specifically set forth in this Lease, the Company may assign or transfer any interests in this Lease to any entity or person with the City's prior written consent, and such consent shall not be unreasonably withheld, conditioned or delayed. The City shall have the right to grant or withhold its consent to such proposed assignment or transfer in its reasonable discretion after inquiry and the delivery of information by the Company to the City as to whether the proposed assignee or transferee has sufficient financial wherewithal and experience to complete the Project according to the terms of this Lease, the Performance Agreement or any other agreement related to the issuance of the Bonds. If and to the extent that the Company and/or the proposed assignee reasonably demonstrates to the City that the proposed assignee has sufficient experience and a net worth sufficient to complete the Project, then it shall not be deemed "reasonable" for the City to withhold its consent to such proposed assignment or sublease. Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease or any agreement related to the issuance of the Bonds.

Section 13.2. Assignment of Revenues by City. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment. The City and the Company recognize that the Trustee is a third party creditor beneficiary of this Lease.

Section 13.3. Prohibition Against Fee Mortgage of Project. Except as otherwise set forth in **Section 10.4**, the City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by City. During this Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the

Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

Section 15.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.10. Satisfaction of the Company's Obligations. Any obligation of the Company under this Lease, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance as required herein, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

Section 15.11 Complete Agreement. THE COMPANY AND THE CITY UNDERSTAND THAT ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT THE COMPANY AND THE CITY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE CITY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE AND IN THE PERFORMANCE AGREEMENT, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE CITY, EXCEPT AS THE COMPANY AND THE CITY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE AND THE PERFORMANCE AGREEMENT.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Randall L. Rhoads
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Denise Chisum
Title: City Clerk

[Lease Agreement]

[ARCHVIEW PROPERTIES, LLC],
an Indiana limited liability company

By: _____

EXHIBIT A

PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[To be provided]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

The Project Improvements shall consist of an approximately 312-unit high-end multi-family complex and associated site work and infrastructure.

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: BOKF, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF [DATE], 2017, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF [DATE], 2017, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI AND [ARCHVIEW PROPERTIES, LLC].

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$_____ is requested to pay for Project Costs (as defined in the Indenture) of the Project Improvements. The total amount of this requisition and all prior requisitions are as follows:

<i><u>Date of Project Costs</u></i>	<i><u>Amount Submitted in this Requisition</u></i>	<i><u>Requisitions Submitted to Date (Including this Requisition)</u></i>

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the construction and improvement of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the construction and improvement of the Project which, if unpaid, might become the basis of a vendors’, mechanics’, laborers’ or materialmen’s statutory or similar lien upon the Project or any part thereof.

[ARCHVIEW PROPERTIES, LLC]

By: _____
Authorized Company Representative

Approved this _____ day of _____, 20__.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Authorized City Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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APPENDIX I
PERFORMANCE AGREEMENT

(See Document No. 4)

PERFORMANCE AGREEMENT

Dated as of [DATE], 2017

BETWEEN

CITY OF LEE'S SUMMIT, MISSOURI

AND

[ARCHVIEW PROPERTIES, LLC]

Prepared By:

**Gilmore & Bell, P.C.
Kansas City, Missouri**

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, dated as of [DATE], 2017 (the “**Agreement**”), between the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the “**City**”), and **[ARCHVIEW PROPERTIES, LLC]**, an Indiana limited liability company (the “**Company**”);

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “**Act**”), to purchase, construct, extend and improve certain projects and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council of the City gave notice to the affected taxing jurisdictions in accordance with Section 100.059.1 of the Act and held a public hearing to finance the costs of a project (the “**Project**”) for the Company consisting of the acquisition and improvement of certain real property located generally in the vicinity of the northeast intersection of 3rd Street and View High Drive in the City (the “**Project Site**”), including the construction and improvement of a high-end multi-family complex on the Project Site, out of the proceeds of the industrial development revenue bonds to be issued under the Act to provide funds to pay the costs of the Project, and to lease or sell the Project to the Company for the purpose of financing the costs of the Project.

