



The City of Lee's Summit

Final Agenda

City Council - Regular Session

Tuesday, February 5, 2019

6:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 21

Preliminaries:

- A. Invocation
- B. Pledge of Allegiance
- C. Call to Order
- D. Roll Call

1. Approval of Agenda

2. Council Roundtable

Council Roundtable is reserved for items of general interest, community announcements and other such information. Council may ask for clarification or give direction about agenda items or discuss items of an emerging nature.

3. Approval of Consent Agenda:

Items on the Consent Agenda are routine business matters or proposed ordinances approved unanimously by the Council on First Reading. Consent agenda items may be removed by any Councilmember for discussion as part of the regular agenda.

- A. [2019-2527](#) Approval of Action Letters from January 8, January 15 and January 22, 2019.
- B. [2018-2488](#) Mayor's Appointments:
 - Arts Council: Appoint John Hardesty to replace Hopper Thomas, term to expire 7-22-20.
 - Planning Commission: Appoint Mark Kitchens, to replace Allan Gardner, term to expire 4-15-23.
 - TIF Commission: Appoint Clint Haynes, term to expire 12-15-22.
 - Water Utilities Advisory Board: Appoint Colleen Fullerton, term to expire 3-1-21.

4. Public Hearings:

Proposed ordinances considered after a public hearing will be read for the first time and forwarded to a future City Council meeting for second reading, unless deemed to be an emergency as defined in Sec. 3.13(f) of the Lee's Summit Charter. Five affirmative votes are required for approval of second reading.

- A. [2018-2408](#) Public Hearing - Application #PL2018-194 Unified Development Ordinance Amendment #3 - Article 6 Use Standards - Accessory Uses and Structures - Table 6.IV-1. Accessory Structures - amending detached garage size limitations and setbacks in all residential districts; City of Lee's Summit Applicant

Presenter: Robert McKay, AICP, Director of Planning and Special Projects

- 1) [BILL NO. 19-17](#) An Ordinance approving Application #PL2018-194 Unified Development Ordinance (UDO) Amendment #3 Article 6 Use Standards - Accessory Uses and Structures - Table 6.IV-1. Accessory Structures - amending detached garage size limitations and setbacks in all residential districts; City of Lee's Summit Applicant.

Presenter: Robert McKay, AICP, Director of Planning and Special Projects

- B. [2018-2506](#) Public Hearing - New Longview Community Improvement District

Presenter: Corey Walker, M-III Longview
John Hansen, IRR Corporate & Public Finance
David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager

- 1) [BILL NO. 19-18](#) An Ordinance approving the petition for establishment of the New Longview Community Improvement District.

Presenter: Corey Walker, M-III Longview, LLC
John Hansen, IRR Corporate & Public Finance
David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager

5. Resolutions:

- A. [RES. NO. 19-03](#) A Resolution supporting an extension of the duration of the New Longview Transportation Development District Sales Tax.

Presenter: Corey Walker, M-III Longview, LLC
John Hansen, IRR Corporate & Public Finance
David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager

6. Public Comments:

Anyone wishing to address the Mayor and Council during Public Comments will be limited to 3 minutes. Each speaker must fill out a Public Comment Card. The Public Comment Cards are located at the entrance of Council Chambers. After completion, the card is to be given to the City Clerk. Please be concise with comments and respect the 3 minute time limit.

7. Proposed Ordinances Forwarded from Committee:

The following proposed ordinances were considered by a Council Committee and are presented to the Council for two readings and adoption.

- A. [BILL NO. 19-19](#) An Ordinance approving Change Order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66. (PWC 1/29/19)
Presenter: Jeff Thorn, Assistant Director of Engineering Services
- B. [BILL NO. 19-20](#) An Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same. (PWC 1/29/19)
Presenter: Craig Kohler, Senior Staff Engineer
- C. [BILL NO. 19-21](#) An Ordinance amending Sections 28-175, 28-176, 28-177, 28-179 and 28-181 of the Code of Ordinances of the City of Lee's Summit governing the License Tax on Building Contractors by deleting outdated or expired content and clarify applicable use of the I.T.E. Trip Generation Manual for traffic generation calculations based on land use categories. (PWC 1/29/19)
Presenter: George Binger III, P.E., Deputy Director of Public Works / City Engineer

8. Proposed Ordinances - First Reading:

The proposed ordinances presented for first reading may include items with a previous hearing; an item brought directly to the City Council without a recommendation from a Council Committee; or, items forwarded from citizen Boards or Commissions. Five affirmative votes are required for approval of second reading.

- A. [BILL NO. 19-22](#) An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$60,000,000 in connection with the Streets of West Pryor Commercial Project; and authorizing certain documents and actions in connection therewith.
Presenter: David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager
David Martin, Gilmore & Bell
- B. [BILL NO. 19-23](#) An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$17,000,000 in connection with the Streets of West Pryor Grocery Store Development; and authorizing certain documents and actions in connection therewith.
Presenter: David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager
David Martin, Gilmore & Bell

- C. [BILL NO. 19-24](#) An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$48,000,000 in connection with the Streets of West Pryor Apartment Development; and authorizing certain documents and actions in connection therewith.
- Presenter:** David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager
David Martin, Gilmore & Bell
- D. [BILL NO. 19-25](#) An Ordinance determining and declaring the necessity of acquiring for public use certain Permanent Easements and Temporary Construction Easements for streambank stabilization improvements associated with the Streambank Stabilization Projects in Lee's Summit, Missouri; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land; and authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations.
- Presenter:** Dena Mezger, Director of Public Works

9. Proposed Ordinances - Second Reading:

The proposed Ordinances were advanced from First Reading without a unanimous vote of the City Council.

- A. [BILL NO. 19-01](#) An Ordinance approving rezoning from District AG and R-1 to District RP-3 and Preliminary Development Plan located at the southwest corner of SW Pryor Road and SW MO-150 Highway, proposed Allera development in accordance with the provisions of Chapter 33 of the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.
(Note: This Bill was first read by City Council on January 22, 2019.)
- Presenter:** Josh Johson, AICP, Asst. Dir. of Plan Services

10. Council Comments:

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

11. Committee Reports

Committee chairs report on matters held in Committee.

12. Staff Roundtable

Staff Roundtable is reserved for items of general interest, community announcements and other such information; however, staff may ask for clarification or direction from the council related to items on the agenda or for items of an emergency nature for which insufficient time exists for adding to the agenda.

13. 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 Legislative Information Center website at "lsmo.legistar.com"

Packet Information

File #: 2019-2527, **Version:** 1

Approval of Action Letters from January 8, January 15 and January 22, 2019.

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

Tuesday, January 8, 2019

6:30 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 19

Preliminaries:

- A. Invocation
- B. Pledge of Allegiance
- C. Call to Order

Mayor Baird called Regular Session No. 19 to order at 6:49 p.m.

- D. Roll Call

Present: 9 - Mayor Bill Baird
Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Fred DeMoro
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Bob Johnson
Councilmember Beto Lopez

1. Approval of Agenda

ACTION: A motion was made by Councilmember DeMoro, seconded by Councilmember Forte, to approved the agenda as published. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

2. Approval of Consent Agenda:

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, to approve the Consent Agenda. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- A. [2018-2497](#) Approval of Action Letters from December 4, December 11 and December 18, 2018.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, to approve the Action Letters from December 4, 11 and 18, 2018 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- B. [2018-2500](#) Approval of the addition of new owners to the existing Liquor Licenses G3 and S for Bricks Pub & Grub, 18 SE 3rd Street

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, to approve the addition of new owners to the existing Liquor License for Brick's Pub & Grub as part of the Consent Agenda. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- C. [2018-2501](#) Mayor's Appointments:
Health Forward Formation (formerly Health Care Foundation of Kansas City):
Appoint Alan Flory to replace Dee Anne Bowles for a two-year term.
Human Relations Commission: Appoint Vanessa Workcuff and Karen Schuler terms to expire 07-06-21.
Planning Commission: Appoint Allan Gardner to replace Herman Watson, term to expire 04-15-23.
Tax Increment Financing: Reappoint Alison Walker, term to expire 12-15-22.

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ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, to approve the Mayor's Appointments as part of the Consent Agenda. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- D. [BILL NO. 18-214](#)** An Ordinance approving a rezoning from District R-1 to District PMIX and Preliminary Development Plan located at the northwest corner of NW Pryor Road and NW Lowenstein Drive, proposed the Streets of West Pryor in accordance with the provisions of Chapter 33, the Unified Development Ordinance of the Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri. (NOTE: First Reading by Council on December 18, 2018. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, that Bill No. 18-214 be adopted and numbered Ordinance No. 8531 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- E. [BILL NO. 18-220](#)** An Ordinance authorizing the execution of a cooperative agreement for funding operations of Operation Green Light traffic control system by and between the City of Lee's Summit, Missouri, and the Mid-America Regional Council. (NOTE: First Reading by Council on December 18, 2018. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, that Bill No. 18-220 be adopted and numbered Ordinance No. 8532 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

3. Council Roundtable

Councilmember Edson shared that recently all three Lee's Summit High Schools had students that traveled to Orlando to perform. The band students marched in the Citrus Bowl Parade but just as they were coming into view, the station cut to commercials. It will be re-broadcast Saturday, January 12, 2019 on KMBC at 1:00 p.m.

Councilmember DeMoro stated there was a ribbon cutting ceremony on Saturday, January 5, 2019 for the Longview Community Center which will give the City of Lee's Summit a total of four community centers. He added that it is a beautiful facility.

Councilmember Binney recognized Lee's Summit's County Legislator, Theresa Galvin. The new County Legislators were sworn in this week and Theresa was chosen by the body as the Legislative Chair for the upcoming session. Congratulations Theresa Galvin.

Mayor Baird commented the opening of the new Lee's Summit Park and Recreation facility was fun and very well attended. He thanked the Councilmembers that attended. He then wished staff, and Councilmembers, a Happy New Year and expressed his excitement about 2019.

4. Resolutions:

- A. [RES. NO. 19-01](#) A Resolution supporting the formation of the Streets of West Pryor Transportation Development District.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Carlyle, that Resolution No. 19-01 be adopted. The motion carried by the following vote:

Aye: 7 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 2 - Councilmember Binney
Councilmember Johnson

- B. [RES. NO. 19-02](#) A Resolution approving a Funding Agreement between the City of Lee's Summit, Missouri, and M-III Longview, LLC for the proposed New Longview Community Improvement District.

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Forte, that Resolution No. 19-02 be adopted. The motion carried by the following vote:

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Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

5. Public Hearings:

- A.** [2018-2491](#) Public Hearing: Application #PL2018-184 - Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan - Allera, approximately 32 acres located at the southwest corner of SW Pryor Road and SW M-150 Highway; Olsson Associates, applicant.

(Note: This item was continued from January 8, 2019 per staff's request.)

(Note: This item, and corresponding Bill No. 19-01, were continued to a date certain of January 22, 2019 due to date discrepancies on the posted public hearing signs.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Public Hearing 2018-2491 be continued to a date certain of January 22, 2019. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- 1)** [BILL NO. 19-01](#) An Ordinance approving rezoning from District AG and R-1 to District RP-3 and Preliminary Development Plan located at the southwest corner of SW Pryor Road and SW MO-150 Highway, proposed Allera development in accordance with the provisions of Chapter 33 of the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.
(Note: This item was continued from January 8, 2019 with the Public Hearing.)

(Note: This item, and corresponding Public Hearing 2018-2491, were continued to a date certain of January 22, 2019 due to date discrepancies on the posted public hearing signs.)

A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 19-01 be continued to a date certain of January 22, 2019. The motion carried by the following vote:

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Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- B.** [2018-2490](#) Public Hearing: Application #PL2018-185 - Preliminary Development Plan - Reece Nichols Phase 2, 207 SW Market Street; Engineering Solutions, LLC, applicant.

Councilmember Binney confirmed with Mr. David Bushek, Chief Council of Economic Development and Planning, that this application is not actually associated with Reece Nichols. It was named that way on the agenda for convenience so everyone would know it is related to the Reece Nichols Phase I project but Reece Nichols is not the applicant for Phase II. They won't own, lease or develop the property so there would not be any reason for Councilmember Binney to recuse himself from the conversation.

Exhibit A, list of exhibits 1-15 were entered into the record.

Council discussions:

- Long term parking next to the Railroad
- Entrance elevation and sidewalk
- Number of proposed parking spaces in the lot
- Two "for rent" apartments and is there sufficient parking for them
- Updates since the Planning Commission meeting regarding the alley
- Updates on the location of trash dumpsters

Ms. Geraldine Amato spoke in opposition to the application. Her comments included the UCC (Uniform Commercial Code), building against nature, developing over agricultural fields and she corrected a statement she gave at the previous meeting regarding her beliefs about a ritualistic masonic murder.

Councilmember Johnson asked if it is required by state statute that pro and con speakers give their name and address so there is a record of who is appearing during a Public Hearing which could potentially be subject to legal action.

- 1)** [BILL NO. 19-02](#) An Ordinance approving a Preliminary Development Plan located at 207 SW Market St in district CBD, proposed Reece Nichols Phase 2 in accordance with the provisions of Chapter 33, the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.
(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Johnson, seconded by Councilmember DeMoro, that Bill No. 19-02 be advanced to second reading. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

6. Public Comments:

Ms. Geraldine Amato addressed the Council regarding border walls, private commercial jurisdictions, traffic tickets she received after a traffic accident, resisting unlawful authority and losing freedoms.

7. Presentations:

A. [2018-2518](#) Discussion of Citizen Strategic Planning Process

Council discussions:

- Council Strategic Plan or Citizen Strategic Plan
- Citizen engagement opportunities
- Reaching out to all stake holders and citizens
- How will Council be helped to get citizen participation
- How will Council be updated
- Focus groups
- Personal goals for the next 5-10 years
- City goals for the next 20-30 years

B. [2018-2519](#) Transit Introduction and Review

Council discussions:

- Clarification of number of trips verses number of people riding
- Is the contract for commuter service for three or four vehicles
- Priority of the route from Independence to Downtown Lee's Summit
- Location of the Three Trails Center
- Funding for proposed fixed routes; Transportation Sales Tax or FTA funds with a local match
- Bill No. 19-04, the difference between the amount not to exceed \$242,000 and commitment of an amount not to exceed \$375,000.
- Continue commuter routes until riders can be notified of the change from 4 to 3 buses. Notification would take roughly 60 days.
- How can citizens contact transit services; online or by phone, there is not an app for phones.
- OATS is no longer just for elderly or disabled riders

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- 1) [BILL NO. 19-03](#) An Ordinance authorizing the execution of an amendment to an intergovernmental contract for transit services by and between the City of Lee's Summit, Missouri and the Kansas City Area Transportation Authority (KCATA) and commitment of Federal Transit Administration Section 5307 Formula Funds to the KCATA for transit service and capital expenses.

(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Forte, that Bill No. 19-03 be advanced to second reading. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- 2) [BILL NO. 19-04](#) 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 January 1, 2019 through December 31, 2019 in an amount not to exceed \$242,000 and commitment of an amount not to exceed \$365,000 of Federal Transit Administration Section 5307 Formula Funds to OATS for transit service.

(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

(Note: There was a discrepancy on the "not to exceed" dollar amount. The posted agenda listed it as \$375,000 and the attached proposed Ordinance listed it as \$365,000. Staff confirmed the correct amount was listed on the proposed Ordinance as \$365,000.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Faith, that Bill No. 19-04 be advanced to second reading. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

8. Proposed Ordinances Forwarded from Committee:

- A. [BILL NO. 19-05](#) An Ordinance approving the Award of Bid No. 2019-016 for Tow Services for a one-year term with up to four, one-year renewals to Ron's Auto & Truck Towing, LLC, and authorizing the City Manager to execute the same by and on behalf of the City. (F&BC 12-17-18)

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Forte, that Bill No. 19-05 be second read. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Forte, that Bill No. 19-05 be adopted and numbered Ordinance No. 8533. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- B. [BILL NO. 19-06](#) An Ordinance approving a Sole Source Enterprise Agreement with Environmental Systems Research Institute, Inc. for unlimited licensing and software maintenance services; and authorizing the City Manager to enter into and execute an agreement for the same on behalf of the City of Lee's Summit, Missouri. (F&BC 12-17-18)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 19-06 be second read. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, that Bill No. 19-06 be adopted and numbered Ordinance No. 8534. The motion carried by the following vote:

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Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- C. [BILL NO. 19-07](#) An Ordinance authorizing the Mayor to execute an Intergovernmental Agreement by and between the City of Lee's Summit, Missouri, by and through the Lee's Summit Parks and Recreation Board and Jackson County, Missouri Parks and Recreation for facility use to support programming for various Jackson County, Missouri Parks and Recreation Programs. (F&BC 12-17-18)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Forte, that Bill No. 19-07 be second read. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Forte, that Bill No. 19-07 be adopted and numbered Ordinance No. 8535. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- D. [BILL NO. 19-08](#) An Ordinance amending Chapter 7 of the Code of Ordinances of the City of Lee's Summit, Missouri, the Lee's Summit Building Code by repealing Articles 2, 3, 4, 5, 6 and 9; and adopting new Articles 2, 3, 4, 5, 6 and 9 pertaining to the same subject matter to incorporate new provision of the 2018 International Building Codes and the 2017 National Electrical Code and modify or retain certain existing provisions of the Building Code and Electrical Code. (CEDC 12/12/18)

ACTION: A motion was made by Councilmember DeMoro, seconded by Councilmember Carlyle, that Bill No. 19-08 be second read. The motion carried by the following vote:

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Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

ACTION: A motion was made by Councilmember DeMoro, seconded by Councilmember Carlyle, that Bill No. 19-08 be adopted and numbered Ordinance No. 8536. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- E. [BILL NO. 19-09](#) An Ordinance amending Chapter 13 Fire Prevention and Protection of the Code of Ordinances of the City of Lee's Summit, Missouri by repealing Article III. Fire Code and adopting a new Article III pertaining to the same subject matter. (CEDC 12/12/18)

ACTION: A motion was made by Councilmember Lopez, seconded by Councilmember Faith, that Bill No. 19-09 be second read. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

ACTION: A motion was made by Councilmember Lopez, seconded by Councilmember Faith, that Bill No. 19-09 be adopted and numbered Ordinance No. 8537. The motion carried by the following vote:

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Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- F. [BILL NO. 19-10](#)** An Ordinance repealing Chapter 16, Lee's Summit Property Maintenance Code of the Code of Ordinances of the City of Lee's Summit, Missouri, and enacting a new Chapter 16 pertaining to the same subject matter, for the City of Lee's Summit, Missouri. (CEDC 11/14/18)

ACTION: A motion was made by Councilmember Johnson, seconded by Councilmember Carlyle, that Bill No. 19-10 be second read. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

ACTION: A motion was made by Councilmember Johnson, seconded by Councilmember Carlyle, that Bill No. 19-10 be adopted and numbered Ordinance No. 8538. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

9. Proposed Ordinances - First Reading:

- A. [BILL NO. 19-11](#)** An Ordinance approving the Second Amendment to the Second Amended and Restated Longview Farm Tax Increment Financing Plan, the First Amendment to the New Longview Tax Increment Financing Plan, and the First Amendment to the Tax increment Financing Contract between the City of Lee's Summit and M-III Longview, LLC, to revise the amounts and priority of funding for improvements to Longview Lake and the Pergola.
(Note: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Faith, that Bill No. 19-11 be advanced to second reading. The motion carried by the following vote:

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Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- B.** [BILL NO. 19-12](#) An Ordinance authorizing the execution of Modification No. 1 to agreement dated July 3, 2018 (RFQ No. 73-3221) for professional engineering services for the Chipman Road Improvements from View High Drive to Bent Tree Drive with Wilson & Company, Inc., for an increase of \$10,500.00 with an amended not to exceed amount of \$391,340.00, and authorizing the City Manager to enter into an agreement for the same.

(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember DeMoro, that Bill No. 19-12 be advanced to second reading. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- C.** [BILL NO. 19-13](#) An Ordinance vacating a certain drainage easement located at 837 NW Donovan Road in the City of Lee's Summit, Missouri.

(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Forte, that Bill No. 19-13 be advanced to second reading. The motion carried by the following vote:

Aye: 9 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson
Councilmember Lopez

- D.** [BILL NO. 19-14](#) An Ordinance Approving the Tax Increment Financing Contract Between the City of Lee's Summit, Missouri, and Streets of West Pryor, LLC, for the Streets of West Pryor Tax Increment Financing Plan.

(Note: First Reading by City Council on January 8, 2019.)

City Council - Regular Session

Action Letter

January 8, 2019

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Faith, that Bill No. 19-14 be advanced to second reading. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 1 - Councilmember Johnson

- E. [BILL NO. 19-15](#)** An Ordinance Approving the Streets of West Pryor Community Improvement District Cooperative Agreement Among Streets of West Pryor, LLC, the City Of Lee's Summit, Missouri, and the Streets of West Pryor Community Improvement District.

(Note: First Reading by City Council on January 8, 2019.)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Carlyle, that Bill No 19-15 be advanced to second reading. The motion carried by the following vote:

Aye: 6 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 3 - Councilmember Binney
Councilmember Edson
Councilmember Johnson

- F. [BILL NO. 19-16](#)** An Ordinance Approving the Streets of West Pryor Transportation Development District Cooperative Agreement Among Streets of West Pryor, LLC, the City of Lee's Summit, Missouri, and the Streets of West Pryor Transportation Development District.

(Note: First Reading by City Council on January 8, 2019.)

ACTION: A motion was made by Councilmember DeMoro, seconded by Councilmember Carlyle, that Bill No. 19-16 be advanced to second reading. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 1 - Councilmember Johnson

10. Proposed Ordinances - Second Reading:

City Council - Regular Session

Action Letter

January 8, 2019

- A. [BILL NO. 18-215](#) An Ordinance approving the Streets of West Pryor Tax Increment Financing Plan, establishing a Redevelopment Area and designating the Redevelopment Area as a blighted area. (NOTE: First Reading by Council on December 18, 2018)

ACTION: A motion was made by Councilmember Lopez, seconded by Councilmember Forte, that Bill No. 18-215 be adopted and numbered Ordinance No. 8539. The motion carried by the following vote:

Aye: 7 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 2 - Councilmember Binney
Councilmember Johnson

- B. [BILL NO. 18-217](#) An Ordinance approving a Master Plan for Industrial Development Projects for the Streets of West Pryor Development. (NOTE: First Reading by Council on December 18, 2018)

ACTION: A motion was made by Councilmember Johnson, seconded by Councilmember Carlyle, that Bill No. 18-217 be adopted and numbered Ordinance No. 8540. The motion carried by the following vote:

Aye: 7 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 2 - Councilmember Binney
Councilmember Johnson

- C. [BILL NO. 18-218](#) An Ordinance approving the Petition for Establishment of the Streets of West Pryor Community Improvement District. (NOTE: First Reading by Council on December 18, 2018)

(Note: Substitute Bill No. 18-218, which included a blight finding, was submitted to the City Clerk's office prior to the January 8, 2019 City Council meeting but did not get attached to the packet. Substitute Bill No. 18-218 is what City Council adopted.)

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Forte, that Substitute Bill No. 18-218 be adopted and numbered Ordinance No. 8541. The motion carried by the following vote:

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Aye: 6 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 3 - Councilmember Binney
Councilmember Edson
Councilmember Johnson

- D. [BILL NO. 18-216](#) An Ordinance approving the Redevelopment Project for the Streets of West Pryor Tax Increment Financing Plan and activating the collection of tax increment financing revenues therein. (NOTE: First Reading by Council on December 18, 2018)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Carlyle, that Bill No. 18-216 be adopted and numbered Ordinance No. 8542. The motion carried by the following vote:

Aye: 7 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Lopez

Nay: 2 - Councilmember Binney
Councilmember Johnson

11. Committee Reports

Councilmember Johnson reminded the Finance and Budget Committee members that the meeting previously scheduled for Monday, January 14, 2019 has been canceled for lack of agenda items. The next Finance and Budget Committee meeting is scheduled for February 11, 2019 at 5:00 p.m. in the City Council Chambers.

Mayor Pro Tem Lopez announced the CEDC (Community and Economic Development Committee) January meeting has also been cancelled. The next meeting is scheduled for February 13, 2019 at 4:00 p.m. in the City Council Chambers.

12. Council Comments:

Councilmember Edson asked if it would be possible to get the City Council agendas out earlier in the week so they would have more time to read through the packet and ask questions.

Mayor Baird asked if it would be possible to have a preliminary agenda distributed to Councilmembers.

Mr. Stephen Arbo, City Manager, gave a brief overview of packet due dates and stated that staff will make adjustments to accommodate the Council's needs. He noted that moving packet dates up sometimes delays items up to 15 days, when the deadline can't be met, which causes difficulties for people trying to get items moving forward. He suggested that staff work to find a way to get larger packet items to Councilmembers earlier.

Mayor Baird suggested putting more items on Work Session agendas.

Councilmember Johnson added that he prefers a paper copy and has been experiencing problems with network connectivity and the printer causing him to not have packets until the day before, or day of, the meeting.

Mr. Arbo stated that staff will look into having a wired computer available to Councilmembers for printing their packets.

13. Staff Roundtable

Mr. Stephen Arbo, City Manager, gave a brief update on the LS Connect app that kicked off this week. He congratulated everyone that was involved.

Mr. Arbo also gave a quick word of thanks to the incredible Development Services group for their work on Chapter 7, 13 and 16, it was a very thorough process. He thanked the Council for their support of some very important changes, especially with the home maintenance program.

14. Adjournment

There being no further business, Mayor Baird adjourned Regular Session No. 19 at 9:24 p.m.

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 Legislative Information Center website at "lsmo.legistar.com"

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

Tuesday, January 15, 2019

6:30 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

WORK SESSION NO. 8

Preliminaries:

- A. Invocation
- B. Pledge of Allegiance
- C. Call to Order

Mayor Baird called Work Session No. 8 to order at 7:13 p.m.

- D. Roll Call

Present: 8 - Mayor Bill Baird
Councilmember Rob Binney
Councilmember Fred DeMoro
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Bob Johnson
Councilmember Beto Lopez

Absent: 1 - Councilmember Trish Carlyle

1. Approval of Agenda

ACTION: On motion by Councilmember Faith, second by Councilmember Forte, the Council voted unanimously to approve the published agenda.

AYE:

Councilmember Faith
Councilmember Forte
Councilmember Edson
Councilmember DeMoro
Councilmember Lopez
Councilmember Johnson
Councilmember Binney
Mayor Baird

ABSENT:

Councilmember Carlyle

2. Council Roundtable

Councilmember Faith noted the 2019 Citizens Leadership Academy is scheduled to start this Saturday, January 19th here at City Hall from 8am - 12pm.

Councilmember Faith advised the Public Works Committee would be meeting on January 29th at 5:30pm and they will be discussing the snowfall report.

Councilmember Edson said she had taken the opportunity to teach 5 classes on local government at Lee's Summit North High School. She enjoyed teaching the classes and the students were very engaged.

Mayor Baird simply stated, "Go Chiefs!"

3. Presentations:

- A. [2018-2402](#) Presentation & Discussion - Preparation for Long Range Development Planning and Community Growth

Council Discussion Included:

- City Use
- Timing
- Brought through Planning Commission with Comprehensive Master Plan
- Transportation / Transit Services
- Infrastructure / Underground power lines
- Fiscal Development Model (2002 / 2003)
- Land Uses / Zoning
- Public Safety
- Civil Engineering
- Outside Consulting

- B. [2018-2395](#) Presentation regarding the City's capacity for debt issuance.

Council Discussion Included:

- Election Dates
- Issue Bonds vs Issue Debt
- Special Committee of Council / Ad Hoc Committee
- May Deadline for August Election / August Deadline for November Election
- Tax Levy / City Levy (5 different levies due to 5 school districts)
- Public Input
- Task Force
- 1 Councilmember from each district to form committee with Public Input

The Council reached a general consensus to send this to Community and Economic Development Committee (CEDC) which has 1 Councilmember from each district. Once vetted by CEDC, the matter will be brought back to the full Council for further discussion.

4. Public Comments:

Ms. Geraldine Amato discussed private commercial jurisdiction, can't pay off debts with credit, federal reserve and lawyers are now practicing the "dark arts".

Mr. Roy Mussett wanted to know why a police officer was in front of a house on his street for 3 hours and why the officer didn't remove a tree limb from the roadway. He went on to complain about snow removal throughout the City.

5. Committee Reports

Mayor Pro Tem Lopez advised the Community and Economic Development Committee will not be meeting in January. The next meeting is scheduled for February 13, 2019 at 4pm.

Faith noted that he had already stated the next Public Works Committee meeting would be held on January 29, 2019 at 5:30pm in Council Roundtable.

6. Council Comments:

Mayor Baird introduced Mr. Chris Clubine as the City's new Management Analyst. Welcomed him to the city and stated he looks forward to working with him.

Mayor Baird said the Work Session nights are usually more laid back and he would like to make sure they still remain somewhat formal as they are official city meetings.

7. Staff Roundtable

Mr. Steve Arbo, City Manager, commented on the recent snow removal from the snow storms over the weekend. He stated they had recieved both good and bad comments, but mostly good. The residential target time was later than usual due to the second storm coming through within 24 hours and many downed tree limbs in the roadways.

Mr. Arbo also noted there is another significant snow/ice event in the forecast for this weekend. The upcoming storm will be harder to clear as rain is forecast first which does not allow for pretreatment, it will just wash away in the rain. The storm is also calling for more ice than snow, which is always more difficult.

Mayor and Council gave their thanks to city staff for their time and hard work during these snow events.

8. Adjournment

There being no further business, Mayor Baird adjourned to Closed Session at 9:08pm.

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

City Council - Work Session

Action Letter

January 15, 2019

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Legislative Information Center website at "lsmo.legistar.com"

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

Tuesday, January 22, 2019

6:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 20

Preliminaries:

- A. Invocation
- B. Pledge of Allegiance
- C. Call to Order

Mayor Baird called Regular Session No. 20 to order at 6:06 p.m.

- D. Roll Call

Note: Mayor Pro Tem Lopez arrived at 6:17 p.m. and Councilmember Forte left at 9:32 p.m.

Present: 8 - Mayor Bill Baird
Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Fred DeMoro
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Bob Johnson

Absent: 1 - Councilmember Beto Lopez

1. Approval of Agenda

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, to approve the agenda as published. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

2. Approval of Consent Agenda:

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Binney, to approve the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

- A. [BILL NO. 19-02](#)** An Ordinance approving a Preliminary Development Plan located at 207 SW Market St in district CBD, proposed Reece Nichols Phase 2 in accordance with the provisions of Chapter 33, the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.
(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

A motion was made by Councilmember Faith, seconded by Councilmember Binney, that Bill No. 19-02 be adopted and numbered Ordinance No. 8543 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

- B. [BILL NO. 19-03](#)** An Ordinance authorizing the execution of an amendment to an intergovernmental contract for transit services by and between the City of Lee's Summit, Missouri and the Kansas City Area Transportation Authority (KCATA) and commitment of Federal Transit Administration Section 5307 Formula Funds to the KCATA for transit service and capital expenses.
(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

A motion was made by Councilmember Faith, seconded by Councilmember Binney, that Bill No. 19-03 be adopted and numbered Ordinance No. 8544 as part of the Consent Agenda. The motion carried by the following vote:

City Council - Regular Session

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Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

- C. [BILL NO. 19-04](#) 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 January 1, 2019 through December 31, 2019 in an amount not to exceed \$242,000 and commitment of an amount not to exceed \$365,000 of Federal Transit Administration Section 5307 Formula Funds to OATS for transit service.
(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

A motion was made by Councilmember Faith, seconded by Councilmember Binney, that Bill No. 19-04 be adopted and numbered Ordinance No. 8545 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

- D. [BILL NO. 19-12](#) An Ordinance authorizing the execution of Modification No. 1 to agreement dated July 3, 2018 (RFQ No. 73-3221) for professional engineering services for the Chipman Road Improvements from View High Drive to Bent Tree Drive with Wilson & Company, Inc., for an increase of \$10,500.00 with an amended not to exceed amount of \$391,340.00, and authorizing the City Manager to enter into an agreement for the same.
(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

A motion was made by Councilmember Faith, seconded by Councilmember Binney, that Bill No. 19-12 be adopted and numbered Ordinance No. 8546 as part of the Consent Agenda. The motion carried by the following vote:

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Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

- E. [BILL NO. 19-13](#) An Ordinance vacating a certain drainage easement located at 837 NW Donovan Road in the City of Lee's Summit, Missouri.
(NOTE: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

A motion was made by Councilmember Faith, seconded by Councilmember Binney, that Bill No. 19-13 be adopted and numbered Ordinance No. 8547 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Johnson

Absent: 1 - Councilmember Lopez

3. Council Roundtable

Councilmember Faith introduced Chris Benyes, from Boy Scout Troop 122 from Overland Park. He was in attendance working on his communications merit badge.

Councilmember Edson announced that members of Boy Scout Troop 366, from the Community of Christ Church on Independence Avenue, were also in attendance.

Councilmember Binney, noted that this Thursday, January 24, 2019, Lee's Summit Cares will be holding their annual Character Breakfast, also known as the Mayor's Character Breakfast. The Mayor and Lee's Summit Cares recognize several individuals that have exemplified certain character traits through out the year. He then shared there is an upcoming Journalism in School Week, and with the recent passing of Mr. Ferrell Schuck, he thought it would be a good time to have a Proclamation celebrating journalism in schools that would mention him in it. He then mentioned the Citizens Leadership Academy will start this Saturday, January 26, 2019 and on Saturday, February 2, 2019 there will be an event in the downtown area called the Chocolate Crawl which is a fundraiser for Lee's Summit Social Services and most vendors will have chocolates of some sort to give out to those walking around.

Mayor Baird commented the Dr. Martin Luther King Jr. event on January 21, 2019 was phenomenal at John Knox Village. The Human Relations Commission hosts it and it was a beautiful event. It is well attended with an estimate of at least 500 attendees.

Councilmember DeMoro announced Police Chief, Travis Forbes won the Leadership Award at the Dr. Martin Luther King Jr. presentation. It is a great honor and he is very deserving of that award.

4. Public Hearings:

- A. [2018-2491](#) Public Hearing: Application #PL2018-184 - Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan - Allera, approximately 32 acres located at the southwest corner of SW Pryor Road and SW M-150 Highway; Olsson Associates, applicant.

(Note: This item was continued from January 8, 2019 per staff's request.)

Exhibit A, list of exhibits 1-22 were entered into the record.

Council discussions included:

- Parameters for RP-3 zoning
- The maximum number of developments that can go on an acre in RP-3
- Have modifications been made for single family housing in RP-3 zoning
- Smaller lot homes have typically been built in PMIX zoning
- Public Hearing signage and who produces those
- Traffic studies
- Notice mailed to adjacent land owners
- Modification narrative and staff letter
- Activity Center and how roof tops support it
- Is there going to be an HOA
- Did the management of Summit Homes change after they became Clayton Properties
- Residency requirements for city employees
- Missouri 150 overlay had citizen involvement
- Owners of two lots to the east.
- Availability of lots to the south and west
- Garage door width
- Rear set backs include patios or decks
- What does a typical landscape package cost
- Paint colors and metal roofs
- Distance between driveways
- Sidewalks
- Are there any safety concerns from the Fire Department
- Over crowding of schools
- Streets without driveways
- Number of parking spaces in parking lot

- Lot sizes and zoning in similar subdivisions
- Price ranges
- Target audience
- Would Pryor Road still be able to be widened
- Street widths
- What Fire station would be handling this subdivision and is it up for replacement
- Two apartment complexes that have not been built in the area yet, plus this development, so is there a concern with the aging Fire Station

Ms. Christy Fields spoke in favor of this application. She commented that she grew up in Lee's Summit, as did her husband, and they were unable to find a new home in their price range so they bought a foreclosure home. She would have liked a modern home with energy efficient appliances but that hasn't been available in their price range.

Mr. Gary Thompson spoke in opposition of this application. He and his wife own the agricultural ground to the south of this addition. His concern is density and traffic volume. He said he already can't access M150 in the area without a traffic signal and there are roads proposed that would dead end going into his property. At one time Pryor was slated to be a four lane road going south and there won't be room for that now.

Mr. Kevin Higdon spoke in opposition of this application. He stated that this development is not consistent with the surrounding large lot residential zoning. His concerns included UDO amendments, lot sizes, lack of buffers, density, doesn't meet framework for M150 corridor study, financial feasibility is not a justification for changes to zoning, rear setbacks and the quality of materials.

Mr. Mike Atcheson spoke in opposition of this application. His concern is he believes it is setting a precedent with modifications. The project isn't an in-fill project that has been worked on for 50 years. The location is the front door to the southern boarder.

Ms. Geraldine Amato spoke in opposition of this application. Her comments were regarding building against nature and building over agricultural land.

Ms. Alicia Nailer spoke in opposition of this application. Her concerns were stormwater, kids ability to ride bikes, over crowding of the school district and access for school busses.

Mr. Rick Yord, spoke in opposition of this application. He stated that he is an amateur astronomer and his neighbors have been required to have flood lights on their homes but no one remembers to turn them off. He doesn't want Lee's Summit to be ruined due to overdevelopment.

Mr. Jeff Riffe spoke in opposition of this application. He believes this is a significant departure from the plan and they are trying to make it fit. The issue of setting a precedent is incredibly important.

Mr. Dustin Stull spoke in opposition of this application. His concern was the proposed development will decrease his property value and will set a precedent.

- 1) [BILL NO. 19-01](#) An Ordinance approving rezoning from District AG and R-1 to District RP-3 and Preliminary Development Plan located at the southwest corner of SW Pryor Road and SW MO-150 Highway, proposed Allera development in accordance with the provisions of Chapter 33 of the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri. (Note: This Bill was first read by City Council on January 22, 2019.)

ACTION: A motion was made by Councilmember DeMoro, seconded by Councilmember Lopez, that Bill No. 19-01 be advanced to second reading. The motion carried by the following vote:

Aye: 5 - Mayor Baird
Councilmember DeMoro
Councilmember Edson
Councilmember Johnson
Councilmember Lopez

Nay: 4 - Councilmember Binney
Councilmember Carlyle
Councilmember Faith
Councilmember Forte

5. Public Comments:

Ms. Geraldine Amato spoke about private commercial jurisdictions, secret court proceedings and police quotas.

6. Presentations:

- A. [2018-2502](#) Presentation - Proposed Amendments to New Longview Tax Increment Financing Plan and Contract; creation of a Community Improvement District; and extension of Transportation Development District sales tax.

Council discussions included:

- Did the money from the contingency come from the mansion
- Public access to the pergola
- 4th and 5th plat
- What will the TDD be funding
- How many quality jobs will be produced
- Update on the barns
- Does the CID include the new and previous owner

City Council - Regular Session

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January 22, 2019

- 1) [BILL NO. 19-11](#) An Ordinance approving the Second Amendment to the Second Amended and Restated Longview Farm Tax Increment Financing Plan, the First Amendment to the New Longview Tax Increment Financing Plan, and the First Amendment to the Tax increment Financing Contract between the City of Lee's Summit and M-III Longview, LLC, to revise the amounts and priority of funding for improvements to Longview Lake and the Pergola.
(Note: First Reading by City Council on January 8, 2019. Passed by unanimous vote.)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Carlyle, that Bill No. 19-11 be adopted and numbered Ordinance No. 8548. The motion carried by the following vote:

Aye: 6 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Faith
Councilmember Lopez

Nay: 2 - Councilmember Edson
Councilmember Johnson

Absent: 1 - Councilmember Forte

7. Proposed Ordinances - Second Reading:

- A. [BILL NO. 19-14](#) An Ordinance approving the Tax Increment Financing Contract between the City of Lee's Summit, Missouri, and Streets of West Pryor, LLC, for the Streets of West Pryor Tax Increment Financing Plan.
(Note: First Reading by City Council on January 8, 2019.)

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Faith, that Bill No. 19-14 be adopted and numbered Ordinance No. 8549. The motion carried by the following vote:

Aye: 7 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Lopez

Nay: 1 - Councilmember Johnson

Absent: 1 - Councilmember Forte

- B. [BILL NO. 19-15](#) An Ordinance approving the Streets of West Pryor Community Improvement District Cooperative Agreement among Streets of West Pryor, LLC, the City Of Lee's Summit, Missouri, and the Streets of West Pryor Community Improvement District. (Note: First Reading by City Council on January 8, 2019.)

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Carlyle, that Bill No. 19-15 be adopted and numbered Ordinance No. 8550. The motion carried by the following vote:

Aye: 5 - Mayor Baird
Councilmember Carlyle
Councilmember DeMoro
Councilmember Faith
Councilmember Lopez

Nay: 3 - Councilmember Binney
Councilmember Edson
Councilmember Johnson

Absent: 1 - Councilmember Forte

- C. [BILL NO. 19-16](#) An Ordinance approving the Streets of West Pryor Transportation Development District Cooperative Agreement among Streets of West Pryor, LLC, the City of Lee's Summit, Missouri, and the Streets of West Pryor Transportation Development District. (Note: First Reading by City Council on January 8, 2019.)

ACTION: A motion was made by Councilmember Lopez, seconded by Councilmember Carlyle, that Bill No. 19-16 be adopted and numbered Ordinance No. 8551. The motion carried by the following vote:

Aye: 7 - Mayor Baird
Councilmember Binney
Councilmember Carlyle
Councilmember DeMoro
Councilmember Edson
Councilmember Faith
Councilmember Lopez

Nay: 1 - Councilmember Johnson

Absent: 1 - Councilmember Forte

8. Committee Reports

Councilmember Faith announced the Public Works Committee will be meeting Tuesday, January 29, 2019 at 5:00 p.m.

Mayor Pro Tem Lopez announced the Community and Economic Development Committee will be meeting February 13, 2019.

9. Council Comments:

Mayor Baird thought the Public Hearing went well and was well vetted. He asked why public safety is still questioned if the Chief of Police says they can handle the increase, why isn't it accepted. The schools addressed over crowding in the High Schools by redistricting but the issue will come up again as Lee's Summit grows. There are some schools that are under utilized and some that are over crowded so would it be helpful to have the school district give a presentation to Council to gain a better understanding of their process for addressing those issues. He then asked for Council feedback to clarify the process for Public Hearing commenters. If someone is representing a group of people, and is therefore allowed extra time to speak, and then some of the people that were represented still get up to speak, how could that be handled best.

Councilmember Edson stated public safety has problems hitting their response time in certain areas which is documented in the standard of cover report. As the city grows, those discussions are valid and need to happen but may not be needed in all cases.

Councilmember Johnson stated he looked up the school districts CFMP report and the majority of Lee's Summit Schools are under 79% and under 89% capacity and therefore won't be impacted in the near future by development, although a few certainly will be impacted.

Councilmember Binney thanked Councilmember Johnson for his reminder of the School Districts CFMP report and added they have yearly updates. He then shared that sometimes when a new subdivision goes in, they thought it would be ok with public safety but then they found there have been problems since, traffic patterns build up and people start parking on both sides of the streets and things are different than what was expected. He went on to comment about the School Districts by saying, lets get all Lee's Summit students going to Lee's Summit schools instead of Blue Springs and Raymore. As for the multiple commentors, some people might not know who their HOA President is or that someone is speaking on their behalf. There were many comments tonight but no one really repeated comments made by others. He expressed his appreciation of the Chairs concern to not let it get out of hand.

Mayor Pro Tem Lopez added his concern that there still seems to be a slight disconnect with the Planning Commission and it doesn't seem like everyone is on the same page because some of the items of discussion should have been vetted in more detail during the Planning Commission's Public Hearing process. He stated that some residents didn't feel they had that opportunity.

Mayor Baird asked David Bushek, Chief Council of Economic Development and

Planning, if he had sent his summary of the combined Work Session to everyone or if it was just internal. Mr. Bushek confirmed that the members of the Planning Commission had received the summary.

Councilmember Edson added that Lee's Summit serves 5 different school districts. District 3 is probably half Blue Springs schools and they have seen tremendous growth. Conversations with the school district would probably open the door for conversations with the other four districts as well.

Councilmember Johnson mentioned that he attended the Planning Commission meeting because he wanted to see what the opposition was to the Allera project and the only opposition was a question on a boundary line that wasn't mentioned this evening. If no one shows up to the Planning Commission meetings in opposition then it is tough for them to respond and it becomes a unanimous presentation.

Mayor Pro Tem Lopez ended things on a lighter note by announcing that the Blue Springs South Varsity Girls basketball team won over Lee's Summit North High School in their game that night.

10. Staff Roundtable

Mr. Steve Arbo, City Manager, stated Mr. Robert McKay has announced his retirement effective March 8, 2019. He has had a wonderful 40 year career and has been a great public servant. He has been very instrumental in Lee's Summit's growth for close to 20 years.

11. Adjournment

There being no further business, Mayor Baird adjourned Regular Session No. 20 at 10:14 p.m.

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 Legislative Information Center website at "lsmo.legistar.com"

Packet Information

File #: 2018-2488, **Version:** 1

Mayor's Appointments:

Arts Council: Appoint John Hardesty to replace Hopper Thomas, term to expire 7-22-20.

Planning Commission: Appoint Mark Kitchens, to replace Allan Gardner, term to expire 4-15-23.

TIF Commission: Appoint Clint Haynes, term to expire 12-15-22.

Water Utilities Advisory Board: Appoint Colleen Fullerton, term to expire 3-1-21.

Issue/Request:

Due to term expirations/resignations, Mayor Baird is seeking City Council approval of his appointments to the Planning Commission and Water Utilities Advisory Board.



LEE'S SUMMIT MISSOURI

Mayor William A. Baird

DATE: January 25, 2019

TO: City Council

FROM: Mayor Bill Baird

RE: Citizen Boards and Commissions Appointments

I am submitting the following appointment for the City Council's approval:

Arts Council: Appoint John Hardesty to replace Hopper Thomas, term to expire 7-22-20.

Planning Commission: Appoint Mark Kitchens, to replace Allan Gardner, term to expire 4-15-23.

TIF Commission: Appoint Clint Haynes, term to expire 12-15-22.

Water Utilities Advisory Board: Appoint Colleen Fullerton, term to expire 3-1-21.