3. Pursuant to Ordinance No. [_____] (the “**Ordinance**”) passed by the City Council on February 2, 2017, the City has approved a plan for the Company’s economic development project and has been authorized to execute and deliver (a) a Trust Indenture of even date herewith (the “**Indenture**”) between the City and BOKF, N.A., Kansas City, Missouri, as trustee (the “**Trustee**”), for the purpose of issuing and securing the City’s Taxable Industrial Development Revenue Bonds (Village at View High Project), Series 2017 in the maximum principal amount of \$39,500,000 (the “**Bonds**”), (b) a Lease Agreement of even date herewith (the “**Lease**”) with the Company under which the City, as lessor, will construct, extend and improve the Project and will lease the Project to the Company, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds, and (c) this Agreement for the purpose of setting forth the terms and conditions of the Project’s exemption from ad valorem real property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company’s desire to construct, extend and improve the Project upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to the terms otherwise defined herein, the following words and terms as used herein shall have the following meanings:

“**Agreement**” means this Performance Agreement dated as of [DATE], 2017, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“**Commercial Facility**” means a facility comprised of rentable space operated for profit by the Company in accordance with this Agreement, including a residential apartment complex and associated uses.

“**Company**” means [Archview Properties, LLC], an Indiana limited liability company, and its successors and assigns.

“**Cost-Benefit Analysis**” means the Cost Benefit Analysis contained in the Plan for an Industrial Development Project and Cost-Benefit Analysis for Village at View High, approved by the City pursuant to the Ordinance.

“**Indenture**” means the Trust Indenture dated as of [DATE], 2017, between the City and BOKF, N.A., Kansas City, Missouri, as Trustee, relating to the issuance of the Bonds, as amended or supplemented from time to time.

“**PILOT Payments**” or “**PILOTS**” means the payments in lieu of taxes provided for in **Article III** hereof.

“**Project**” means, collectively, the Project Site and the Project Improvements as they may at any time exist.

“**Project Improvements**” shall have the same meaning as provided in **Exhibit B** to the Indenture.

“**Project Site**” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. City’s Representations. The City hereby represents that the Project will significantly benefit the City and the State of Missouri by (i) stimulating economic development in the City and the State; and (ii) increasing local and state tax revenues.

Section 2.2. Company's Representations. The Company hereby represents that the Project will significantly benefit the City and the State of Missouri by (i) stimulating economic development in the City and the State; and (ii) increasing local and state tax revenues.

ARTICLE III

PROPERTY TAX EXEMPTION; PAYMENT IN LIEU OF TAXES

Section 3.1. Property Tax Exemption. So long as the City owns title to the Project, the City expects that the Project will be exempt from ad valorem taxes on real property. The first year of the exemption period for purposes of this Agreement shall begin on January 1, 2017. Notwithstanding any other provision of this Agreement to the contrary, the last year of such exemption period shall be 2028. The Company covenants and agrees that, during each year the Project is exempt from ad valorem taxes by reason hereof, the Company will make annual payments in lieu of taxes to the City (each such payment, a "PILOT") as described in this **Article III**. The City and the Company hereby agree that the tax abatement provided by this Agreement shall only apply to property financed with the proceeds of the Bonds (i.e., property constituting a part of the Project) and shall not apply to property not financed with proceeds of the Bonds.

Section 3.2. Payments In Lieu of Taxes for Project. The Company covenants and agrees to make PILOT Payments to the City on or before each December 31, commencing December 31, 2017, in the amounts, and in the years, set forth in **Exhibit B** attached hereto. Additionally, because the Project Site is being transferred to the City in 2017, the real property is not subject to ad valorem taxation for 2017 and 2018, and therefore, the Company, to the extent the taxes for 2017 or 2018 are not paid, is required to make a PILOT Payment equal to 100% of the taxes that would otherwise be due for 2017 and 2018 in the amounts shown in **Exhibit B**.

Section 3.3. Termination for Failure to Operate the Project as a Commercial Facility. If the Company fails to operate the Project as a Commercial Facility, other than temporary closures customary in the applicable industry, then in addition to any other remedies that may be available to the City under the Lease or hereunder, the percentage of PILOTS set forth in **Section 3.2** shall be increased to 100% of the ad valorem real property taxes that would otherwise have been due on the Project during each year following such failure, including the year in which the failure occurs, and during which the Project is exempt from ad valorem real property taxes as provided herein.

Section 3.4. Distribution of PILOTS. Within 30 days of the date of receipt of each PILOT, the City or designated billing/collection agent shall distribute each PILOT among the taxing jurisdictions. However, upon a termination under **Section 3.3**, the City or designated billing/collection agent shall distribute each PILOT among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Project not been exempt from taxation pursuant to this Agreement.

Section 3.5. Obligation of City to Effect Tax Abatement. The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 3.1** above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of Jackson County, Missouri or any other governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Project. In the event such a levy or assessment should occur, the City shall, at the Company's request and at the Company's expense,

fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Project.