Julie Pryor

From: do-not-reply@cityofls.net
Sent: Wednesday, January 30, 2019 3:03 PM
To: Julie Pryor
Subject: Committee Interest Form Submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The City of Lee's Summit Committee Interest Form was submitted.

Name	Content
First Name	John
Last Name	Hardesty
Home Address	4727 NW Canyon Cir
City	Lee's Summit
State	MO
Zip	64064
Email Address	john@johnhardesty.com
Phone Number	7134465242
Which district do you live?	District 3
Years as a resident?	Four on March 1st, 2019
High School Attended	Merkel High School, Merkel Texas
College Attended	The University of Texas at Austin
Current Employment	Self
Position Held	Pianist/Composer/Songwriter
Interest Response	Ever since we moved to Lee's Summit to be near our two grandsons, I've wanted to contribute in some way to the arts experience in this city, but I just wasn't sure how I could. This appears to be a great opportunity to support and up-level cultural arts experiences, and I've been looking for a way to become more of a part of the community. Two of my personal strengths are "communication" and "connectedness" which I feel are important aspects in any endeavor. Also, the fact that I'm a lifelong musician - I began playing piano by ear at age 6, spent many years playing clarinet in Junior High, High School (made the Texas All-State band my

senior year), and the UT Longhorn Band; I've also been a church organist and was a member on keyboard of the music team at my church for the last 23 years I lived in Houston, TX. For many years I was a subscriber of the Houston Symphony and the Houston Grand Opera, and my wife and I currently support the Kansas City Symphony and the Nelson-Atkins Museum of Art. I've always had a strong belief that the arts are an essential part of Life. They can inspire, heal, entertain, help us relax and reduce stress, focus attention on important elements of life, and generally greatly enhance a person's experience of living.

Other activities?	I provide piano entertainment for approximately 15 retirement centers in the Kansas City area.
Interest in Serving On?	Arts Council
Other Interests (Please Specify)	Helping to create opportunities for children to express their essence in whatever area of art that speaks to them, i.e., music, art, dance.

From Page Url: <https://cityofls.net/boards-commissions/boards-commissions-interest-form>

User IP: 73.3.45.92

Submission Date: 1/30/2019 3:03:06 PM

Julie Pryor

From: markadamkitchens@gmail.com
Sent: Tuesday, October 2, 2018 8:32 PM
To: Julie Pryor
Subject: Committee Interest Form submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The following committee interest information was submitted through cityofls.

Name: Mark Kitchens

Address: 333 SE Alexandria Dr
Lee's Summit MO 64063

Email: markadamkitchens@gmail.com

Phone: 8013699780

Council District: District 4

How many years a resident: 3

High School: Stafford Senior High School

College: Brigham Young University, BA/ Park University, MPA

Employment: Teracore, FEMA Region VII

Position: Regional Preparedness Liaison (CTR)

Why interested: Since my wife and I moved to the Kansas City metro area, we've been avid investors in the community. We've been fortunate enough to invest in single family homes throughout the metropolitan area, with our current residence in Lee's Summit. Our entrepreneurial endeavors have extended beyond real estate as we own several small businesses, including a retail bakery; Cupcake a La Mode. Business has been good and we are currently developing our second bakery location in Downtown Lee's Summit. As owners, we've taken businesses and properties from the brink of bankruptcy, to growth and development. As a property owner, landlord, and commercial leasee, I'm well aware of the incentives in buying, improving, and renting everything from a small apartment to a largescale shopping center. In short, I see the development of business as a priority, and see the balance of benefits to both the investor and community in designing and planning the best city design and operation. My career in Emergency Management includes a stint as the volunteer Assistant Emergency Manager for the City of Glenaire, MO. With my roots in Law Enforcement, I cut my rookie standing as an Investigator with the US Postal Inspection Service while in college on a joint federal-state Task Force on Identity Theft in the Richmond, VA area. Finishing my degree at Brigham Young University, I decided to continue working with the Utah Constable Service, switching to Private Investigations and Security. I made the switch to Homeland Security Consulting while finishing my Master's degree in Public Affairs with concentration in Disaster and Emergency Management. I have now been retained as a consultant in my current

position with FEMA Region VII for the past six years and am well-known throughout the country as an expert in National Preparedness. My current position also entails management of seven different programs and staff in order to direct constant growth of federal projects. My professional background as a Certified Emergency Manager (CEM) gives me keen understanding into city public safety planning and requirements. As Lee's Summit continues to grow, its public emergency response and incident planning will require infrastructure design and correct land-use management. City development must take into regard Hazard and Vulnerability Assessments for the area in order to correctly plan for and assume proper and sustainable public safety investments. I see potential in Lee's Summit to an astounding degree- more than any other place I've lived. The possibilities for growth require a unique outlook on balancing individual investor's ambition with what's best for the community at large- a skill which only someone with community, family, business, and investment ties into Lee's Summit can truly comprehend. Investing my own money and time into making this city the best place to raise a family and business makes the transition back into public service a welcome advancement.

Other participation: I currently serve as the Stake Emergency Preparedness Coordinator for the Church of Jesus Christ of Latter-day Saints for the Kansas City Stake. With an area of approximately 1,000 square miles, the Stake includes the entirety of Lee's Summit, Raytown, Harrisonville, and much of Southern Kansas City. As a non-paid position, my coordination for the Church includes coordination with municipal partners throughout the Stake. Development of Church emergency response plans, safety coordination, and emergency communication plans requires coordination with county and city partners. My experience in this position for the past seven years has resulted in my name being well-known throughout the area as an expert representative of the Church's Emergency Management. My service in the Church has also been paired at times with service in the Boy Scouts of America. I served as a Scoutmaster for a four-year stint within Troop 661. I thoroughly enjoyed my time in service to the Boy Scouts of America, and even continue to coordinate service between FEMA nationally and the Boy Scouts. Among other interests, I continue to plan for youth outings and assist with disaster planning for non-profit entities.

Interested in serving on: Planning Commission ,Public Safety Advisory ,Special Ad Hoc Committees ,Strategic Plan

Other interests: Of all the sports I've played and loved, I played Rugby in High School and club leagues in Kansas City (Kansas City Rogues) and Racquetball with Brigham Young University. If further character or professional references are required, I can supply as desired, to include Don Gustafson.

Julie Pryor

From: do-not-reply@cityofls.net
Sent: Tuesday, January 29, 2019 7:47 PM
To: Julie Pryor
Subject: Committee Interest Form Submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The City of Lee's Summit Committee Interest Form was submitted.

Name	Content
First Name	Clint
Last Name	Haynes
Home Address	405 SW Waterfall Ct
City	Lee's Summit
State	MO
Zip	64081
Email Address	clint.haynes@nextgen-wealth.com
Phone Number	8162874780
Which district do you live?	District 2
Years as a resident?	14
High School Attended	Raymore-Peculiar
College Attended	Missouri State
Current Employment	NextGen Wealth
Position Held	Owner, Certified Financial Planner
Interest Response	I love the city of Lee's Summit and having lived here 14 years, I genuinely want to see this city continue to grow and succeed. Mayor Baird thought I would be a good fit for the TIF Commission and Strategic Planning Board. After doing some research and speaking with others, I believe my financial and accounting skills would be a great fit as well.
Other activities?	I currently serve on the Lee's Summit Chamber Board, Economic Development Council Board, and the Lee's Summit Educational Foundation Advisory Board.

Interest in Serving On? Strategic Plan, Tif Commission

Other Interests (Please Specify)

From Page Url: <https://cityofls.net/boards-commissions/boards-commissions-interest-form>

User IP:208.188.113.205

Submission Date:1/29/2019 7:47:04 PM

Julie Pryor

From: do-not-reply@cityofls.net
Sent: Monday, December 3, 2018 3:48 PM
To: Julie Pryor
Subject: Committee Interest Form Submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The City of Lee's Summit Committee Interest Form was submitted.

Name	Content
First Name	Colleen
Last Name	Fullerton
Home Address	229 SE Sumpter Drive
City	Lee's Summit
State	MO
Zip	64063
Email Address	cfullerton@usas-llc.com
Phone Number	816-524-5044
Which district do you live?	District 3
How many years have you been a resident of Lee's Summit?	On and off (lived in Greenwood for 13 years) for 20 years
High School Attended	Raytown South High School
College Attended	Longview Community College
Current Employment	US Asset Services (Commercial Real Estate)
Position Held	General Manager - Summit Tech Campus

Interest Question

Interest Response

I have worked with the City on taxes, water projects, road projects and construction over my 14 years at Summit Technology Campus. I served on the LS Chamber board for three years and have an earnest interest in the City and being engaged and helpful where I can.

What other community or civic activities do you participate in?

LS Chamber Building Owners Managers Association Volunteer with LS Social Services Volunteer at Sunset Valley Elementary Active in my church - Eagle Creek Church in LS MO

I would be interested in serving on: (check all that apply - You MUST select at least one)

Human Services Advisory Board

Other Interests (Please Specify)

Water Utilities Advisory Board

From Page Url: <https://cityofls.net/boards-commissions/boards-commissions-interest-form>

User IP: 74.87.165.226

Submission Date: 12/3/2018 3:48:21 PM

Packet Information

File #: 2018-2408, Version: 1

Public Hearing - Application #PL2018-194 Unified Development Ordinance Amendment #3 - Article 6 Use Standards - Accessory Uses and Structures - Table 6.IV-1. Accessory Structures - amending detached garage size limitations and setbacks in all residential districts; City of Lee's Summit Applicant

Staff received a request from a home owner to construct a detached garage on a lot exceeding 1 acre in size. The current conditions provide a formula allowing a detached garage of 250 sq. ft. for every 5,000 sq. ft. of lot area up to a maximum of 1,000 sq. ft. for lots less than 4 acres and 2,000 sq. ft. for lots of 4 acres or more. The requestor was looking to construct a 3 car detached garage of 1,500 sq. ft. but was limited to a maximum of 1,000 sq. ft. per the formula. The proposed amendment would still utilize the formula but increase maximum allowable square footage of a detached garage to 2,500 sq.ft. on residentially zoned lots of less than 5 acres. Lots 5 acres and greater would have a maximum limit of 3,500 sq. ft. The height limitation was also increased to 40 feet but not greater than the principal structure to allow for loft dwellings above the detached garage where permitted.

This proposed amendment would allow large lot owners the option to construct larger garages for vehicles or necessary maintenance equipment. Again the current formula stays in place while providing increased maximum size limitations. Agricultural zoning does not have a size limitation which is appropriate for the size of lots in that district.

Often UDO amendments are prompted by requests from citizens. Staff researches the intent of the original ordinance language and upon finding that the either the original intent is no longer valid or just outdated and a change is appropriate an amendment is brought forward for consideration. Staff believes the latter to be the case here and is providing an amendment that gives some increase in detached garages but still keeps a maximum in place.

The CEDC considered this request at their meeting on November 14th and recommended forwarding this proposed amendment to the Planning Commission for public hearing. They also recommended staff and Commission consider addressing graduated setbacks for the larger detached garages. Staff included proposed graduated setbacks in the amendment.

The Planning Commission held a public hearing January 10, 2019 and recommended approval of the proposed amendment.

Attached for your consideration is the proposed amendment including graduated setbacks along with a sheet that shows calculated sizes, both current and proposed, and associated lot coverages as well. This proposed amendment primarily affects 3/4 acre and larger lots. The amendment should have little or no effect on standard lot sizes in the community based on the lot coverages shown on the calculations sheet.

Recommendation: Staff recommends approval of UDO Amendment #3.

Robert McKay, AICP, Director of Planning and Special Projects

Table 6.IV-1. Accessory Structures

Accessory Structure	Permitted Zoning Districts	Required Setbacks	Height	Size Limitations and Other Special Conditions Note: See Section 6.1330.B. for easement and right-of-way encroachments
Garage in AG — Detached	AG	Front: Prohibited	40 feet (maximum height in	No limitation on size in AG.
		Side: 35 feet Rear: 35 feet	district)	
Garage — Detached	All Residential districts (including RDR and RLL, but excluding AG)	Front: No closer than principal structure Side: 10 feet- <u>(Lots < 1 acre)</u> <u>20 feet (lots 1 to 5 acres)</u> <u>30 feet (lots > 5 acres)</u> Rear: 10 feet (4 feet for alley access) <u>(lots < than 1 acre);</u> <u>20 feet (lots 1 to 5 acres)</u> <u>30 feet (lots > 5 acres)</u> <u>-30 feet for detached garage with-loft residential dwelling unit</u>	<u>40</u> 25 feet (not to exceed height of principal structure on property)	Detached garage shall not exceed 250 square feet for each 5,000 square feet of lot area, with a maximum of 1,000 <u>2,500</u> square feet for lots less than <u>5.4</u> acres, and a maximum of 2,000 <u>3,500</u> square feet for lots of <u>5.4</u> acres or more. Only one garage structure is permitted. Design and construction shall be as set forth in Section 6.1350.E.
Garage — Attached	All Residential districts (including AG, RDR and RLL)	Same as a principal structure in district	Same as a principal structure in district	

DETACHED GARAGE MAXIMUM SIZES – RESIDENTIAL OTHER THAN AG

The current UDO formula for detached garage sizes for all residential districts except AG:

- 250 sq. ft. /5,000 sq. ft. of lot area, 1,000 sq. ft. maximum for lots less than 4 acres and 2,000 sq. ft. maximum for 4 acres or more

The following table shows the current detached garage maximums based on the above formula with established maximums:

<u>Lot Size</u>	<u>Current Max. (Lot Coverage)</u>	
1. 8,400 sq. ft. – SF Lot	420 sq. ft.	(5.0%)
2. 21,780 sq. ft. – ½ Acre	1,000 sq. ft.	(4.6%)
3. 43,560 sq. ft. – 1 Acre	1,000 sq. ft.	(2.3%)
4. 130,680 sq. ft. – 3 Acres	1,000 sq. ft.	(.07%)
5. 217,800 sq. ft. – 5 Acres	2,000 sq. ft.	(.01%)

The proposed UDO amendment still uses the formula but increases the maximum detached garage sizes to 2,500 sq. ft. for lots less than 5 acres and 3,500 sq. ft. for lots 5 acres and larger.

The proposed amendment would provide the following sq. ft. maximums using the same lot sizes:

	<u>Proposed / Existing</u>	
1. SF Lot	420 sq. ft.	/ 420 sq. ft.
2. ½ acre	1,089 sq. ft.	/ 1,000 sq. ft.
3. 1 acre	2,178 sq. ft.	/ 1,000 sq. ft.
4. 3 acres	2,500 sq. ft.	/ 1,000 sq. ft.
5. 5 acres	3,500 sq. ft.	/ 2,000 sq. ft.

The amendment primarily impacts lots of 3/4 acre and greater. (3/4 acre would be allowed 1,634 sq. ft.)

Lot coverage based on the proposed amendment:

1. 5.0%
2. 5.0%
3. 5.0%
4. 1.9%
5. 0.16%

Packet Information

File #: BILL NO. 19-17, **Version:** 1

An Ordinance approving Application #PL2018-194 Unified Development Ordinance (UDO) Amendment #3 Article 6 Use Standards - Accessory Uses and Structures - Table 6.IV-1. Accessory Structures - amending detached garage size limitations and setbacks in all residential districts; City of Lee's Summit Applicant.

Proposed City Council Motion:

I move for second reading of an An Ordinance approving Application #PL2018-194 Unified Development Ordinance (UDO) Amendment #3 Article 6 Use Standards - Accessory Uses and Structures - Table 6.IV-1. Accessory Structures - amending detached garage size limitations and setbacks in all residential districts; City of Lee's Summit Applicant.

Robert McKay, AICP, Director of Planning and Special Projects

BILL NO. 19-17

AN ORDINANCE APPROVING APPLICATION #PL2018-194 - UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT #3, ARTICLE 6 USE STANDARDS - ACCESSORY USES AND STRUCTURES - TABLE 6.IV-1. ACCESSORY STRUCTURES - AMENDING DETACHED GARAGE SIZE LIMITATIONS AND SETBACKS IN ALL RESIDENTIAL DISTRICTS; CITY OF LEE'S SUMMIT APPLICANT.

WHEREAS, the Unified Development Ordinance (UDO) was originally adopted by the City Council as Ordinance No. 5209 on September 6, 2001, which has been amended numerous times and recodified in its entirety by the adoption of Ordinance No. 8443 and is incorporated into the City's Code of Ordinances through Section 33-1 of the Code; and,

WHEREAS, Application #PL2018-194, proposing an amendment to Article 6 Use Standards, Accessory Uses and Structures, Table 6.IV-1. Accessory Structures, Amending Detached Garage Size Limitations and Setbacks in all Residential Districts was filed; and,

WHEREAS, the Community and Economic Development Committee considered the proposed UDO Amendment to Article 6 Use Standards, Accessory Uses and Structures, Table 6.IV-1. Accessory Structures on November 14, 2018, and authorized the amendments to be advertised for public hearings; and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for Application #PL2018-194 on January 10, 2019 and rendered a report to the City Council recommending that the proposed amendment to Article 6 Use Standards, Accessory Uses and Structures, Table 6.IV-1. Accessory Structures be approved; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on Application #PL2018-194 on February 5, 2019 and,

WHEREAS, the City Council determined that the proposed UDO amendment contained in Application #PL2018-194 would serve the interests of the citizens of Lee's Summit.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as shown on the attached copy, appended hereto and made a part hereof.

SECTION 1. That Article 6 Use Standards, Accessory Uses and Structures, Table 6.IV-1. Accessory Structures of the Unified Development Ordinance, are hereby amended in the manner shown on the copy appended hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. That it is the intention of the City Council and is hereby ordained that the provisions of this Ordinance shall become and be made a part of the UDO, and the sections of this Ordinance and the UDO may be renumbered as appropriate to accomplish such intention.

SECTION 3. That this ordinance shall be in full force and effect from and after the date of its passage, adoption, and approval by the Mayor.

BILL NO. 19-17

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

Table 6.IV-1. Accessory Structures

Accessory Structure	Permitted Zoning Districts	Required Setbacks	Height	Size Limitations and Other Special Conditions Note: See Section 6.1330.B. for easement and right-of-way encroachments
Garage in AG — Detached	AG	Front: Prohibited	40 feet (maximum height in district)	No limitation on size in AG.
		Side: 35 feet Rear: 35 feet		
Garage — Detached	All Residential districts (including RDR and RLL, but excluding AG)	Front: No closer than principal structure Side: 10 feet; <u>(Lots < 1 acre)</u> <u>20 feet (lots 1 to 5 acres)</u> <u>30 feet (lots > 5 acres)</u> Rear: 10 feet (4 feet for alley access)(<u>lots < than 1 acre</u>); <u>20 feet (lots 1 to 5 acres)</u> <u>30 feet (lots > 5 acres)</u> <u>30 feet for detached garage with loft residential dwelling unit</u>	<u>40.25</u> feet (not to exceed height of principal structure on property)	Detached garage shall not exceed 250 square feet for each 5,000 square feet of lot area, with a maximum of <u>1,000 2,500</u> square feet for lots less than <u>5.4</u> acres, and a maximum of <u>2,000 3,500</u> square feet for lots of <u>5.4</u> acres or more. Only one garage structure is permitted. Design and construction shall be as set forth in Section 6.1350.E.
Garage — Attached	All Residential districts (including AG, RDR and RLL)	Same as a principal structure in district	Same as a principal structure in district	

Packet Information

File #: 2018-2506, **Version:** 1

Public Hearing - New Longview Community Improvement District

Issue/Request:

Public Hearing - New Longview Community Improvement District

Key Issues:

This is the public hearing for the Council to receive evidence and testimony regarding the proposed New Longview Community Improvement District.

Background:

Developer M-III Longview, LLC ("Developer"), along with several other property owners in the Longview area, have filed a Petition for the formation of a new CID in the Longview area. The City Council has previously approved two TIF plans (2003 and 2015) and a transportation development district (2003) in the Longview area, and this CID request is a new funding district that is not directly connected with the prior incentive approvals by the Council.

The CID would impose a new 1% sales tax on the commercial retail businesses in the Longview area. Developer is requesting that none of the CID sales tax revenues would be captured by the two active TIF plans in the Longview area and all of the CID sales tax revenues would be devoted to CID purposes and public improvements.

The CID is proposed to fund the following public improvements and associated soft costs in the combined total of about \$5.5M over the life of the CID:

- Activity Plaza west of the theater
- Traffic Signal at 3rd & Kessler and other street improvements
- Grading, Paving and Utilities for right-of-way and shared parking stalls
- Streetscape and Landscape improvements in right-of-way and common areas
- Structured Parking (160 spaces)
- Maintenance of the North Arch

Developer estimates that the CID will generate about \$250,000 per year by the year 2022 (increasing each year due to sales growth). Developer estimates that this will generate about \$9 million over the 30-year life of the District with a net present value of about \$4.2 million.

The ordinance would make the CID approval contingent upon the CID entering into a cooperative agreement with the CID for implementation of the District. The cooperative agreement would contain the following safeguards and protections for the City:

- The City Finance Department would receive the CID revenues from the Department of Revenue and disburse the revenues pursuant to the terms of the agreement. The City will receive a portion of the CID revenues as reimbursement for this for this administrative work.
- The agreement will require the District to annually fund a maintenance fund to provide for a source of funds to provide for long term maintenance of the CID public improvements in the event that the Longview Business Owners Association or the CID fails to function properly and maintain the CID public improvements after they are constructed and placed into service.
- Reimbursable project costs which are incurred by the Developer or other private parties will be reviewed and approved by City staff and the District prior to reimbursement from District revenues.
- The CID will be a political subdivision of the state and must follow all applicable laws such as the Sunshine Law and annual budgeting laws.

The sales tax would go into effect after the approval of a ballot measure in an election that will be conducted by the Jackson County Election Authority among the property owners in the CID area. The CID sales tax would be in addition to the other sales taxes already in effect in the Longview area, which includes local sales taxes imposed by the City, County, Zoo District and the Longview TDD.

Impact/Analysis:

This CID would impose a new 1% sales tax that would be in addition to the existing sales taxes, which would create the following total sales tax rate in the Longview area:

4.225% - State
2.250% - City
1.250% - County
0.125% - Zoo District
1.000% - Longview TDD
1.000% - Longview CID
9.850% - Total

This request presents no direct impact to City general revenues. This will result in up to 30 years of additional 1% sales tax to fund additional public improvements in the Longview area.

Timeline:

Developer would conduct the sales tax election and begin implementation in 2019.

Corey Walker, M-III Longview
John Hansen, IRR Corporate & Public Finance
David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager

**PETITION FOR ESTABLISHMENT OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT
CITY OF LEE'S SUMMIT, MISSOURI**

**PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

To the Mayor and City Council of the City of Lee’s Summit, Missouri:

The undersigned real property owners (the “Petitioners”), being the owners of more than:

- (1) fifty percent (50%) by assessed value of the real property; and
- (2) fifty percent (50%) per capita of all owners of real property

within the boundaries of the hereinafter described proposed community improvement district does hereby petition and request that the City Council of the City of Lee’s Summit, Missouri create a community improvement district as described herein under the authority of Sections 67.1401 to 67.1571, RSMo (the “CID Act”). In support of this petition, the Petitioner sets forth the following information in compliance with the CID Act:

1. District Name. The name for the proposed community improvement district (“CID” or “District”) is:

New Longview Community Improvement District.
2. Legal Description and Map. A legal description and map generally depicting the boundaries of the proposed District are attached hereto as **Exhibit A** and **Exhibit B**, respectively. The proposed district consists of approximately 35 acres and is located entirely within the City of Lee’s Summit, Missouri.
3. Five-Year Plan. A five-year plan as required by the CID Act is attached hereto as **Exhibit C** (the “Five Year Plan”).
4. Form of District. The proposed District will be established as a political subdivision of the State of Missouri under the CID Act.
5. Board of Directors.
 - a. Number. The District shall be governed by a Board of Directors (the “Board”) consisting of five (5) members, whom shall be appointed by the municipality in accordance with this petition.
 - b. Qualifications. Each Member of the Board (“Director”) shall meet the following requirements:
 - (1) be at least 18 years of age;
 - (2) be and must declare to be either an owner of real property within the District (“Owner”) or an authorized representative of an Owner, an owner of a business operating within the District (“Operator”), or a registered voter (“Resident”) residing within the District, as provided in the CID Act;
 - (3) be and have been a resident of the State of Missouri for at least one year immediately preceding the date upon which he or she takes office in accordance with Article VII, Section 8 of the Missouri Constitution; and
 - (4) except for the initial slate of directors named in this Petition, be appointed according to a slate submitted as described in this Petition.

c. Initial Directors. The initial directors (“Initial Directors”) and their respective terms shall be as follows:

- i. Caleb Holmes – Owner’s Representative, Four (4) year term
- ii. Evan Welsh – Owner’s Representative, Four (4) year term
- iii. Jennifer Metz – Owner’s Representative, Four (4) year term
- iv. Mike Jenkins – Owner’s Representative, Two (2) year term
- v. Mark Dunning – City Representative, Two (2) year term

d. Terms. Initial Directors shall serve for the term set forth above. Each of the successor directors (“Successor Directors”) shall serve a four (4) year term or until his/her successor is appointed in accordance with this Petition. If, for any reason, a Director is not able to serve his/her term, the remaining Directors shall elect an Interim Director to fill the vacancy of the unexpired term.

Notwithstanding anything to the contrary, any Director’s failure to meet the qualification requirements set forth above, either in a Director’s individual capacity or in a Director’s representative capacity, shall constitute cause for the Board to take appropriate action to remove said Director.

e. Successor Directors. Successor Directors shall be appointed by the Mayor with the consent of the City Council by resolution. The Executive Director of the District will submit a proposed slate of successor directors to the City of Lee’s Summit, Missouri’s City Clerk (the “City Clerk”) for a non-binding recommendation regarding the appointment of successor directors, which slate may be comprised of any individuals that meet the above-listed criteria in the discretion of the Executive Director. Upon receipt of a slate of Successor Directors, the City Clerk shall promptly deliver the slate to the Mayor and the Mayor shall appoint the Successor Directors with the consent of the City Council.

6. Assessed Value. The total assessed value of all real property in the District is \$4,208,209. The official total assessed valuation for the District may change by the time the District is created.

7. Duration of District. The proposed length of time for the existence of the District is thirty (30) years from the date upon which the CID sales tax is levied within the District pursuant to this Petition. The District may be terminated prior to the end of such term in accordance with the provisions of the CID Act.

8. Real Property and Business License Taxes. The District will not have the power to impose a real property tax levy or business license taxes.

9. Special Assessments. The District will not have the power to impose a special assessment.

10. Sales Tax. Qualified voters of the District may be asked to approve a sales tax of up to one percent (1%) (“District Sales Tax”), in accordance with the CID Act, to fund certain improvements within the District and/or to pay the costs of services provided by the District. Additional details about the District Sales Tax are set forth in the Five Year Plan attached hereto as Exhibit C. It is anticipated that the District will not consent to the capture of its District Sales Tax as economic activity taxes subject to deposit into a special allocation fund for any TIF redevelopment project area within any TIF redevelopment area formed under the Real Property Tax Increment Allocation Act, RSMO 99.800 to 99.865.

11. Borrowing Limits. Petitioner does not seek limitations on the borrowing capacity of the District.

12. Revenue Limits. Petitioner does not seek limitations on the revenue generation of the District.

13. Authority Limits. Petitioner does not seek limitations on the authority of the District, except as set forth in this Petition.
14. Blight. Petitioner does not seek a finding of blight under this Petition.
15. **Revocation of Signatures. THE PETITIONERS ACKNOWLEDGES THAT THE SIGNATURE OF THE SIGNER OF THIS PETITION MAY NOT BE WITHDRAWN FROM THIS PETITION LATER THAN SEVEN (7) DAYS AFTER THE FILING HEREOF WITH THE CITY CLERK.**

WHEREFORE, Petitioner respectfully requests that the City Council establish the requested New Longview Community Improvement District in accordance with the information set forth in this Petition and that the Mayor appoint and the City Council consent to the proposed members for the Board of Directors as set forth in this Petition, and take all other appropriate and necessary action that is consistent with the CID Act to establish the requested district.

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: M-III Longview LLC

Owner's address: 4220 Shawnee Mission Parkway, Suite 200 B, Fairway, KS 66205

Owner's telephone number: 816-285-3872

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: Corey Walker

Title: Senior Vice President of Platform Ventures, LLC, manager of Platform Investments, LLC, manager of M-III Longview LLC

Signer's telephone number: 816-285-3878

Signer's mailing address: 4220 Shawnee Mission Parkway, Suite 200 B, Fairway, KS 66205

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input checked="" type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-04-01-00-0-00-000; 62-420-09-01-00-0-00-000; 62-420-98-16-00-0-00-000; 62-420-98-15-00-0-00-000; 62-420-98-13-00-0-00-000; 62-420-98-12-00-0-00-000; 62-420-98-97-00-0-00-000; 62-420-98-08-00-0-00-000; 62-420-98-11-00-0-00-000; 62-420-29-08-00-0-00-000; 62-420-29-04-00-0-00-000; 62-420-29-05-00-0-00-000; 62-420-29-06-00-0-00-000; 62-420-29-07-00-0-00-000; 62-420-29-09-00-0-00-000; 62-420-30-01-00-0-00-000

Total Assessed Value**: \$1,059,847

[Signature follows on separate page.]

By executing this petition, the undersigned represents and warrants that he/she is authorized to execute this petition on behalf of the property owner named immediately below.

M-III LONGVIEW LLC,
a Delaware limited liability company
By: Platform Investments, LLC, its manager
By: Platform Ventures, LLC, its manager

By: *Corey Walker*
Name: Corey Walker
Title: Senior Vice President

Date: _____

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

On this 10th day of January, 2019, before me appeared Corey Walker, to me personally known, who, being by me duly sworn did say that he is the Senior Vice President of Platform Ventures, LLC, manager of Platform Investments, LLC, manager of M-III Longview LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said corporation, and said corporation acknowledged said instrument to be the free act and deed of said entity.

WITNESS my hand and official seal this 10th day of January, 2019.

My Commission Expires: 8/20/22

Jennifer Metz
Notary Public



**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: Hawthorn Bank, formerly known as Citizens Union State Bank and Trust

Owner's address: 300 SW Longview Blvd., Lee's Summit, MO 64081

Owner's telephone number: 816-347-8100

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: Keith A. Asel

Title: President – NW Region

Signer's telephone number: 816-347-8100

Signer's mailing address: 300 SW Longview Blvd., Lee's Summit, MO 64081

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-09-02-00-0-00-000

Total Assessed Value**: \$487,645

[Signature follows on separate page.]

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: Gale Communities, Inc.

Owner's address: 400 SW Longview Blvd., Ste 109, Lee's Summit, MO 64081

Owner's telephone number: 816-645-2336

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: G. David Gale

Title: President

Signer's telephone number: 816-645-2336

Signer's mailing address: 400 SW Longview Blvd., Suite 109, Lee's Summit, MO 64081

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input checked="" type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-09-03-00-0-00-000; 62-420-15-01-01-0-00-000; 62-420-15-01-02-0-00-000

Total Assessed Value**: \$1,547,773

[Signature follows on separate page.]

By executing this petition, the undersigned represents and warrants that he/she is authorized to execute this petition on behalf of the property owner named immediately below.

GALE COMMUNITIES, INC.,
a Missouri corporation

By: [Signature]
Name: G. David Gale
Title: President

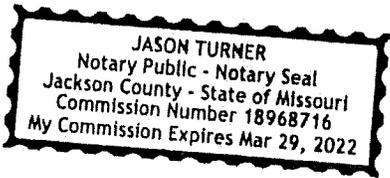
Date: 1.12.18.

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

On this 12th day of January, 2019, before me appeared G. David Gale, to me personally known, who, being by me duly sworn did say that he is the President of Gale Communities, Inc., a Missouri corporation, and that said instrument was signed on behalf of said corporation, and said corporation acknowledged said instrument to be the free act and deed of said entity.

WITNESS my hand and official seal this 12th day of January, 2019.

My Commission Expires: March 29, 2022 [Signature]
Notary Public



**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: NLVC, LLC

Owner's address: 3152 SW Grandstand Cir., Lee's Summit, MO 64081

Owner's telephone number: 816-589-4415

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: Russell G. Pearson

Title: Sole Member of Box Real Estate Development LLC, manager of
NLVC, LLC

Signer's telephone number: 816-589-4415

Signer's mailing address: 3152 SW Grandstand Cir., Lee's Summit, MO 64081

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input checked="" type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-97-01-00-0-00-000

Total Assessed Value**: \$99,424

[Signature follows on separate page.]

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: FSD New Longview, LLC

Owner's address: 465 First Street West, Second Floor, Sonoma, CA 95476

Owner's telephone number: 602-714-3099

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: SG Ellison

Title: President

Signer's telephone number: 707-938-9600

Signer's mailing address: 465 First Street West, Second Floor, Sonoma, CA 95476

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	X	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-98-07-00-0-00-000

Total Assessed Value**: \$820

[Signature follows on separate page.]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

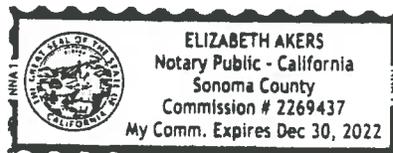
County of Sonoma

On January 14, 2019, before me, Elizabeth Akers, Notary Public, personally appeared SG Ellison, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to within the instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity, and that by his/~~her~~/~~their~~ signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Elizabeth Akers
Notary Public



NOTARY SEAL

EXHIBIT A

Legal Description of New Longview Community Improvement District

NEW LONGVIEW CID
Project No. 018-2866
November 19, 2018

Property Description

A tract of land in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 47 North, Range 32 West of the 5th Principal Meridian in Lee's Summit, Jackson County, Missouri, being bounded and described as follows: Beginning at the Southwest corner of said Southwest Quarter point also being the Northwest corner of said Northwest Quarter; thence South 87°11'20" East, on the South line of the said Southwest quarter of Section 3, and the North line of the said Northwest quarter of Section 10, 1172.61 feet; thence leaving said line North 02°48'40" East, 50.00 feet to the Southwest corner of Tract B10, WINTERSET VALLEY 10th PLAT, a subdivision of land recorded on Document Number 2014E0094859 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'20" East on the South line of said Winterset Valley 10th Plat, 44.36 feet; thence North 45°49'13" East on said South line of Winterset Valley 10th Plat, 16.42 feet; thence South 87°11'20" East on said South line of Winterset Valley 10th Plat, 138.33 feet; thence leaving said South line, South 02°48'40" West, 112.01 feet to a point on the South right-of-way line of said Southwest 3rd Street, point also being on the North line of Lot 1, NEW LONGVIEW COMMERCIAL DISTRICT FOURTH PLAT, LOT 1, a subdivision of land recorded on Document Number 2016E0046879 in said Jackson County Recorder of Deeds Office; thence North 87°11'20" West on said North line, 45.30 feet to the Northwest corner of said Lot 1 point also being on the Easterly right-of-way line of Southwest Kessler Drive, as now established; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 167.31 feet; thence North 87°11'20" West on the West line of said Lot 1 and said Easterly right-of-way line, 12.00 feet; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 164.68 feet to the Southwest corner of said Lot 1; thence leaving said Easterly right-of-way line, South 87°11'21" East on the South line of said Lot 1, 606.38 feet to a point on the Westerly line of BRIDLEWOOD 4th PLAT, a subdivision of land recorded in Book I69 on Page 63 of said Jackson County Recorder of Deeds Office; thence South 03°11'11" West on the West line of said Bridlewood 4th Plat and the West line of BRIDLEWOOD 5th PLAT, a subdivision of land recorded in Book 71 on Page 18 in said Jackson County Recorder of Deeds Office, 439.82 feet to the Northeast corner of Tract A, KESSLER RIDGE AT NEW LONGVIEW - FIRST PLAT, a subdivision of land Recorded on Document Number 2016E0123272 in said Jackson County Recorder of Deeds Office; thence North 86°48'44" West on the North line of said Tract A, 461.29 feet to the Northwest corner of said Tract A, point also being on the Easterly right-of-way line of said Southwest Kessler Drive; thence Northwesterly on said Easterly right-of-way line, with a curve to the left having an initial tangent bearing of North 31°35'13" West with a radius of 310.00 feet, a central angle of 05°37'55" and an arc distance of 30.47 feet; thence North 37°13'07" West on said Easterly right-of-way line, 123.26 feet; thence Northwesterly on said Easterly right-of-way line with a curve to the right being tangent to the last described course with a radius of 190.00 feet, a central angle of 02°01'30" and an arc distance of 6.71 feet; thence leaving said Easterly right-of-way line, North 87°00'49" West, 71.34 feet to a point on the Westerly right-of-way line of said Southwest Kessler Drive point also being the Southeast corner of Lot 1A, FASCINATION AT NEW LONGVIEW LOTS 1A-1E, INCLUSIVE TRACT A, a subdivision of land Recorded on Document Number 2018E0034938 in said Jackson County Recorder of Deeds Office; thence continuing North 87°00'49" West, on the South line of said Lot 1A, 117.45 feet; thence South 58°23'30" West on the South line of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A, 407.26 feet; thence South 31°36'30" East on said South line, 49.74 feet; thence South 58°52'01" West on said South line, 143.96 feet to the Southwest corner of Lot 1E of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A point also on the Easterly right-of-way line of Southwest Longview Boulevard as now established; thence leaving said Easterly right-of-way line, South 61°02'01" West, 116.09 feet to the Southeast corner of Lot 7, TOWER PARK COMMERCIAL - PHASE 2 LOTS 5, 6, 7 AND TRACTS A and B, a subdivision of land Recorded on Document

Number 2005I0090051 of said Jackson County Recorders of Deeds Office point also on the Westerly right-of-way line of said Southwest Longview Boulevard; thence South 58°46'36" West on the South line of said Lot 7, 34.91 feet; thence Southwesterly on the South line of Lot 7 with a curve to the left being tangent to the last described course with a radius of 130.00 feet, a central angle of 38°14'59" and an arc distance of 86.79 feet to the Southwest corner of said Lot 7; thence North 31°13'52" West on the West line of said Lot 7, 280.78 feet to the Northwest corner of said Lot 7 point also being on the Southerly right-of-way line of Southwest Sensation Drive, as now established; thence continuing North 31°13'52" West, 60.00 feet to a point on the Northerly right-of-way line of said Southwest Sensation Drive, point also on the Southerly line of Lot 3, TOWER PARK COMMERCIAL - PHASE 2 LOTS 3, 4 AND TRACT J, a subdivision of land recorded on Document Number 2004I0107121 in said Jackson County Recorder of Deeds Office; thence South 58°46'36" West on the South line of said Lot 3 and the said Northerly right-of-way line, 139.54 feet; thence North 31°13'27" West on said South line, 72.72 feet; thence North 58°46'33" East on said South line, 20.00 feet; thence North 31°13'27" West on said South line, 50.00 feet; thence North 86°44'52" West on said South line, 172.98 feet to the Southwest corner of said Lot 3, point also being on the Easterly right-of-way line of Southwest Longview Road, as now established, thence continuing North 86°44'52" West, 30.00 feet to a point on the West line of said Northwest Quarter; thence North 03°15'11" East on said West line, 876.09 feet to the Point of Beginning. Containing 1,470,815 square feet or 33.77 acres, more or less.

Less and except the fee simple interest in the public right of way for SW 3rd Street, it being the petitioners' intent that the legal description for the property within public right of way for SW 3rd Street only include the City of Lee's Summit's, and any other governmental authority's, right of way interest in such public right of way and not the fee simple interest in such public right of way.

EXHIBIT B

General Boundary Map of the New Longview Community Improvement District

**EXHIBIT C
FIVE YEAR PLAN**

The estimated initial costs of the improvements associated with the exercise of the powers and purposes of the District are shown in the tables below.

Budgeted Expenditures – From District Revenue

Use	Amount	Comments
Activity Plaza (Fascination at NLV Tract A)	\$ 2,250,000	Saddle Plaza - Base
Central Green / Hardscape / Landscape		
Adjacent Streetscape along Fascination/Longview Blvd		
Pedestrian Connectivity		
Surface Parking		
Offsite Sitework Obligations	\$ 330,000	3rd St / Kessler Drive Traffic Signal & Other
Grading, Paving & Utilities	\$ 300,000	ROW & shared parking stalls
Professional Fees	\$ 300,000	legal, consulting, traffic study, other
Remaining Streetscape & Landscape	\$ 250,000	ROW & common areas
Balance of Fascination / Kessler		
North Arch	\$ 50,000	maintenance & upkeep as needed
Contingency	\$ 500,000	general contingency
Total (w/ surface parking)	\$ 3,980,000	
Structured Parking	\$ 1,500,000	Lot 1D - 160 deck parking spots
Grand Total (w/ structured parking)	\$ 5,480,000	

Notes:

- (1) Amounts set forth above totaling approximately \$5.5 million, are net estimated cost reimbursements and do not include interest expenses, financing expenses, fees, or costs of issuance for bonds or any other financing instrument, all of which are eligible costs of the District and which may be funded pursuant to the terms of a Cooperative Agreement between the City and the District.
- (2) The cost estimates set forth in this Exhibit are reasonable best estimates at the time of approval of this District and it is agreed to and understood that such estimates are subject to change as part of the development process and in accordance with the terms of a Cooperative Agreement between the City and the District. The amounts set forth in the above line items are not caps or limitations on such line items. Any such limitation on reimbursement shall only be subject to statutory restrictions and the terms of a Cooperative Agreement between the City and the District.

General Description of Public Improvements to be Funded by the District:

The District will fund the budgeted expenditures as set forth above and other improvements and services, which are necessary to carry out the purposes of the District, as authorized by the CID Act and this Petition and as allowed by the terms of a Cooperative Agreement between the City and the District.

The estimated revenues of the District are shown in the table below. It is expected that the revenue of the District will be used to administer the District and pledged to repay obligations issued by or on behalf of the District to fund the costs of services and improvements.

NEW LONGVIEW CID			
			SPECIAL DISTRICTS
	Year	Lagged CID Taxable Sales	CID Sales Tax Revenue
			1.000%
1	2020	\$ 22,994,126	\$ 223,043
2	2021	\$ 23,339,038	\$ 226,389
3	2022	\$ 25,779,124	\$ 250,058
4	2023	\$ 26,165,811	\$ 253,808
5	2024	\$ 26,558,298	\$ 257,615
6	2025	\$ 26,956,672	\$ 261,480
7	2026	\$ 27,361,022	\$ 265,402
8	2027	\$ 27,771,438	\$ 269,383
9	2028	\$ 28,188,009	\$ 273,424
10	2029	\$ 28,610,829	\$ 277,525
11	2030	\$ 29,039,992	\$ 281,688
12	2031	\$ 29,475,592	\$ 285,913
13	2032	\$ 29,917,726	\$ 290,202
14	2033	\$ 30,366,491	\$ 294,555
15	2034	\$ 30,821,989	\$ 298,973
16	2035	\$ 31,284,319	\$ 303,458
17	2036	\$ 31,753,583	\$ 308,010
18	2037	\$ 32,229,887	\$ 312,630
19	2038	\$ 32,713,335	\$ 317,319
20	2039	\$ 33,204,035	\$ 322,079
21	2040	\$ 33,702,096	\$ 326,910
22	2041	\$ 34,207,627	\$ 331,814
23	2042	\$ 34,720,742	\$ 336,791
24	2043	\$ 35,241,553	\$ 341,843
25	2044	\$ 35,770,176	\$ 346,971
26	2045	\$ 36,306,729	\$ 352,175
27	2046	\$ 36,851,330	\$ 357,458
28	2047	\$ 37,404,100	\$ 362,820
29	2048	\$ 37,965,161	\$ 368,262
30	2049	\$ 38,534,639	\$ 373,786
TOTAL			\$ 9,071,784
NPV			\$ 4,180,906
			5.00%

Notes:

- 1) Taxable Sales growth rate from stabilization 1.50%
- 2) Administration fees 1.00%
- 3) Retailer Holdback 2.00%
- 4) Retail Vacancy (excludes theater) 5.00%
- 5) CID Sales Tax Implementation - Assumption 10/1/2019
- 6) CID Revenues lagged 3 months

**City Clerk Verification of Petition for Establishment of
the New Longview Community Improvement District**

Pursuant to Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the "CID Act"), I, Trisha Fowler Arcuri, City Clerk of the City of Lee's Summit, Missouri, state the following:

1. The Petition to Establish the Summit Orchards Community Improvement District was filed with the City Clerk on January 14, 2019, and the original was submitted on January 29, 2019.
2. I have reviewed the petition and have determined on January 29, 2019, which does not exceed ninety days after receipt of the Petition, that the Petition substantially complies with the requirements of Section 67.1421.2 of the CID Act.
3. On February 1, 2019 the Petition will be delivered to the City Council in the meeting packets for the February 5, 2019 City Council meeting.