Section 3.6. Administration Costs. Under Section 100.050 of the Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the plan including costs associated with this Agreement, in an amount of no greater than \$1,000 per year. The City will provide a statement for such costs to the Company not later than November 15th of each year and the Company will reimburse the City for its costs on or before December 31 of each year continuing until December 31 of the year in which this Agreement expires or is terminated.

Section 3.7. Other Property Taxes In Connection with the Project. The real property tax exemption provided by the City's ownership of the Project is expected to apply to all interests in the Project during the period it is owned by the City. If any ad valorem property taxes are levied by or on behalf of any taxing jurisdiction against any interest in the Project during the period the City owns the Project (including, without limitation, any ad valorem taxes levied against the Company's rights in the Lease), the amount of ad valorem tax payments related to such levy or levies which are paid by the Company and received by the City and other taxing jurisdictions shall be credited against and reduce on a *pro rata* basis the amount of the PILOT Payments the Company is obligated to pay pursuant to this Agreement. The Company shall be responsible for any taxes related to any interest in the Project which the Company owns in its own name or granted to the Company other than pursuant to the Lease.

Section 3.8. Credits for Certain Tax Payments. Nothing in this Agreement shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit hereunder to such extent it has made any payment for ad valorem real property taxes on the Project to Jackson County, Missouri.

Section 3.9. Company's Right To Protest Taxes. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment, classification or similar action.

Section 3.10. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Project if such Project was not owned by the City.

Section 3.11. PILOTS Following Cessation of Operations. If for any reason the Company ceases operations of the Project during the term of this Agreement, the percentage of PILOTS set forth in **Section 3.2** shall be increased to 100% of the ad valorem real property taxes that would otherwise have been due on the Project for each year following such cessation of operations including the year of cessation of operations. "Ceases operations" or "cessation of operations" for the purpose of this paragraph means the Company completely vacates, abandons and permanently ceases operations for a period of 90 consecutive days during the term of this Agreement, unless the Project has been subject to a casualty and the Company is intending to rebuild the Project or the Company's interest in this Agreement has been transferred pursuant to **Article V** hereof and the Project continues in operation thereafter.

ARTICLE IV

COVENANTS, REPRESENTATIONS AND AGREEMENTS

Section 4.1. Inspection. The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement.

Section 4.2. Compliance with Laws. The Project will comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and laws and all other applicable laws, rules and regulations.

Section 4.3. Construction and Improvement of the Project. The Project will be constructed and improved consistent with the description of the Project herein. In the event the Project constructed and improved is materially inconsistent with the description of the Project contained herein and in the presentation to the City Council of the City, the City reserves the right to declare an Event of Default in accordance with **Section 6.1** hereof.

Section 4.4. Representations and Warranties.

(a) The Company represents, warrants and covenants that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana and authorized to conduct business in the State of Missouri;

(2) The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(3) The execution, delivery and performance by the Company of this Agreement has been duly authorized by all necessary corporate action, and does not violate the organizational documents of the Company, as the same may be amended and supplemented, or to the best of the Company's knowledge, any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Company is now a party or by which the Company is now or may become bound;

(4) To the best of the Company's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company that would impair its ability to perform under this Agreement; and

(5) The Company has obtained (or prior to the applicable time required will obtain) and will maintain all government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project.

(b) The City represents, warrants and covenants that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri;

(2) The execution, delivery and performance by the City of this Agreement have been duly authorized by all necessary City actions;

(3) The City has the right, power and authority to enter into, execute, deliver and perform this Agreement; and

(4) To the best of the City's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the City that would impair its ability to perform under this Agreement.

Section 4.5. Survival of Covenants. All warranties, representations, covenants and agreements of the Company and the City contained herein shall survive termination of this Agreement for any reason.

Section 4.6. Indemnification. The Company shall indemnify and defend the City to insure that the City and the Trustee are held harmless from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the term of the Lease, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the term of the Lease from any event described in **Section 10.5** of the Lease to the extent and subject to the limitations provided therein. The Company hereby grants such warranties regarding environmental matters as set forth in **Section 10.9** of the Lease. This section shall not apply to the negligence or willful misconduct of the City or its officers, employees or agents.

Section 4.7. Sales Tax Exemptions. In order to obtain an exemption from state and local sales taxes, the City will provide a project exemption certificate to the Company in connection with the Company's acquisition of the construction materials for the Project Improvements.