(SEAL)



Dated January 29, 2019

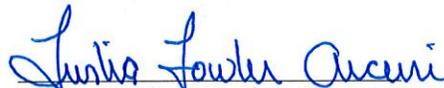

Trisha Fowler Arcuri
City Clerk
City of Lee's Summit, Missouri

EXHIBIT LIST

NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT

**CITY OF LEE'S SUMMIT CITY COUNCIL PUBLIC HEARING
Hearing opened February 5, 2019**

1. Petition to Establish the New Longview Community Improvement District filed January 14, 2019
2. Notice of Public Hearing sent to Property Owners on January 17, 2019 and certified return receipts
3. Proof of Publication of Notice of Public Hearing, published in the *Lee's Summit Journal* on January 23, 2019 and January 30, 2019
4. City Clerk Verification of Petition dated January 29, 2019
5. Developer Presentation Slides for January 22, 2019 conceptual presentation
6. Developer Presentation Slides for February 5, 2019 public hearing

New Longview

TDD & CID Presentation



February 5, 2019

Developer Presentation

- TDD Extension
- CID Establishment
- Questions & Answers

TDD Extension

TDD Extension

- Background:
 - This is a clean-up item for the two New Longview TIF Plans
 - Both the NLV TIF Plan (2015) and LVF TIF Plan (2003) anticipated the TDD being in place for the duration of those TIF Plans but it was agreed to address this detail at a later date
 - With the other matters being considered with the project, it seems an opportune time to resolve this item as well

TDD Extension

- Timing Considerations:
 - Dec 2015 - NLV TIF first formed
 - Dec 2025 – Latest possible RPA activation (10 years later)
 - Dec 2048 – NLV TIF – latest RPA expiration

TDD Boundary – Northern Portion Only



TDD Extension

- Request:

For the City Council to approve a resolution directing staff to take the necessary action to assist the TDD to extend the TDD sales tax from 12/31/2025 to 12/31/2048

CID Overview

CID Overview

- Vision
- Improvements
- Activity Plaza
- Budget

NA Heartland



NEW
LONGVIEW
EST. 2002

third street & view high drive | lee's summit, missouri

MIXED-USE COMMERCIAL SITES

Looking West on Fascination Drive



Looking East on Fascination Drive



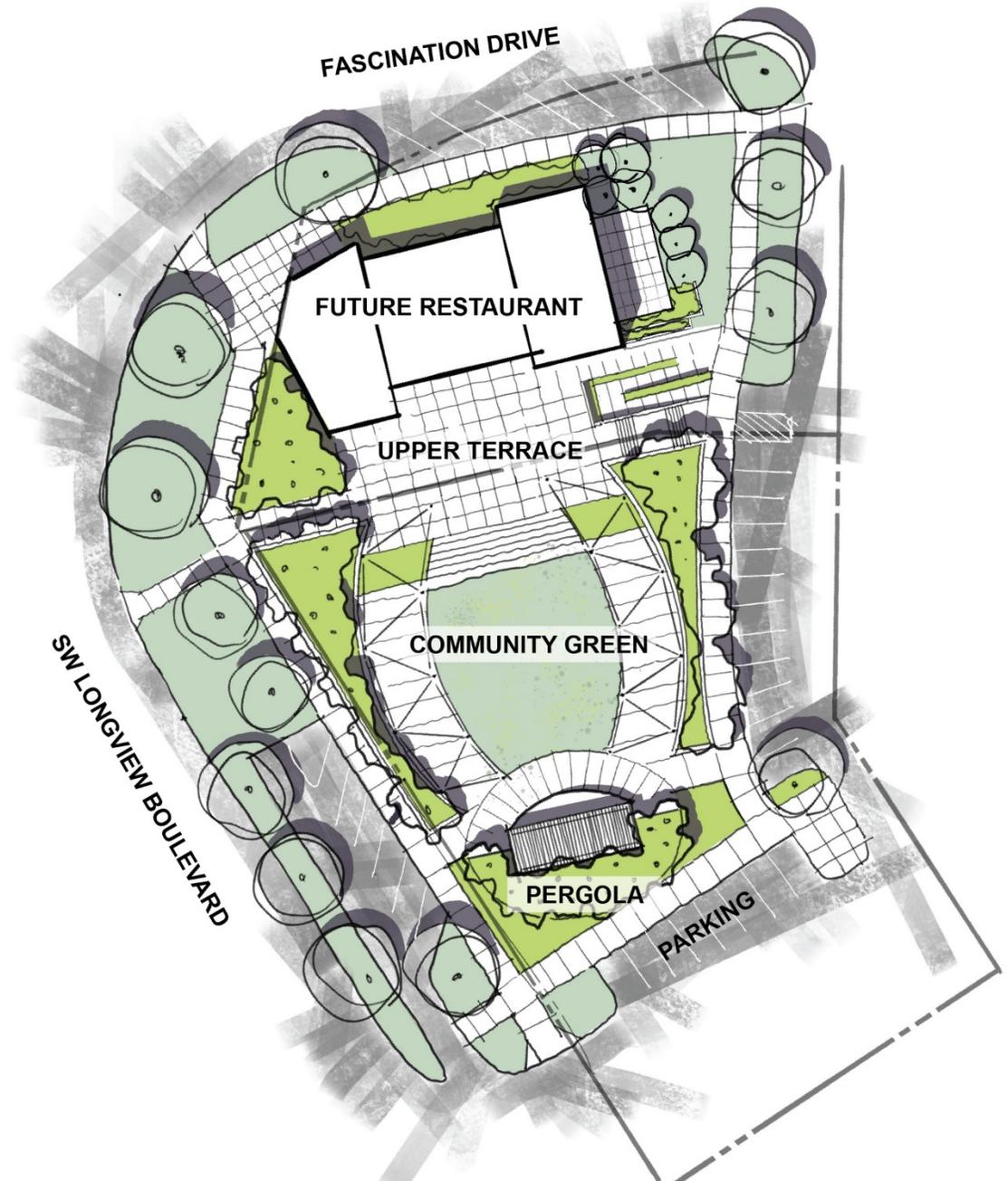
Improvements

- Activity Plaza
- 3rd Street traffic signal
- Sitework on ROW and shared parking
- Streetscape plan
- North Arch maintenance

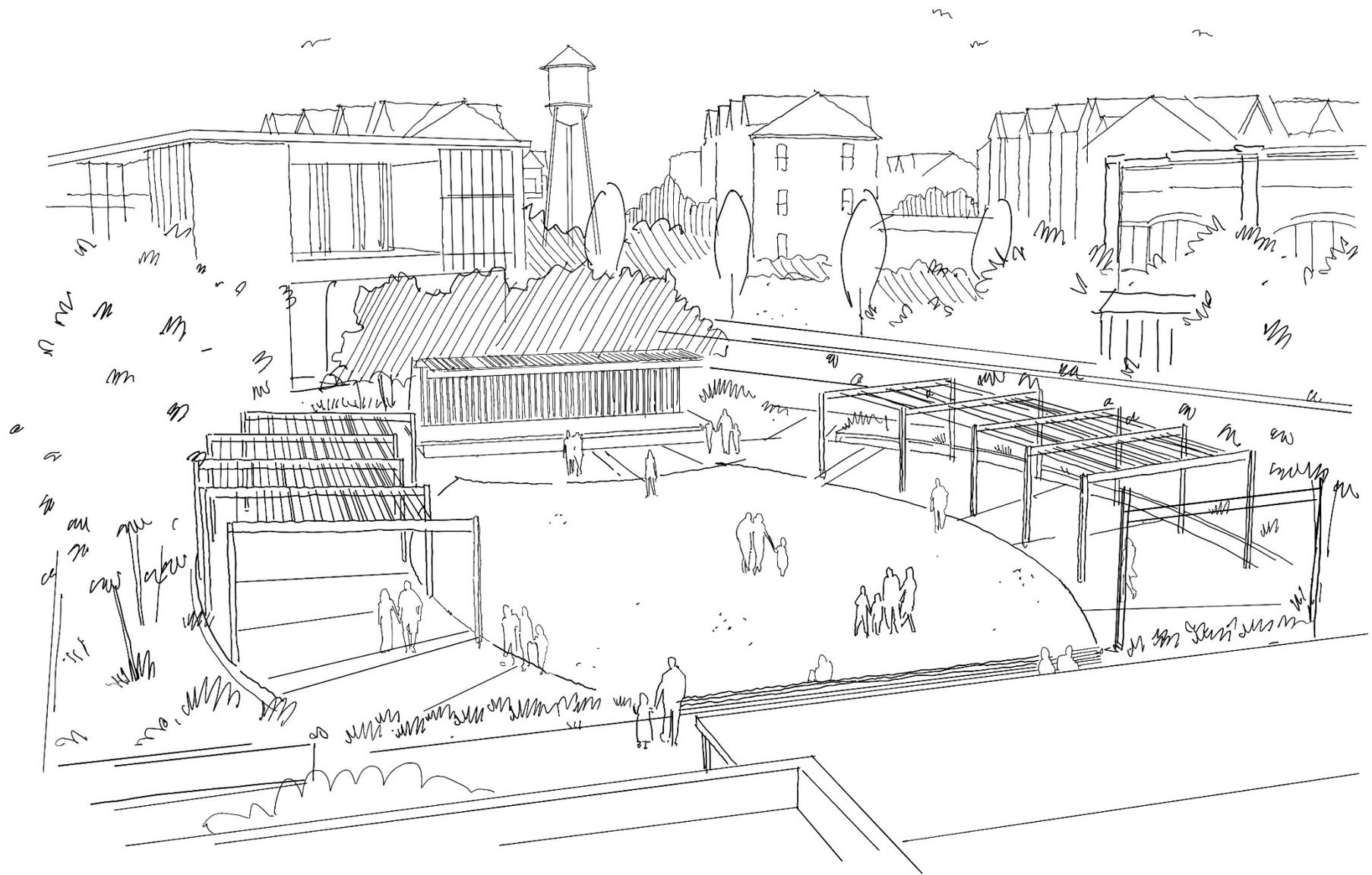
Activity Plaza

- Linkage to history of Longview Farm
- 1.0 acre site next to B&B Theatre – central location
- To be used as open space and event space
- To be owned, managed and maintained by the Commercial Association – already formed and active
- Interface with adjacent retail and restaurants
- Visible from Longview Boulevard
- Catalyst for additional traffic and community identity
- Potential collaboration with City or other organizations

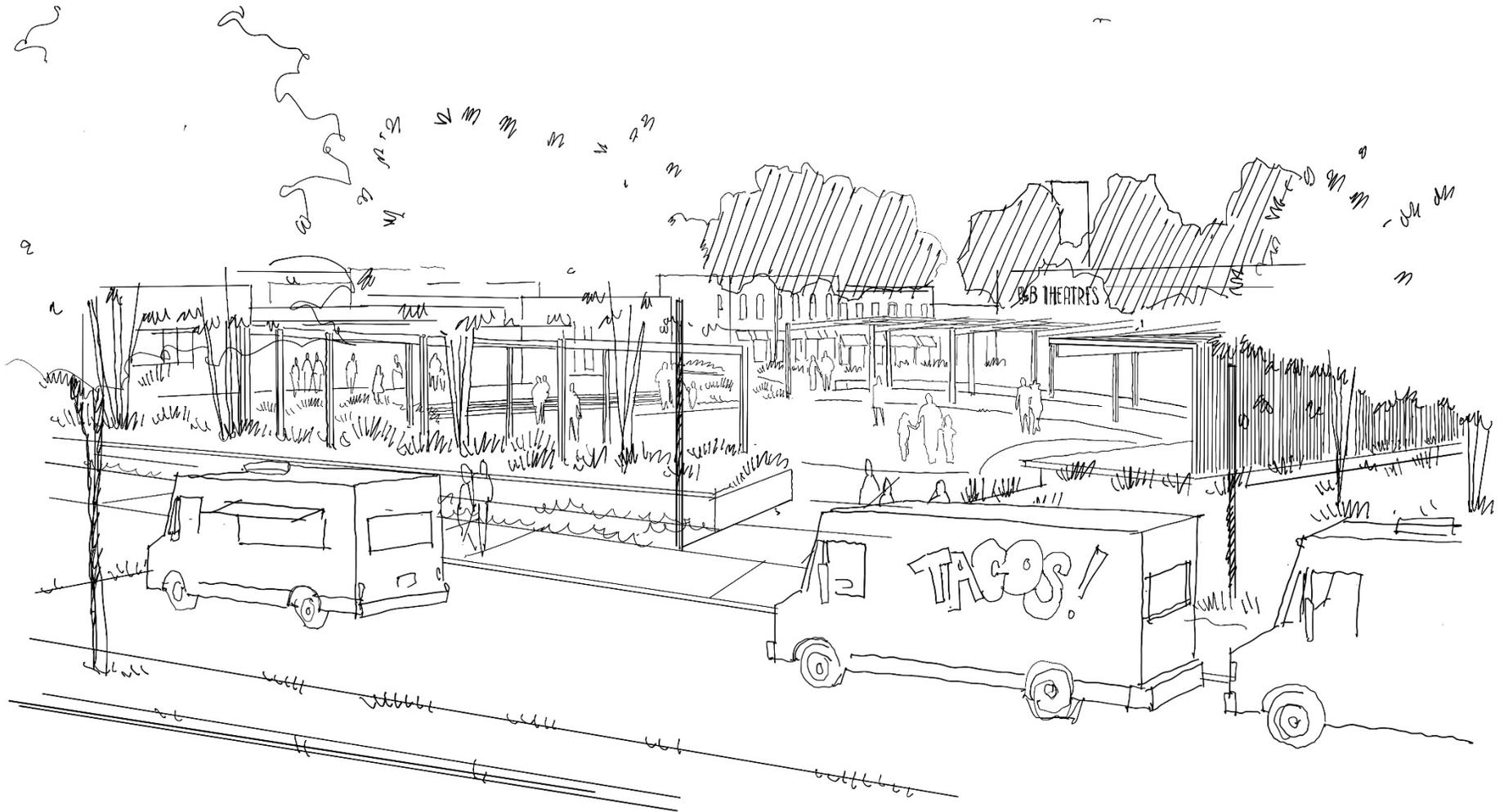
Activity Plaza



Looking Southwest



Looking Northeast



CID Budget

Use	Amount	Comments
Activity Plaza (Fascination at NLV Tract A) Central Green / Hardscape / Landscape Adjacent Streetscape along Fascination/Longview Blvd Pedestrian Connectivity Surface Parking	\$ 2,250,000	Saddle Plaza - Base
Offsite Sitework Obligations	\$ 330,000	3rd St / Kessler Drive Traffic Signal & Other
Grading, Paving & Utilities	\$ 300,000	ROW & shared parking stalls
Professional Fees	\$ 300,000	legal, consulting, traffic study, other
Remaining Streetscape & Landscape Balance of Fascination / Kessler	\$ 250,000	ROW & common areas
North Arch	\$ 50,000	maintenance & upkeep as needed
Contingency	\$ 500,000	general contingency
Total (w/ surface parking)	\$ 3,980,000	
Structured Parking	\$ 1,500,000	Lot 1D - 160 deck parking spots
Grand Total (w/ structured parking)	\$ 5,480,000	

CID Process

- Jan 14 – Signed CID Petition filed with City Clerk
- Jan 22 – CID Presentation
- Feb 5 - Public Hearing / First Reading
- Feb 19 - Second Reading
- Oct 1 – Anticipated start of CID Sales Tax

Questions & Answers

Packet Information

File #: BILL NO. 19-18, **Version:** 1

An Ordinance approving the petition for establishment of the New Longview Community Improvement District.

Issue/Request:

An Ordinance approving the petition for establishment of the New Longview Community Improvement District.

Key Issues:

This ordinance will approve the New Longview Community Improvement District.

Proposed City Council Motion:

I move for second reading of an An Ordinance approving the petition for establishment of the New Longview Community Improvement District.

Background:

Developer M-III Longview, LLC (“Developer”), along with several other property owners in the Longview area, have filed a Petition for the formation of a new CID in the Longview area. The City Council has previously approved two TIF plans (2003 and 2015) and a transportation development district (2003) in the Longview area, and this CID request is a new funding district that is not directly connected with the prior incentive approvals by the Council.

The CID would impose a new 1% sales tax on the commercial retail businesses in the Longview area. Developer is requesting that none of the CID sales tax revenues would be captured by the two active TIF plans in the Longview area and all of the CID sales tax revenues would be devoted to CID purposes and public improvements.

The CID is proposed to fund the following public improvements and associated soft costs in the combined total of about \$5.5M over the life of the CID:

- Activity Plaza west of the theater
- Traffic Signal at 3rd & Kessler and other street improvements
- Grading, Paving and Utilities for right-of-way and shared parking stalls
- Streetscape and Landscape improvements in right-of-way and common areas
- Structured Parking (160 spaces)
- Maintenance of the North Arch

Developer estimates that the CID will generate about \$250,000 per year by the year 2022 (increasing each year due to sales growth). Developer estimates that this will generate about \$9 million over the 30-year life of

the District with a net present value of about \$4.2 million.

The ordinance would make the CID approval contingent upon the CID entering into a cooperative agreement with the CID for implementation of the District. The cooperative agreement would contain the following safeguards and protections for the City:

- The City Finance Department would receive the CID revenues from the Department of Revenue and disburse the revenues pursuant to the terms of the agreement. The City will receive a portion of the CID revenues as reimbursement for this for this administrative work.
- The agreement will require the District to annually fund a maintenance fund to provide for a source of funds to provide for long term maintenance of the CID public improvements in the event that the Longview Business Owners Association or the CID fails to function properly and maintain the CID public improvements after they are constructed and placed into service.
- Reimbursable project costs which are incurred by the Developer or other private parties will be reviewed and approved by City staff and the District prior to reimbursement from District revenues.
- The CID will be a political subdivision of the state and must follow all applicable laws such as the Sunshine Law and annual budgeting laws.

The sales tax would go into effect after the approval of a ballot measure in an election that will be conducted by the Jackson County Election Authority among the property owners in the CID area. The CID sales tax would be in addition to the other sales taxes already in effect in the Longview area, which includes local sales taxes imposed by the City, County, Zoo District and the Longview TDD.

Impact/Analysis:

This CID would impose a new 1% sales tax that would be in addition to the existing sales taxes, which would create the following total sales tax rate in the Longview area:

- 4.225% - State
- 2.250% - City
- 1.250% - County
- 0.125% - Zoo District
- 1.000% - Longview TDD
- 1.000% - Longview CID
- 9.850% - Total

This request presents no direct impact to City general revenues. This will result in up to 30 years of additional 1% sales tax to fund additional public improvements in the Longview area.

Timeline:

Developer would conduct the sales tax election and begin implementation in 2019.

Corey Walker, M-III Longview, LLC

File #: BILL NO. 19-18, **Version:** 1

John Hansen, IRR Corporate & Public Finance

David Bushek, Chief Counsel of Economic Development & Planning

Mark Dunning, Assistant City Manager

BILL NO. 19-18

AN ORDINANCE APPROVING THE PETITION FOR ESTABLISHMENT OF THE NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, Sections 67.1401 to 67.1571 RSMo, 2000, as amended (the "CID Act"), authorize the governing body of any city, upon presentation of a proper petition requesting the formation and after a public hearing, to adopt an ordinance establishing a community improvement district; and,

WHEREAS, the City of Lee's Summit, Missouri (the "City") is a charter city and a political subdivision 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, several property owners within the proposed community improvement district have filed with the Lee's Summit City Clerk (the "City Clerk") a petition for the establishment of a community improvement district pursuant to the CID Act (the "Petition"), entitled the Petition for the Establishment of the New Longview Community Improvement District (the "District"); and,

WHEREAS, the City Clerk verified that the Petition substantially complies with the CID Act, submitted the verified Petition to the City Council and set a public hearing with all proper notice being given in accordance with the CID Act or other applicable law; and,

WHEREAS, none of the signatures of the signers of the Petition were withdrawn within seven days after the Petition was filed with the City Clerk; and,

WHEREAS, all the real property included in the District is entirely located within the City of Lee's Summit; and,

WHEREAS, on February 5, 2019, the City Council held a public hearing, after notice in accordance with the CID Act, at which all persons interested in the formation of the District were allowed an opportunity to speak; and,

WHEREAS, the Petition to establish the District being fully heard before the City Council, the City now desires to establish the District and make such other findings as necessary.

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

SECTION 1. All terms used in this Ordinance shall be construed as defined in the CID Act and the Petition.

SECTION 2. The City Clerk has verified that the Petition substantially complies with all submission requirements of the CID Act.

SECTION 3. The District is hereby approved and shall be established within the City as a political subdivision of the State of Missouri, as provided in the Petition, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. The District includes the contiguous tracts of real estate as described in the attached Petition and shown on the map set forth in the attached Petition.

BILL NO. 19-18

SECTION 4. As set forth in the Petition, the District shall be governed by a board of directors consisting of five (5) members, with the initial members being named in the Petition and whose successors shall be appointed as provided in the Petition.

SECTION 5. The District's Board of Directors shall have authority to establish a sales tax within the District as set forth in the Petition and in conformance with the CID Act.

SECTION 6. The District shall have and possess such powers authorized under the CID Act, as limited in the Petition.

SECTION 7. The life of the District shall begin on the effective date of this Ordinance and shall continue for a period of thirty (30) years, unless the CID is terminated prior to the established expiration date in accordance with the provisions of the CID Act.

SECTION 8. The City Clerk is hereby directed to prepare and file with the Missouri Department of Economic Development (the "Department") the report specified in subsection 6 of Section 67.1421 of the CID Act, substantially in the form provided by the Department.

SECTION 9. Approval of the Petition and the District by this Ordinance is conditioned upon the District entering into a cooperative agreement with the City, upon terms and conditions mutually acceptable to the City and District, which provides for implementation of the District, maintenance of the public improvements that are funded by the District, the process for reimbursement of eligible District costs and expenses and other matters as mutually determined by the City and District. No payment or reimbursement of District costs and expenses shall occur and no disbursement of District revenues shall occur until the cooperative agreement is approved and executed by the City and the District. Failure of the District to enter into such agreement within six (6) months following the effective date of this Ordinance shall nullify and render void the approvals granted in this Ordinance upon such declaration by the City Council.

SECTION 10. City officers and agents of the City are each hereby authorized and directed to take such 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.

SECTION 11. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 12. This Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor.

PASSED by the City Council for the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

BILL NO. 19-18

APPROVED by the Mayor of said city this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

**EXHIBIT A
CID PETITION**

[Attached]

**PETITION FOR ESTABLISHMENT OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT
CITY OF LEE'S SUMMIT, MISSOURI**

**PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

To the Mayor and City Council of the City of Lee’s Summit, Missouri:

The undersigned real property owners (the “Petitioners”), being the owners of more than:

- (1) fifty percent (50%) by assessed value of the real property; and
- (2) fifty percent (50%) per capita of all owners of real property

within the boundaries of the hereinafter described proposed community improvement district does hereby petition and request that the City Council of the City of Lee’s Summit, Missouri create a community improvement district as described herein under the authority of Sections 67.1401 to 67.1571, RSMo (the “CID Act”). In support of this petition, the Petitioner sets forth the following information in compliance with the CID Act:

1. District Name. The name for the proposed community improvement district (“CID” or “District”) is:

New Longview Community Improvement District.
2. Legal Description and Map. A legal description and map generally depicting the boundaries of the proposed District are attached hereto as **Exhibit A** and **Exhibit B**, respectively. The proposed district consists of approximately 35 acres and is located entirely within the City of Lee’s Summit, Missouri.
3. Five-Year Plan. A five-year plan as required by the CID Act is attached hereto as **Exhibit C** (the “Five Year Plan”).
4. Form of District. The proposed District will be established as a political subdivision of the State of Missouri under the CID Act.
5. Board of Directors.
 - a. Number. The District shall be governed by a Board of Directors (the “Board”) consisting of five (5) members, whom shall be appointed by the municipality in accordance with this petition.
 - b. Qualifications. Each Member of the Board (“Director”) shall meet the following requirements:
 - (1) be at least 18 years of age;
 - (2) be and must declare to be either an owner of real property within the District (“Owner”) or an authorized representative of an Owner, an owner of a business operating within the District (“Operator”), or a registered voter (“Resident”) residing within the District, as provided in the CID Act;
 - (3) be and have been a resident of the State of Missouri for at least one year immediately preceding the date upon which he or she takes office in accordance with Article VII, Section 8 of the Missouri Constitution; and
 - (4) except for the initial slate of directors named in this Petition, be appointed according to a slate submitted as described in this Petition.

c. Initial Directors. The initial directors (“Initial Directors”) and their respective terms shall be as follows:

- i. Caleb Holmes – Owner’s Representative, Four (4) year term
- ii. Evan Welsh – Owner’s Representative, Four (4) year term
- iii. Jennifer Metz – Owner’s Representative, Four (4) year term
- iv. Mike Jenkins – Owner’s Representative, Two (2) year term
- v. Mark Dunning – City Representative, Two (2) year term

d. Terms. Initial Directors shall serve for the term set forth above. Each of the successor directors (“Successor Directors”) shall serve a four (4) year term or until his/her successor is appointed in accordance with this Petition. If, for any reason, a Director is not able to serve his/her term, the remaining Directors shall elect an Interim Director to fill the vacancy of the unexpired term.

Notwithstanding anything to the contrary, any Director’s failure to meet the qualification requirements set forth above, either in a Director’s individual capacity or in a Director’s representative capacity, shall constitute cause for the Board to take appropriate action to remove said Director.

e. Successor Directors. Successor Directors shall be appointed by the Mayor with the consent of the City Council by resolution. The Executive Director of the District will submit a proposed slate of successor directors to the City of Lee’s Summit, Missouri’s City Clerk (the “City Clerk”) for a non-binding recommendation regarding the appointment of successor directors, which slate may be comprised of any individuals that meet the above-listed criteria in the discretion of the Executive Director. Upon receipt of a slate of Successor Directors, the City Clerk shall promptly deliver the slate to the Mayor and the Mayor shall appoint the Successor Directors with the consent of the City Council.

6. Assessed Value. The total assessed value of all real property in the District is \$4,208,209. The official total assessed valuation for the District may change by the time the District is created.

7. Duration of District. The proposed length of time for the existence of the District is thirty (30) years from the date upon which the CID sales tax is levied within the District pursuant to this Petition. The District may be terminated prior to the end of such term in accordance with the provisions of the CID Act.

8. Real Property and Business License Taxes. The District will not have the power to impose a real property tax levy or business license taxes.

9. Special Assessments. The District will not have the power to impose a special assessment.

10. Sales Tax. Qualified voters of the District may be asked to approve a sales tax of up to one percent (1%) (“District Sales Tax”), in accordance with the CID Act, to fund certain improvements within the District and/or to pay the costs of services provided by the District. Additional details about the District Sales Tax are set forth in the Five Year Plan attached hereto as **Exhibit C**. It is anticipated that the District will not consent to the capture of its District Sales Tax as economic activity taxes subject to deposit into a special allocation fund for any TIF redevelopment project area within any TIF redevelopment area formed under the Real Property Tax Increment Allocation Act, RSMO 99.800 to 99.865.

11. Borrowing Limits. Petitioner does not seek limitations on the borrowing capacity of the District.

12. Revenue Limits. Petitioner does not seek limitations on the revenue generation of the District.

13. Authority Limits. Petitioner does not seek limitations on the authority of the District, except as set forth in this Petition.
14. Blight. Petitioner does not seek a finding of blight under this Petition.
15. **Revocation of Signatures. THE PETITIONERS ACKNOWLEDGES THAT THE SIGNATURE OF THE SIGNER OF THIS PETITION MAY NOT BE WITHDRAWN FROM THIS PETITION LATER THAN SEVEN (7) DAYS AFTER THE FILING HEREOF WITH THE CITY CLERK.**

WHEREFORE, Petitioner respectfully requests that the City Council establish the requested New Longview Community Improvement District in accordance with the information set forth in this Petition and that the Mayor appoint and the City Council consent to the proposed members for the Board of Directors as set forth in this Petition, and take all other appropriate and necessary action that is consistent with the CID Act to establish the requested district.

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: M-III Longview LLC

Owner's address: 4220 Shawnee Mission Parkway, Suite 200 B, Fairway, KS 66205

Owner's telephone number: 816-285-3872

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: Corey Walker

Title: Senior Vice President of Platform Ventures, LLC, manager of Platform Investments, LLC, manager of M-III Longview LLC

Signer's telephone number: 816-285-3878

Signer's mailing address: 4220 Shawnee Mission Parkway, Suite 200 B, Fairway, KS 66205

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input checked="" type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-04-01-00-0-00-000; 62-420-09-01-00-0-00-000; 62-420-98-16-00-0-00-000; 62-420-98-15-00-0-00-000; 62-420-98-13-00-0-00-000; 62-420-98-12-00-0-00-000; 62-420-98-97-00-0-00-000; 62-420-98-08-00-0-00-000; 62-420-98-11-00-0-00-000; 62-420-29-08-00-0-00-000; 62-420-29-04-00-0-00-000; 62-420-29-05-00-0-00-000; 62-420-29-06-00-0-00-000; 62-420-29-07-00-0-00-000; 62-420-29-09-00-0-00-000; 62-420-30-01-00-0-00-000

Total Assessed Value**: \$1,059,847

[Signature follows on separate page.]

By executing this petition, the undersigned represents and warrants that he/she is authorized to execute this petition on behalf of the property owner named immediately below.

M-III LONGVIEW LLC,
a Delaware limited liability company
By: Platform Investments, LLC, its manager
By: Platform Ventures, LLC, its manager

By: *Corey Walker*
Name: Corey Walker
Title: Senior Vice President

Date: _____

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

On this 10th day of January, 2019, before me appeared Corey Walker, to me personally known, who, being by me duly sworn did say that he is the Senior Vice President of Platform Ventures, LLC, manager of Platform Investments, LLC, manager of M-III Longview LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said corporation, and said corporation acknowledged said instrument to be the free act and deed of said entity.

WITNESS my hand and official seal this 10th day of January, 2019.

My Commission Expires: 8/20/22

Jennifer Metz
Notary Public



**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: Hawthorn Bank, formerly known as Citizens Union State Bank and Trust

Owner's address: 300 SW Longview Blvd., Lee's Summit, MO 64081

Owner's telephone number: 816-347-8100

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: Keith A. Asel

Title: President – NW Region

Signer's telephone number: 816-347-8100

Signer's mailing address: 300 SW Longview Blvd., Lee's Summit, MO 64081

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-09-02-00-0-00-000

Total Assessed Value**: \$487,645

[Signature follows on separate page.]

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: Gale Communities, Inc.

Owner's address: 400 SW Longview Blvd., Ste 109, Lee's Summit, MO 64081

Owner's telephone number: 816-645-2336

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: G. David Gale

Title: President

Signer's telephone number: 816-645-2336

Signer's mailing address: 400 SW Longview Blvd., Suite 109, Lee's Summit, MO 64081

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input checked="" type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-09-03-00-0-00-000; 62-420-15-01-01-0-00-000; 62-420-15-01-02-0-00-000

Total Assessed Value**: \$1,547,773

[Signature follows on separate page.]

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: NLVC, LLC

Owner's address: 3152 SW Grandstand Cir., Lee's Summit, MO 64081

Owner's telephone number: 816-589-4415

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: Russell G. Pearson

Title: Sole Member of Box Real Estate Development LLC, manager of
NLVC, LLC

Signer's telephone number: 816-589-4415

Signer's mailing address: 3152 SW Grandstand Cir., Lee's Summit, MO 64081

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	<input checked="" type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-97-01-00-0-00-000

Total Assessed Value**: \$99,424

[Signature follows on separate page.]

**EXECUTION PAGES FOR PETITION FOR THE CREATION OF THE
NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

Name of owner: FSD New Longview, LLC

Owner's address: 465 First Street West, Second Floor, Sonoma, CA 95476

Owner's telephone number: 602-714-3099

IF SIGNER IS DIFFERENT FROM OWNER:

Name of signer: SG Ellison

Title: President

Signer's telephone number: 707-938-9600

Signer's mailing address: 465 First Street West, Second Floor, Sonoma, CA 95476

If owner is an individual: Single Married

If owner is not an individual, state what type of entity (Mark Applicable Box):

<input type="checkbox"/>	Corporation	<input type="checkbox"/>	General Partnership
<input type="checkbox"/>	Limited Partnership	X	Limited Liability Company
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Urban Redevelopment Corporation
<input type="checkbox"/>	Not-for-Profit Corporation	<input type="checkbox"/>	Other

Map and parcel number(s)*: 62-420-98-07-00-0-00-000

Total Assessed Value**: \$820

[Signature follows on separate page.]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Sonoma

On January 14, 2019, before me, Elizabeth Akers, Notary Public, personally appeared SG Ellison, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Elizabeth Akers
Notary Public



NOTARY SEAL

EXHIBIT A

Legal Description of New Longview Community Improvement District

NEW LONGVIEW CID
Project No. 018-2866
November 19, 2018

Property Description

A tract of land in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 47 North, Range 32 West of the 5th Principal Meridian in Lee's Summit, Jackson County, Missouri, being bounded and described as follows: Beginning at the Southwest corner of said Southwest Quarter point also being the Northwest corner of said Northwest Quarter; thence South 87°11'20" East, on the South line of the said Southwest quarter of Section 3, and the North line of the said Northwest quarter of Section 10, 1172.61 feet; thence leaving said line North 02°48'40" East, 50.00 feet to the Southwest corner of Tract B10, WINTERSET VALLEY 10th PLAT, a subdivision of land recorded on Document Number 2014E0094859 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'20" East on the South line of said Winterset Valley 10th Plat, 44.36 feet; thence North 45°49'13" East on said South line of Winterset Valley 10th Plat, 16.42 feet; thence South 87°11'20" East on said South line of Winterset Valley 10th Plat, 138.33 feet; thence leaving said South line, South 02°48'40" West, 112.01 feet to a point on the South right-of-way line of said Southwest 3rd Street, point also being on the North line of Lot 1, NEW LONGVIEW COMMERCIAL DISTRICT FOURTH PLAT, LOT 1, a subdivision of land recorded on Document Number 2016E0046879 in said Jackson County Recorder of Deeds Office; thence North 87°11'20" West on said North line, 45.30 feet to the Northwest corner of said Lot 1 point also being on the Easterly right-of-way line of Southwest Kessler Drive, as now established; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 167.31 feet; thence North 87°11'20" West on the West line of said Lot 1 and said Easterly right-of-way line, 12.00 feet; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 164.68 feet to the Southwest corner of said Lot 1; thence leaving said Easterly right-of-way line, South 87°11'21" East on the South line of said Lot 1, 606.38 feet to a point on the Westerly line of BRIDLEWOOD 4th PLAT, a subdivision of land recorded in Book I69 on Page 63 of said Jackson County Recorder of Deeds Office; thence South 03°11'11" West on the West line of said Bridlewood 4th Plat and the West line of BRIDLEWOOD 5th PLAT, a subdivision of land recorded in Book 71 on Page 18 in said Jackson County Recorder of Deeds Office, 439.82 feet to the Northeast corner of Tract A, KESSLER RIDGE AT NEW LONGVIEW - FIRST PLAT, a subdivision of land Recorded on Document Number 2016E0123272 in said Jackson County Recorder of Deeds Office; thence North 86°48'44" West on the North line of said Tract A, 461.29 feet to the Northwest corner of said Tract A, point also being on the Easterly right-of-way line of said Southwest Kessler Drive; thence Northwesterly on said Easterly right-of-way line, with a curve to the left having an initial tangent bearing of North 31°35'13" West with a radius of 310.00 feet, a central angle of 05°37'55" and an arc distance of 30.47 feet; thence North 37°13'07" West on said Easterly right-of-way line, 123.26 feet; thence Northwesterly on said Easterly right-of-way line with a curve to the right being tangent to the last described course with a radius of 190.00 feet, a central angle of 02°01'30" and an arc distance of 6.71 feet; thence leaving said Easterly right-of-way line, North 87°00'49" West, 71.34 feet to a point on the Westerly right-of-way line of said Southwest Kessler Drive point also being the Southeast corner of Lot 1A, FASCINATION AT NEW LONGVIEW LOTS 1A-1E, INCLUSIVE TRACT A, a subdivision of land Recorded on Document Number 2018E0034938 in said Jackson County Recorder of Deeds Office; thence continuing North 87°00'49" West, on the South line of said Lot 1A, 117.45 feet; thence South 58°23'30" West on the South line of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A, 407.26 feet; thence South 31°36'30" East on said South line, 49.74 feet; thence South 58°52'01" West on said South line, 143.96 feet to the Southwest corner of Lot 1E of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A point also on the Easterly right-of-way line of Southwest Longview Boulevard as now established; thence leaving said Easterly right-of-way line, South 61°02'01" West, 116.09 feet to the Southeast corner of Lot 7, TOWER PARK COMMERCIAL - PHASE 2 LOTS 5, 6, 7 AND TRACTS A and B, a subdivision of land Recorded on Document

Number 2005I0090051 of said Jackson County Recorders of Deeds Office point also on the Westerly right-of-way line of said Southwest Longview Boulevard; thence South 58°46'36" West on the South line of said Lot 7, 34.91 feet; thence Southwesterly on the South line of Lot 7 with a curve to the left being tangent to the last described course with a radius of 130.00 feet, a central angle of 38°14'59" and an arc distance of 86.79 feet to the Southwest corner of said Lot 7; thence North 31°13'52" West on the West line of said Lot 7, 280.78 feet to the Northwest corner of said Lot 7 point also being on the Southerly right-of-way line of Southwest Sensation Drive, as now established; thence continuing North 31°13'52" West, 60.00 feet to a point on the Northerly right-of-way line of said Southwest Sensation Drive, point also on the Southerly line of Lot 3, TOWER PARK COMMERCIAL - PHASE 2 LOTS 3, 4 AND TRACT J, a subdivision of land recorded on Document Number 2004I0107121 in said Jackson County Recorder of Deeds Office; thence South 58°46'36" West on the South line of said Lot 3 and the said Northerly right-of-way line, 139.54 feet; thence North 31°13'27" West on said South line, 72.72 feet; thence North 58°46'33" East on said South line, 20.00 feet; thence North 31°13'27" West on said South line, 50.00 feet; thence North 86°44'52" West on said South line, 172.98 feet to the Southwest corner of said Lot 3, point also being on the Easterly right-of-way line of Southwest Longview Road, as now established, thence continuing North 86°44'52" West, 30.00 feet to a point on the West line of said Northwest Quarter; thence North 03°15'11" East on said West line, 876.09 feet to the Point of Beginning. Containing 1,470,815 square feet or 33.77 acres, more or less.

Less and except the fee simple interest in the public right of way for SW 3rd Street, it being the petitioners' intent that the legal description for the property within public right of way for SW 3rd Street only include the City of Lee's Summit's, and any other governmental authority's, right of way interest in such public right of way and not the fee simple interest in such public right of way.

EXHIBIT B

General Boundary Map of the New Longview Community Improvement District

**EXHIBIT C
FIVE YEAR PLAN**

The estimated initial costs of the improvements associated with the exercise of the powers and purposes of the District are shown in the tables below.

Budgeted Expenditures – From District Revenue

Use	Amount	Comments
Activity Plaza (Fascination at NLV Tract A)	\$ 2,250,000	Saddle Plaza - Base
Central Green / Hardscape / Landscape		
Adjacent Streetscape along Fascination/Longview Blvd		
Pedestrian Connectivity		
Surface Parking		
Offsite Sitework Obligations	\$ 330,000	3rd St / Kessler Drive Traffic Signal & Other
Grading, Paving & Utilities	\$ 300,000	ROW & shared parking stalls
Professional Fees	\$ 300,000	legal, consulting, traffic study, other
Remaining Streetscape & Landscape	\$ 250,000	ROW & common areas
Balance of Fascination / Kessler		
North Arch	\$ 50,000	maintenance & upkeep as needed
Contingency	\$ 500,000	general contingency
Total (w/ surface parking)	\$ 3,980,000	
Structured Parking	\$ 1,500,000	Lot 1D - 160 deck parking spots
Grand Total (w/ structured parking)	\$ 5,480,000	

Notes:

- (1) Amounts set forth above totaling approximately \$5.5 million, are net estimated cost reimbursements and do not include interest expenses, financing expenses, fees, or costs of issuance for bonds or any other financing instrument, all of which are eligible costs of the District and which may be funded pursuant to the terms of a Cooperative Agreement between the City and the District.
- (2) The cost estimates set forth in this Exhibit are reasonable best estimates at the time of approval of this District and it is agreed to and understood that such estimates are subject to change as part of the development process and in accordance with the terms of a Cooperative Agreement between the City and the District. The amounts set forth in the above line items are not caps or limitations on such line items. Any such limitation on reimbursement shall only be subject to statutory restrictions and the terms of a Cooperative Agreement between the City and the District.

General Description of Public Improvements to be Funded by the District:

The District will fund the budgeted expenditures as set forth above and other improvements and services, which are necessary to carry out the purposes of the District, as authorized by the CID Act and this Petition and as allowed by the terms of a Cooperative Agreement between the City and the District.

The estimated revenues of the District are shown in the table below. It is expected that the revenue of the District will be used to administer the District and pledged to repay obligations issued by or on behalf of the District to fund the costs of services and improvements.

NEW LONGVIEW CID			
			SPECIAL DISTRICTS
	Year	Lagged CID Taxable Sales	CID Sales Tax Revenue
			1.000%
1	2020	\$ 22,994,126	\$ 223,043
2	2021	\$ 23,339,038	\$ 226,389
3	2022	\$ 25,779,124	\$ 250,058
4	2023	\$ 26,165,811	\$ 253,808
5	2024	\$ 26,558,298	\$ 257,615
6	2025	\$ 26,956,672	\$ 261,480
7	2026	\$ 27,361,022	\$ 265,402
8	2027	\$ 27,771,438	\$ 269,383
9	2028	\$ 28,188,009	\$ 273,424
10	2029	\$ 28,610,829	\$ 277,525
11	2030	\$ 29,039,992	\$ 281,688
12	2031	\$ 29,475,592	\$ 285,913
13	2032	\$ 29,917,726	\$ 290,202
14	2033	\$ 30,366,491	\$ 294,555
15	2034	\$ 30,821,989	\$ 298,973
16	2035	\$ 31,284,319	\$ 303,458
17	2036	\$ 31,753,583	\$ 308,010
18	2037	\$ 32,229,887	\$ 312,630
19	2038	\$ 32,713,335	\$ 317,319
20	2039	\$ 33,204,035	\$ 322,079
21	2040	\$ 33,702,096	\$ 326,910
22	2041	\$ 34,207,627	\$ 331,814
23	2042	\$ 34,720,742	\$ 336,791
24	2043	\$ 35,241,553	\$ 341,843
25	2044	\$ 35,770,176	\$ 346,971
26	2045	\$ 36,306,729	\$ 352,175
27	2046	\$ 36,851,330	\$ 357,458
28	2047	\$ 37,404,100	\$ 362,820
29	2048	\$ 37,965,161	\$ 368,262
30	2049	\$ 38,534,639	\$ 373,786
TOTAL			\$ 9,071,784
NPV			\$ 4,180,906
			5.00%

Notes:

- 1) Taxable Sales growth rate from stabilization 1.50%
- 2) Administration fees 1.00%
- 3) Retailer Holdback 2.00%
- 4) Retail Vacancy (excludes theater) 5.00%
- 5) CID Sales Tax Implementation - Assumption 10/1/2019
- 6) CID Revenues lagged 3 months

Packet Information

File #: RES. NO. 19-03, **Version:** 1

A Resolution supporting an extension of the duration of the New Longview Transportation Development District Sales Tax.

Issue/Request:

Resolution supporting an extension of the existing Longview Transportation Development District sales tax for an additional 23 years.

Key Issues:

This resolution will authorize staff to affirmatively participate in the Jackson County Circuit Court process to be initiated by developer M-III Longview, LLC, to seek a court order to hold an election among the property owners within the TDD area to extend the TDD sales tax for an additional 23 years.

Proposed City Council Motion:

I move for approval of a Resolution Supporting and Extension of the Duration of the New Longview Transportation Development District Sales Tax.

Background:

The Lee's Summit, Missouri, New Longview Transportation Development District (the "TDD" or "District") was formed on July 31, 2003 through an order entered by the Jackson County Circuit Court. The TDD imposes a 1% sales tax throughout the boundaries of the TDD area (generally including all of the commercial areas in Longview). The TDD revenues are used to fund the operating costs of the District and then for two primary purposes:

- (1) half of the revenues are captured in the Special Allocation Fund of the two Longview TIF Plans and then used for the historic preservation purposes of those TIF Plans, and
- (2) repay a loan incurred by the former developer of the Longview area (Gale Communities, Inc.) which was used to fund road improvements including
 - (a) the construction of Longview Boulevard;
 - (b) single lane improvements to the southern half of 3rd Street, from the eastern roundabout on 3rd Street to the eastern border of the property included within the District;
 - (c) the construction of two (2) east-west arterial roads, from the Longview College entrances on Longview Road, easterly to the two (2) roundabout intersections with Longview Boulevard; and
 - (d) improvements to Longview Road from the Intersection of View High Road and 3rd Street to the southernmost roundabout on Longview Road, along with the costs of District formation and the operations of the District

The sales tax is set to expire on December 31, 2025. Developer is requesting to extend the sales tax for an additional 23

years, with a new expiration date of December 31, 2048.

Impact/Analysis:

This request presents no direct impact to City general revenues. This will result in 23 years of additional revenues for the TDD and the two TIF Plans.

Timeline:

Developer is continuing to develop the commercial areas of the TDD. The Developer would seek the Circuit Court order and then hold the sales tax extension election in 2019.

Corey Walker, M-III Longview, LLC

John Hansen, IRR Corporate & Public Finance

David Bushek, Chief Counsel of Economic Development & Planning

Mark Dunning, Assistant City Manager

Recommendation: Staff recommends approval of the Resolution.

RESOLUTION NO. 19-03

A RESOLUTION SUPPORTING AN EXTENSION OF THE DURATION OF THE NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX.

WHEREAS, the Lee's Summit, Missouri, New Longview Transportation Development District (the "TDD" or "District") was formed on July 31, 2003 through an order entered by the Jackson County Circuit Court; and,

WHEREAS, a map depicting the boundaries of the TDD is attached for reference as Exhibit A; and,

WHEREAS, the TDD imposes a sales tax in the amount of 1.0% within the boundaries of the TDD area which is currently set to expire on December 31, 2025, for the purpose of funding the following transportation projects: (a) the construction of Longview Boulevard; (b) single lane improvements to the southern half of 3rd Street, from the eastern roundabout on 3rd Street to the eastern border of the property included within the District; (c) the construction of two (2) east-west arterial roads, from the Longview College entrances on Longview Road, easterly to the two (2) roundabout intersections with Longview Boulevard; and (d) improvements to Longview Road from the Intersection of View High Road and 3rd Street to the southernmost roundabout on Longview Road, along with the costs of District formation and the operations of the District; and,

WHEREAS, half of the TDD sales tax revenues are captured as Economic Activity Taxes and deposited in the Special Allocation Funds of the Amended and Restated Longview Farm Tax Increment Financing Plan and the New Longview Tax Increment Financing Plan, which are then used to pay for historic preservation costs as described in those TIF plans; and,

WHEREAS, M-III Longview, LLC, as the primary developer for the Longview area, along with the cooperation of other parties that own commercial properties within the TDD boundaries, seeks to extend the duration of the TDD sales tax for the purpose of providing funding for the purposes of the Amended and Restated Longview Farm Tax Increment Financing Plan and the New Longview Tax Increment Financing Plan as well as continuing to repay previously incurred liabilities of the TDD; and,

WHEREAS, the extension of the TDD sales tax will require action by the TDD in the Jackson County Circuit Court, and the City will be named as a party to that proceeding if such action is filed by the TDD; and,

WHEREAS, the City Council finds that extension of the TDD sales tax is in the best interest of the City and the citizens of the City.