Section 4.8. Costs of Issuance of the Bonds. The Company agrees to pay on the date of the initial issuance of the Bonds, all costs of issuance incurred in connection therewith.

ARTICLE V

SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred (other than to an affiliate of the Company), assigned, pledged or in any other manner hypothecated without the express written consent of the City; but nothing herein shall preclude the Company from assigning or pledging its interest in the Project so long as the Company continues to operate the Project as a commercial apartment complex and otherwise remains responsible for its undertakings herein. Notwithstanding the foregoing, the Company may, without the City's consent, transfer its interests in this Agreement to any entity or person to whom the Lease has been assigned in accordance with **Article XIII** thereof.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

- (a) the Company fails to make any PILOT Payments required to be paid hereunder within 10 days after written notice and demand by the City;
- (b) any representation of the Company contained herein proves to be materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City and the Company may agree in writing) after the City has given written notice to the Company specifying the false or erroneous representation and requiring it to be remedied; provided, that if such matter is not subject to cure within such 30 days (or such longer period as the City and Company agree in writing) after such notice, the Company fails to initiate action to cure the default within such 30 days after such notice and fails to pursue such action diligently; or
- (c) the Company fails to operate the Project as a Commercial Facility.

Section 6.2. Remedies on Default. Upon an Event of Default hereunder this Agreement may be terminated by written notice to the Company from the City. Within thirty days of such termination and upon written notice of the dollar amounts due, the Company shall make a PILOT to the City equal to (i) the pro rata amount payable pursuant to **Section 3.3** hereof from January 1 of the year in question through the effective date of termination, plus (ii) the pro rata amount of taxes that would be due for the remaining portion of the year assuming the Project was placed on the tax rolls effective on the date of termination through December 31; provided, however, the payment of PILOTS following cessation of operations shall be governed by **Section 3.12**.

Upon any termination of this Agreement the Company agrees to pay interest and penalties on all amounts due hereunder to the same extent as if such payments were taxes under Missouri law.

Section 6.3. Payments on Defaulted Amounts. Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Missouri law on overdue ad valorem real estate taxes from the date such payment was first due.

Section 6.4. Enforcement. In addition to the remedies specified in **Section 6.2**, upon the occurrence of an Event of Default, the City or any taxing jurisdictions that would benefit from the PILOT Payments due and owing under this Agreement may bring an action for specific performance to enforce such payments. In the event of litigation pertaining to the enforcement of this Agreement, the losing party shall pay all costs of litigation, including reasonable attorneys' fees.

Section 6.5. Failure of the City to Perform its Obligations. In the event the City shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the Company and the City may agree in writing) following written notice to the City from the Company of such failure which notice shall include a specific description of the City's failure hereunder, or (ii) if such failure is not subject to cure within such 60 days, the City shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the City is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

ARTICLE VII

TERM OF AGREEMENT

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly **Article VI** hereof), shall have an initial term commencing as of the date of this Agreement and terminating on December 1, 2028 (the “**Stated Expiration Date**”). This Agreement shall automatically terminate prior to the Stated Expiration Date in the event the Bonds (or any Bonds issued to refund the Bonds) are no longer outstanding.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 8.2. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 8.3. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 8.4. Waiver. The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease executed in connection with the Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company in any bankruptcy court.

Section 8.5. Entire Agreement. This Agreement constitutes the entire agreement relating to the subject matter contained herein and supersedes all prior agreements and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof.

Section 8.6. Electronic Storage of Documents. The City and the Company agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means.

Section 8.7. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be given in the manner specified in the Lease.

Section 8.8. Employee Verification. The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before November 15 of each year during the term of this Agreement, beginning November 15, 2017, and also upon execution of this Agreement.

Section 8.9. Complete Agreement. The Company and the City understand that oral or unexpected agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering such matters are contained in this Agreement and the Lease, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this Agreement and the Lease.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names, all as of the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Randall L. Rhoads
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Denise Chisum
Title: City Clerk

[ARCHVIEW PROPERTIES, LLC],
an Indiana limited liability company

By: _____

EXHIBIT A

Legal Description

The following described real estate located in Jackson County, Missouri:

[To be provided]

EXHIBIT B
PILOT SCHEDULE

<u>Year</u>	<u>Amount</u>
2017	\$ 1,149.00
2018	1,149.00
2019	327,912.00
2020	327,912.00
2021	327,912.00
2022	336,110.00
2023	336,110.00
2024	336,110.00
2025	336,110.00
2026	336,110.00
2027	344,513.00
2028	344,513.00