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

SECTION 1. The City finds and determines that it is in the best interests of the City to have the duration of the TDD sales tax extended for a period not to exceed twenty-three (23) years with a revised termination date of December 31, 2048.

SECTION 2. City legal counsel is hereby authorized and directed to take appropriate actions and file any required petitions, answers, pleadings, motions, court filings, certificates,

RESOLUTION NO. 19-03

instruments, consents and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized by this Resolution for the extension of the TDD sales tax and City staff is authorized to take such additional actions and execute such documents as required to comply with this Resolution.

SECTION 3. Should any section, sentence, or clause of this resolution be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 4. This Resolution shall be in full force and effect from and after its passage and approval.

Passed by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

RESOLUTION NO. 19-03

EXHIBIT A

NEW LONGVIEW TDD BOUNDARIES

The attached map shows the TDD boundaries as originally established in 2003.

[See attached]

Exhibit "B"

Transportation Development District (TDD) Right-of-Way

SE 1/4 SEC 4,
T 47 N, R 32 W

SW 1/4 SEC 3,
T 47 N, R 32 W

UN-PLATTED
Longview Road

UN-PLATTED
View High Drive

UN-PLATTED

UN-PLATTED

UN-PLATTED

UN-PLATTED

UN-PLATTED

UN-PLATTED

3rd Street

TDD Tract "A" Description
See Page 1 & 2, Exhibit "A"

Proposed Boulevard

UN-PLATTED
Longview Road
NE 1/4 SEC 9, T 47 N, R 32 W

UN-PLATTED
SW 1/4 SEC 10, T 47 N, R 32 W

TDD Tract "A" Description
See Pages 1 & 2, Exhibit "A"

UN-PLATTED
K Drive



New Longview

TDD & CID Presentation



February 5, 2019

Developer Presentation

- TDD Extension
- CID Establishment
- Questions & Answers

TDD Extension

TDD Extension

- Background:
 - This is a clean-up item for the two New Longview TIF Plans
 - Both the NLV TIF Plan (2015) and LVF TIF Plan (2003) anticipated the TDD being in place for the duration of those TIF Plans but it was agreed to address this detail at a later date
 - With the other matters being considered with the project, it seems an opportune time to resolve this item as well

TDD Extension

- Timing Considerations:
 - Dec 2015 - NLV TIF first formed
 - Dec 2025 – Latest possible RPA activation (10 years later)
 - Dec 2048 – NLV TIF – latest RPA expiration

TDD Boundary – Northern Portion Only



TDD Extension

- Request:

For the City Council to approve a resolution directing staff to take the necessary action to assist the TDD to extend the TDD sales tax from 12/31/2025 to 12/31/2048

CID Overview

CID Overview

- Vision
- Improvements
- Activity Plaza
- Budget

NA Heartland



NEW
LONGVIEW
EST. 2002

third street & view high drive | lee's summit, missouri

MIXED-USE COMMERCIAL SITES

Looking West on Fascination Drive



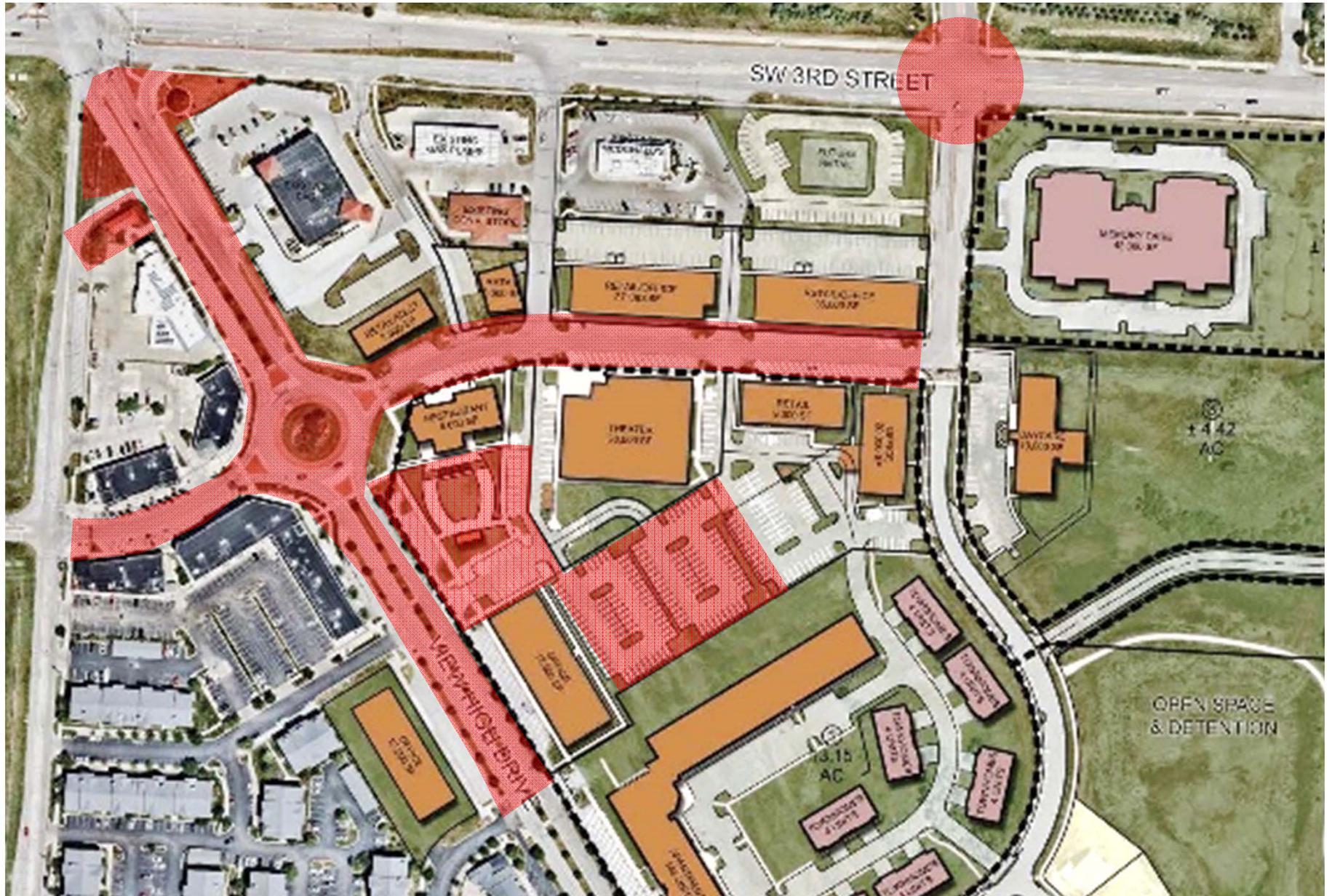
Looking East on Fascination Drive



Improvements

- Activity Plaza
- 3rd Street traffic signal
- Sitework on ROW and shared parking
- Streetscape plan
- North Arch maintenance

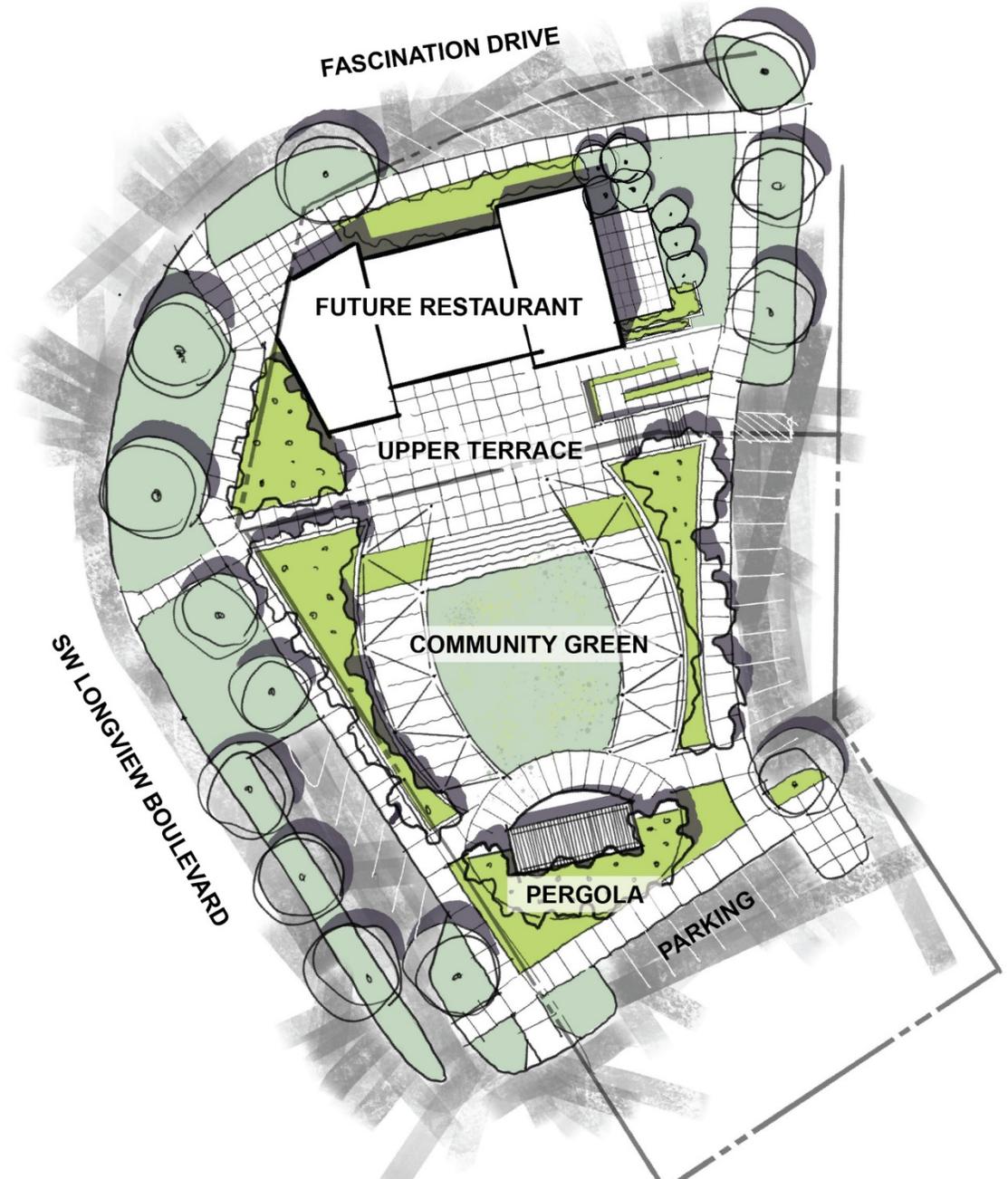
Proposed Improvements



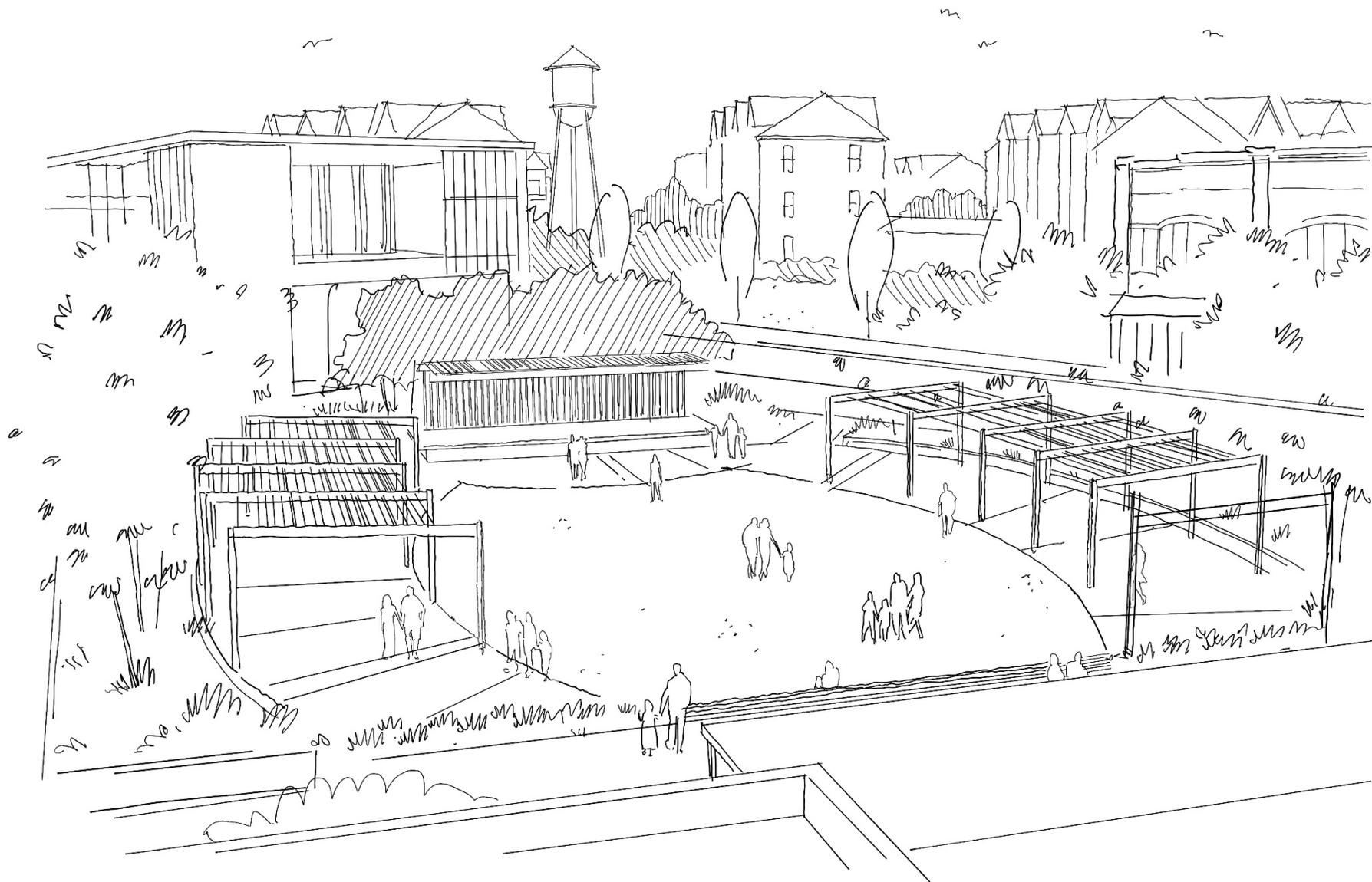
Activity Plaza

- Linkage to history of Longview Farm
- 1.0 acre site next to B&B Theatre – central location
- To be used as open space and event space
- To be owned, managed and maintained by the Commercial Association – already formed and active
- Interface with adjacent retail and restaurants
- Visible from Longview Boulevard
- Catalyst for additional traffic and community identity
- Potential collaboration with City or other organizations

Activity Plaza



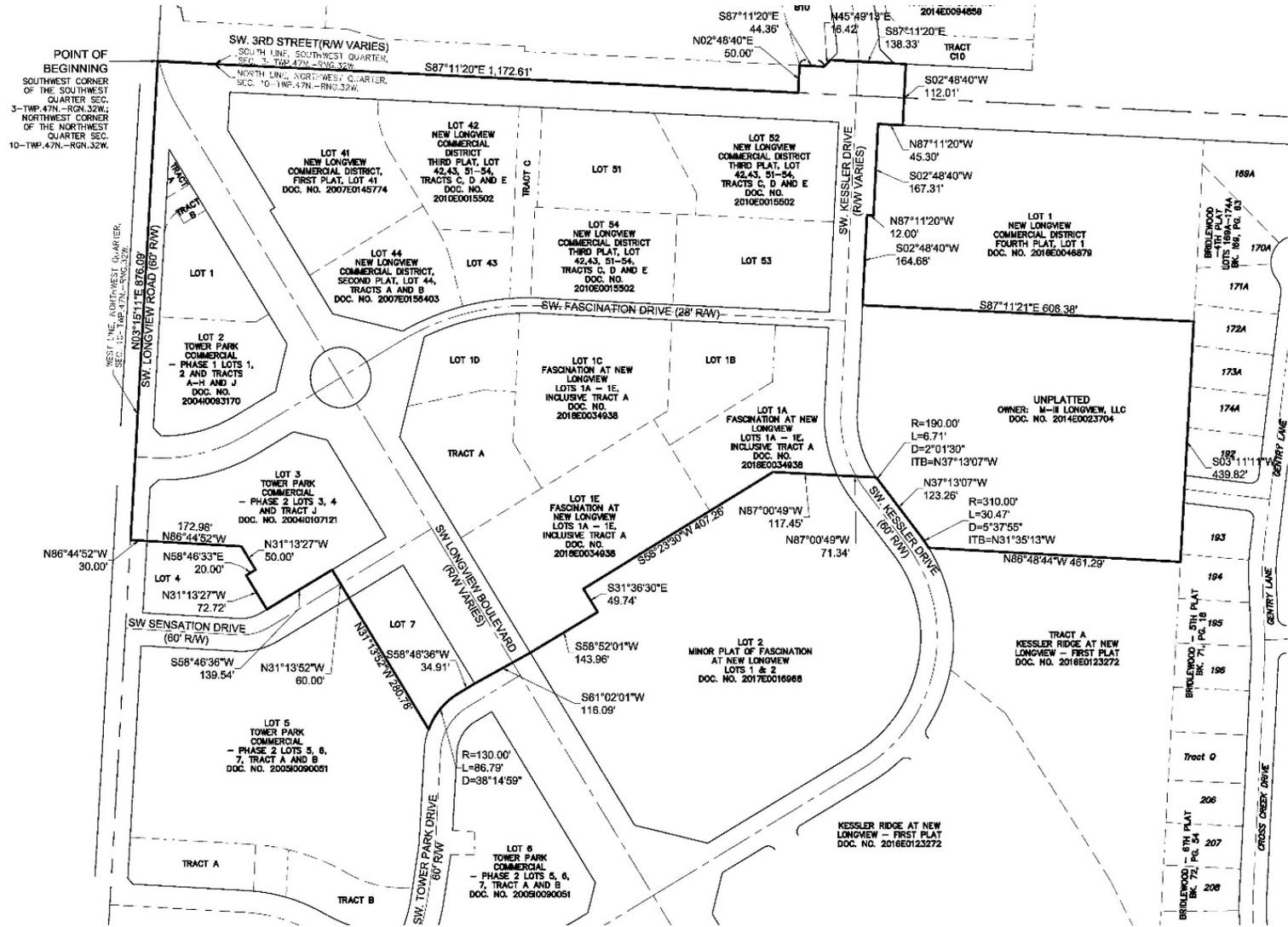
Looking Southwest



Looking Northeast



Proposed CID Boundary



CID Budget

Use	Amount	Comments
Activity Plaza (Fascination at NLV Tract A) Central Green / Hardscape / Landscape Adjacent Streetscape along Fascination/Longview Blvd Pedestrian Connectivity Surface Parking	\$ 2,250,000	Saddle Plaza - Base
Offsite Sitework Obligations	\$ 330,000	3rd St / Kessler Drive Traffic Signal & Other
Grading, Paving & Utilities	\$ 300,000	ROW & shared parking stalls
Professional Fees	\$ 300,000	legal, consulting, traffic study, other
Remaining Streetscape & Landscape Balance of Fascination / Kessler	\$ 250,000	ROW & common areas
North Arch	\$ 50,000	maintenance & upkeep as needed
Contingency	\$ 500,000	general contingency
Total (w/ surface parking)	\$ 3,980,000	
Structured Parking	\$ 1,500,000	Lot 1D - 160 deck parking spots
Grand Total (w/ structured parking)	\$ 5,480,000	

CID Process

- Jan 14 – Signed CID Petition filed with City Clerk
- Jan 22 – CID Presentation
- Feb 5 - Public Hearing / First Reading
- Feb 19 - Second Reading
- Oct 1 – Anticipated start of CID Sales Tax

Questions & Answers

Packet Information

File #: BILL NO. 19-19, Version: 1

An Ordinance approving Change Order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66. (PWC 1/29/19)

Issue/Request:

An Ordinance approving change order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66.

Key Issues:

- The antenna at the Rice Road Valve location was changed from a standard aerial to a panel antenna as it is less intrusive and less likely to be damaged by passersby.
- The mast configuration at the South Terminal was changed as the final loadings for the equipment was determined.
- Final sight and signal lines between Bowlin Pump Station and Woods Chapel Tower required testing and revision of the antenna mounting mast.
- The antenna configuration at Leinweber was revised for better long term operation.
- The antenna configuration was revised for better reception at Kensington BO.
- There was a change to a Cellular solution at Station 6 due to poor radio signal strength at this site.
- An upgrade of the grounding system was required at the Rice Road valve vault as it was determined the existing system would not protect the proposed radios.

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of an Ordinance approving Change Order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66.

SECOND MOTION: I move for adoption of an Ordinance approving Change Order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66.

Background:

The SCADA System was originally constructed using AT&T leased POTs (Plain Old Telephone) lines for its communications backbone to all the remote water and waste water sites. These lines have worked well for many years but over time the utility's systems have become more complex and the data files are now larger and more numerous than ever before which is causing the lines to reach their limit at several of the larger remote sites.

To compound this issue AT&T is moving towards retiring these lines and encouraging the utility to seek other alternatives by increasing the lease rates while decreasing support. Water Utilities has been reviewing alternatives for

several years to find the correct technology to replace the leased copper lines. The utility has worked with public safety to review microwave transmission, has reviewed the possibility of fiber connections, has piloted a cellular communication option and had a varieties of issues with consistency and potential costs with all of those options.

As this project is finishing up the City has retired the use of the leased copper lines and are up and running on the radio communications system. There have been some items found in the field during construction of this system which were different than the design assumptions and require modification by this change order to complete the installations. These changes have been minor and fall within our original budget for the project.

Jeff Thorn, Assistant Director of Engineering Services

Staff recommends approval of an Ordinance approving change order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66.

The Public Works Committee voted unanimously 3-0 (Councilmember DeMoro "absent"), to recommend to City Council approval of an Ordinance approving change order #2 to the contract with Second Sight Systems, L.L.C. for the SCADA System Improvements Project, an increase of \$6,487.42 for a revised contract price of \$420,405.66.

BILL NO. 19-19

AN ORDINANCE APPROVING CHANGE ORDER #2 TO THE CONTRACT WITH SECOND SIGHT SYSTEMS, L.L.C. FOR THE SCADA SYSTEM IMPROVEMENTS PROJECT, AN INCREASE OF \$6,487.42 FOR A REVISED CONTRACT PRICE OF \$420,405.66.

WHEREAS, the City of Lee's Summit, Missouri ("City") has previously entered into a contract with Second Sight Systems, L.L.C. for the SCADA System Improvement project, being undertaken by the City's Water Utilities Department; and,

WHEREAS, a second change order to the contract with Second Sight Systems, L.L.C. is necessary; and,

WHEREAS, the antenna at the Rice Road Valve location was changed from a standard aerial to a panel antenna as it is less intrusive and less likely to be damaged by passersby; and,

WHEREAS, the mast configuration at the South Terminal was changed as the final loadings for the equipment was determined; and,

WHEREAS, final sight and signal lines between Bowlin Pump Station and Woods Chapel Tower required testing and revision of the antenna mounting mast; and,

WHEREAS, the antenna configuration at Leinweber was revised for better long term operation; and,

WHEREAS, the antenna configuration was revised for better reception at Kensington BO; and,

WHEREAS, a change to a Cellular solution at Station 6 was made due to poor radio signal strength at this site; and,

WHEREAS, an upgrade of the grounding system at the Rice Road valve vault was required as it was determined the existing system would not protect the proposed radios.

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

SECTION 1. That the Change Order No. 2 to the contract between the City of Lee's Summit, Missouri and Second Sight Systems, L.L.C. for the SCADA System Improvement project, bid no. 2017-042-1-3C, for an increase in price of \$6,487.42 for a revised contract price of \$420,405.66, a true and accurate copy attached hereto as Change Order No. 2 and incorporated by reference as if fully set forth herein, be and the same is hereby approved. The City Manager is hereby authorized to execute the same by and on behalf of the City of Lee's Summit, Missouri.

SECTION 2. 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 _____, 2019.

BILL NO. 19-19

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2019.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

Change Order
No. 2

Date of Issuance: December 6, 2018 Effective Date: December 6, 2018

Project: SCADA System Improvements 2017-18 Owner: City of Lee's Summit, MO Owner's Contract No.: 2017-042-1-3C SCADA

Contract: SCADA System Improvements 2017-18 Date of Contract: NTP Dec. 18th, 2017

Contractor: Second Sight Systems, LLC. Engineer's Project No. HDR # 10028695
7280 Old State Rte. 21 Barnhart, MO 63012

The Contract Documents are modified as follows upon execution of this Change Order:

Description: Refer to Reasons for Change and Change Spreadsheet (Attached).

Attachments: (List documents supporting change):

Change Order / reference documents (attached)

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ 396,855.14

Increase from previously approved Change Orders
No. 0 to No. 1 :

\$ 17,063.10

Contact Price prior to this Change Order:

\$ 413,918.24

Increase of this Change Order:

\$ 6,487.42

Contract Price incorporating this Change Order:

\$ 420,405.66

CHANGE IN CONTRACT TIMES:

Original Contract Times: Working days Calendar Days

Notice to proceed date: December 18th, 2017

Suspension of days until: May 22nd 2017

Substantial completion (days or date): 185 days = Nov.23th, 2018

Ready for final payment (days or date): 215 days = Dec.23th, 2018

(Increase) (Decrease) from previously approved Change Orders
No. 0 to No. 0 :

Substantial completion (days): _____

Ready for final payment (days): _____

Contact Times prior to this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

(Increase) (Decrease) of this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED:

By: [Signature]
Engineer (Authorized Signature)

ACCEPTED:

By: _____
Owner (Authorized Signature)

ACCEPTED:

By: [Signature]
Contractor (Authorized Signature)

Date: 01/16/2019

Date: _____

Date: 01/16/2019

Approved by Funding Agency (if applicable): _____

Date: _____

*Change Proposal Request(s)***#12 Second Sight Systems has installed a new antenna configuration for Rice Valve.**

Total Increase for Changed Scope: \$1,142.50

*Site was changed from a standard aerial to a panel antenna as it is less intrusive.***#13 Second Sight Systems has designed and installed a new antenna mast for South Terminal**

Total Increase for Changed Scope: \$270.00

*Mast configuration was change as the final loadings for the equipment was determined.***#14 Second Sight Systems proposes installing a new antenna mast for Bowlin.**

Total Increase for changed scope: \$2,883.62

*Final sight and signal lines between Bowlin Pump Station and Woods Chapel Tower required testing and revision of the antenna mounting mast.***#15 Second Sight Systems has installed a new antenna configuration for Leinweber.**

Total Increase for Changed Scope: \$715.00

*Revised antenna configuration for better long term operation.***#16 Second Sight Systems has installed a new antenna configuration for Kensington BO.**

Total Increase for Changed Scope: \$990.00

*Revised antenna configuration for better reception at BO.***#17 Second Sight Systems proposes installing an Orbit 4G LTE DMVPN enabled remote at Station 6.**

Total Increase for Changed Scope: \$1,226.30

*Change to a Cellular solution due to poor radio signal strength at this site.***#18 Second Sight Systems recommends installation and acquisition of licensing for SolarWinds**

Network Performance Monitor SL100 software

*Total Project Price Projected Reduction: (\$-2,400.00)**Replacement of the free version with a more robust network management software for troubleshooting the radio system.***#19 Second Sight Systems recommends installing a new grounding system at Rice Road.**

Total Increase for Changed Scope \$1,660.00

Upgrade of the grounding system at the Rice Road valve vault as it was determined that the existing system would not protect the proposed radios.

Packet Information

File #: BILL NO. 19-20, **Version:** 1

An Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same. (PWC 1/29/19)

Issue/Request:

An Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same.

Key Issues:

- The project is included in the City's FY2019 Capital Improvement Plan adopted by Council.
- The project will be funded from the voter-approved 2017 CIP Sales Tax Renewal, Water Tap Fee, and Federal STP Funds FY2021.
- City staff issued RFQ No. 569-32272 to conduct a Qualification Based Selection for professional engineering services, in accordance with state statutes, federal regulations, and local procurement policies.
- Garver, LLC was selected as the best qualified firm for the project and satisfactorily conducted negotiations for scope and fee with City staff.

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of an Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same.

SECOND MOTION: I move for adoption of an Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same.

Background:

The project will enhance safety, expand capacity, promote economic development in the area, and accommodate non-motorized transportation. The City's Comprehensive Plan and associated Thoroughfare

Master Plan (TFMP) include and support the project. The project is recommended in the TFMP as a high priority considering the capacity and condition deficiencies of the existing roadway.

The City annexed property along the corridor, including Colbern Road, from Unity Village in December 2011 to support an economic development plan and new regional activity center. This project supports the long-range planning for this corridor envisioned in the annexation agreement.

The project includes multi-modal elements that support the City's Bicycle Transportation Plan and Greenway Master Plan. Multi-modal transportation is part of the Complete Streets performance goal adopted in the LS360 Strategic Plan and continues under the consultation and oversight of the Livable Streets Advisory Board.

The current road is a narrow, two lane, and an open ditch section with minimal shoulders. The pavement condition is declining and the bridge over the Union Pacific Railroad (UPRR), first constructed in the 1930s, requires widening or replacement. The roadway will be improved by constructing a four lane roadway with raised medians and middle turn lanes (as dictated by the City's Access Management Code), installing curb and gutter, enclosed storm drainage systems, street lighting, sidewalk on the north side, and shared-use path on the south side. The sidewalk and shared-use path will be extended beyond the project limits to connect with the existing sidewalk and shared-use path along Colbern Road. The project also includes the installation of a new 12" water main which will run along the new roadway and connect at each end to recently installed water mains. If appropriate, the project will include water quality BMPs, sustainable design elements, and landscaping.

There are numerous engineering challenges in the scope of services of this contract related to improving Colbern Road as described above. These challenges include traffic modeling and analysis to include future development along the corridor. Potential construction cost impacts associated with potential earthwork costs, retaining walls, temporary sheet piles during construction, etc. must be evaluated when balancing the horizontal and vertical realignment of the roadway to support the 45 mph speed limit. The existing single lane roundabout must be expanded to two lanes and incorporate traffic changes affecting Unity Village and the M-350 interchange. The bridge over the UPRR also spans Little Cedar Creek's mapped floodways and floodplain areas. The bridge expansion or replacement must accommodate vehicular traffic, bicycle/pedestrian traffic, and accommodate multiple utilities crossing the railway and creek. The corridor also contains potentially historic resources that must be evaluated, such as the Unity Village markers, stone fence pillars, and the UPRR bridge. The east end of the project will be subject to Federal Aviation Administration review and regulations in relation to the Lee's Summit Airport.

Stakeholder engagement will be a key component to designing the road to accommodate future growth envisioned in the area. As part of the stakeholder process, the scope of services includes the possible realignment of Blue Parkway to the north which will require coordination with Unity Village and MoDOT.

Public Works issued RFQ 569-32272. The RFQ was advertised on the City website and www.PublicPurchase.com <<http://www.PublicPurchase.com>>. Over 310 Engineering firms were notified by Public Purchase for access to the documents, 72 firms reviewed the RFQ, and 66 firms downloaded the RFQ documents. Eleven firms submitted statements of qualifications prior to the November 5, 2018 closing date. All submittals were evaluated by a City Staff evaluation team composed of five Public Works Engineering personnel.

Timeline:

Bid Date of January 2021

Other Information/Unique Characteristics:

Craig Kohler, Senior Staff Engineer

Staff recommends approval of an Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same.

The Public Works committee voted unanimously 3-0 (Councilmember DeMoro "absent"), to recommend to City Council approval of an Ordinance authorizing execution of an agreement by and between the City of Lee's Summit, Missouri, and Garver, LLC in an amount not to exceed \$1,462,127.00 for Professional Engineering Services for the Colbern Road Improvements from M350 Highway to Douglas Street (RFQ No. 569-32272), and authorizing the City Manager to enter into an agreement for the same.

BILL NO. 19-20

AN ORDINANCE AUTHORIZING EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI, AND GARVER, LLC IN AN AMOUNT NOT TO EXCEED \$1,462,127.00 FOR PROFESSIONAL ENGINEERING SERVICES FOR THE COLBERN ROAD IMPROVEMENTS FROM M350 HIGHWAY TO DOUGLAS STREET (RFQ NO. 569-32272), AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR THE SAME.

WHEREAS, the Colbern Road Improvements from M350 Highway to Douglas Street (hereinafter "Project") were authorized in the Capital Improvement Plan (CIP) adopted by Council; and,

WHEREAS, the Project has been awarded federal STP funds and local matching funds; and,

WHEREAS, the City intends to have professional engineering services for the design of this Project; and,

WHEREAS, Garver, LLC (hereinafter "Engineer") was selected as the best qualified firm through an open Qualification Based Selection process; and,

WHEREAS, the Engineer has submitted a proposal for the Project and an estimate of engineering costs to perform the Project; and,

WHEREAS, the City Manager is authorized and empowered by the City to execute contracts providing for professional engineering services; and,

WHEREAS, the City desires to enter into an agreement with the Engineer to perform the Project; and,

WHEREAS, the Engineer represents that the firm is equipped, competent, and able to undertake such an assignment.

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

SECTION 1. That the agreement, for professional engineering services by and between the City of Lee's Summit, Missouri and Garver, LLC, generally for the purpose of professional engineering services for Colbern Road Improvements from M350 Highway to Douglas Street, a true and accurate copy being attached hereto and incorporated herein by reference, is hereby approved and the City Manager is hereby authorized to execute the same on behalf of the City of Lee's Summit, Missouri.

SECTION 2. 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.

BILL NO. 19-20

PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2019.

Mayor William A. Baird

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2019.

Mayor William A. Baird

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief Council of Infrastructure and Planning
Nancy K. Yendes

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR COLBERN ROAD IMPROVEMENTS FROM M350 TO DOUGLAS STREET
(RFQ NO. 569-32272)**

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Garver, LLC (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for the Colbern Improvements (hereinafter "Project"); and

WHEREAS, Engineer has submitted a proposal for the Project and an estimate of engineering costs to perform the Project; and

WHEREAS, the City Manager is authorized and empowered by City to execute contracts providing for professional engineering services; and

WHEREAS, City desires to enter into an agreement with Engineer to perform the Project; and

WHEREAS, Engineer represents that the firm is equipped, competent, and able to undertake such an assignment.

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, **IT IS HEREBY AGREED** by the parties hereto as follows:

**ARTICLE I
SCOPE OF BASIC SERVICES TO BE PROVIDED BY ENGINEER**

Engineer shall provide the following professional engineering services to City ("Basic Services"):

1.1 General

Generally, the scope of services includes surveying, roadway and bridge design, traffic studies, water line and gravity sewer design, preparation of property acquisition documents, geotechnical investigations, traffic data collection, and utility coordination for improvements to Colbern Road from Missouri (MO) Route 350 to 2000 feet east of Douglas Street. Improvements will consist primarily of constructing a new four and five lane city street with curb & gutters, sidewalks, lighting, shared-use paths, enclosed stormwater systems, stormwater BMP's, MSE retaining walls, signage, pavement markings, and a new water main and relocated gravity sewer, and landscaping/streetscaping features. Also included will be a new bridge over the UPRR and Little Cedar Creek, reconfiguring the

Colbern Road and Blue Parkway roundabout, and relocating Blue Parkway north of Colbern Road to tie into the reconfigured Colbern Road and Blue Parkway roundabout.

1.2 Surveys

1.2.1 Design Surveys

Contract with Powell CWM, Inc. (Powell) to provide field survey data for designing the project, and this survey will be tied to the City's control network.

Powell will conduct field surveys, utilizing radial topography methods, at intervals and for distances along the project site as appropriate for modeling the existing ground (maximum of 50 foot intervals), including locations of pertinent features or improvements. Powell will locate buildings and other structures, streets, bridges (column and abutment locations included), existing enclosed drainage features, existing cross road culverts, existing street lights, existing traffic signals, pull boxes, controllers, sidewalks, trails, street signs, trees over eight inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site. Powell will establish control points for use during construction.

Powell will provide four (4) additional pick-up survey days and associated post processing for additional pick-up surveying.

1.2.2 Hydraulic Surveys

Powell will conduct field surveys to assist in the development of the hydraulic modeling. Eleven cross sections will be taken at the following locations: high point at centerline of roadway, at the upstream toe of roadway embankment, at the downstream toe of roadway embankment, four at upstream valley section, and four at downstream valley section (spaced 200 feet apart along the stream centerline). The sections will be wide enough to include the top of bank, top of water surface, flow line of the creek, limits of the 100 year floodplain, and any other pertinent features important to the hydraulic modeling.

1.2.2 Property Surveys

Powell will locate existing monumentation representing right of way and/or easements based on record data which will be provided by an abstractor under a sub consultant agreement with Powell.

1.3 Traffic Data Collection

Engineer will subcontract with The Traffic Group to perform data collection at the following locations:

- NW Colbern/Bannister Road and NW Pryor Road
- Mo Route 350 SB on ramp and off ramp
- Mo Route 350 NB on ramp and off ramp.
- NW Colbern Road and NW Blue Parkway
- NW Colbern Road and NW Blue Parkway/Unity Way
- NW Colbern Road and N Main Street
- NW Main Street and NW Victoria Drive
- NW Colbern Road and NE Douglas Street
- NE Douglas Street and WB I-470 on ramp and off ramp
- NE Douglas Street and EB I-470 on ramp and off ramp
- NE Douglas Street and NE Mulberry Street
- NE Douglas Street and NE Victoria Drive

The traffic data collection will include 24-hour video turning movement counts at the above intersections with truck classifications and pedestrian crossings included. The collection will occur shortly after Notice to Proceed and will be conducted when conditions are above freezing, while school is in session, and avoiding holiday influences.

1.4 Geotechnical Services

Engineer will subcontract with Geotechnology, Inc. to provide geotechnical investigations and recommendations for the new bridge and MSE retaining walls.

Geotechnology will provide a boring plan which will include the following:

- Retaining Walls – Up to thirteen (13) borings to 10 to 15-ft in depth with one being 20 feet deep. Up to ten (10) rock probes in the cut sections 5 to 10-ft deep. Probes will not include soil sampling. Borings and rock probes will be alternated between the north and south sides of Colbern Road resulting in an approximate interval of 200 feet.
- Bridge Substructure – Six borings, two borings at each bent. For the purpose of evaluating drilled shafts each boring will be extended 25-ft into rock.

1.5 Subsurface Utility Engineer (SUE) Level A

Engineer will subcontract with Geotechnology, Inc. to perform subsurface excavation for up to four (4) locations to develop accurate location and depth information for underground utilities.

1.6 Administration and Project Management

The Engineer shall perform the following Administration and Project Management Tasks:

1. Set up and attend the project kick-off meeting.
2. Personnel planning, project scheduling, and budget control.
3. Plan and hold internal project team meetings.
4. Plan and hold City project weekly coordination and bimonthly progress meetings.
5. Prepare agendas and meeting minutes for bimonthly progress meetings, and submit monthly progress report documents, along with the monthly invoices. The Monthly Progress Report shall document the following:
 - a. Past Month's Activities/Accomplishments
 - b. Pending Issues and Decisions
 - c. Problem Areas and Recommended Corrective Actions
 - d. Budget Summary Status (showing % complete vs. % expended per task)
 - e. Schedule Summary Status (chart showing baseline schedule vs. actual schedule)
 - f. Next month's Planned Activities/Goals
 - g. Summary of Coordination Efforts (including correspondence summaries)
6. Develop subconsultant contracts, review, and process subconsultant invoices.

All of the above items shall include/address sub-consultant tasks.

1.7 Stakeholder Coordination

The Engineer shall perform the following Stakeholder Coordination Tasks:

- Attend stakeholder face to face meetings:
 - Ten (10) meetings with Unity Village (Unity Village, Unity Villas, Newmark Grubb Zimmer)

- Four (4) meetings with Howard and Dorothy Stayton
- Eight (8) meetings with the Lee's Summit Municipal Airport/FAA
- Four (4) meetings with MoDOT LPA Staff
- Three (3) meetings with the Union Pacific Rail Road (UPRR)

The Engineer will develop agendas and meeting minutes for all meetings. Agendas will be submitted to City for review two (2) weeks prior to any meeting and meeting minutes will be completed and submitted to City within (2) weeks after said meeting.

In addition to the Stakeholder Coordination the Engineer will make two (2) presentations to the City Council for the purposes of informing the public and to solicit feedback. The Engineer will develop a presentation utilizing powerpoint or presentation boards as directed by the City. Engineer will submit the presentation or draft exhibits to the City two (2) weeks prior to presentation for approval and comment.

1.8 Quality Assurance and Quality Control

The Engineer shall perform the following Quality Assurance and Quality Control Tasks:

- Develop project Quality Control Plan (QCP) document.
- Perform independent Quality Assurance Reviews to verify that QCP is being followed and continuously updated as required.
- Perform independent Quality Control reviews on the design and plans.
- Perform Conceptual, Preliminary, Right of Way, and Final Design Reviews.
- Perform Conceptual, Preliminary, Right of Way, and Final Plan Reviews.
- Perform Engineers Estimate of Probable Cost Reviews.
- Review deliverables from subconsultants such as, but not limited to:
 - Geotechnical Reports
 - Survey Design Files
 - Traffic Data Collection Summaries
 - Right of Way and Easement Acquisition Documents

1.9 Utility Coordination

Furnish plans to all known utility owners potentially affected by the project at the approved conceptual, preliminary, and final design stage of plan development.

Conduct the following coordination meetings among all known affected utility owners to enable them to coordinate efforts for any necessary utility relocations.

- Kickoff Meeting (30 days after conceptual design submittal to utility companies)
- Preliminary Design Meeting (30 days after preliminary submittal to utility companies)
- Final Design Meeting (30 days after final plans submittal to utility companies)

Engineer will include the surveyed locations of the observable and marked utilities in the construction plans. Engineer will also include proposed and/or relocated utility information in the construction plans as provided by the utility companies.

Attend coordination meetings with the City as required, and prepare agendas and meeting minutes for these meetings.

1.10 Environmental Services (NEPA)

Engineer will coordinate the completion and approval of a Categorical Exclusion 2 (CE2) with the Missouri Department of Transportation (MoDOT). The following tasks shall be performed as required by MoDOT.

1.10.1 Request for Environmental Review (RER)

Engineer will obtain information pertinent to complete online submittal of the RER from the City. Engineer will submit the RER to MoDOT for review and address comments requests for additional information.

1.10.2 Data Collection and Constraints

Engineer will develop an initial constraints map and collect data from governmental and other sources to document potential environmental constraints. Desktop constraints will be verified thorough a detailed site visit to review the presence of readily visible and environmentally sensitive features such as wetlands, endangered and threatened species habitats, streams, ponds, rivers, farmlands, historic properties, residences, any hazardous material sites, and businesses. Photos of the site will be taken of environmentally sensitive features.

1.10.3 Agency Coordination

Engineer will coordinate with the State Historic Preservation Officer (SHPO) and MoDOT regarding Section 106, establish an Area of Potential Effect (APE), and cultural, historical and archaeological clearance for the project. If a cultural resources survey and/or architectural survey is required, this will be considered extra work to be approved in writing by the Client. For the purposes of this contract, fees for historic and archaeological surveys are included.

Engineer will complete a *de minimis* Section 4(f) determination and submit to MoDOT for review and approval. Section 4(f) *de minimis* coordination is anticipated as there is a house on the National Register of Historic Places (NRHP) that may be affected by the project.

Engineer will obtain an IPaC list from the US Fish and Wildlife Service (USFWS) to document federally listed threatened and endangered species in the area. Garver will also obtain the Missouri Department of Conservation (MDC) Inventory of state listed species. Potential impacts to listed species will be evaluated. Spatial, seasonal, or temporal restrictions or design modifications will be evaluated. Informal Section 7 consultation with the USFWS is anticipated in this scope.

Engineer will coordinate with the US Army Corps of Engineers (USACE) and Missouri Department of Natural Resources (MDNR) regarding potential impacts to jurisdictional waters of the US and water quality.

Engineer will coordinate with the City and the Mid-America Regional Council (MARC) in determining the level of air quality analysis required.

1.10.4 Special Environmental Studies

Habitat Assessment

Engineer will complete a habitat assessment for the project that will include documentation of the potential project effects on state and federally listed species. The habitat assessment will include detailed evaluation for the preferred habitats of the listed species and provide an effects determination for each species.

Wetland Delineation

Engineer will complete a wetland delineation that will include field evaluation and mapping of jurisdictional waters. A report of the findings will be completed and presented to the USACE for use in Section 404 permitting. Engineer will coordinate avoidance, minimization and mitigation with the designer and the City. We will assess the potential effect of construction activities of the proposed project on jurisdictional waters and wetlands, consult with the US Army Corp of Engineers (USACE), the US Fish and Wildlife Service, and MDNR to propose mitigation measures if required.

Noise Analysis

Engineer will conduct a detailed noise analysis of the proposed improvements from State Route 350 to NE Douglas Street. The noise study will take into account existing and future traffic volumes. Potential traffic noise impacts will be evaluated and if needed one barrier analysis will be completed. The noise study will be conducted in accordance with

MoDOT Noise Policy. Engineer will submit the noise analysis to MoDOT for review and approval.

1. Enter the pavement centerlines, edges, and profiles (along with side slope information) into the TNM model from plan, profiles, and cross-sections. Topographic mapping for insertion of terrain lines would also be used where possible.
2. Based on traffic counts and projections provided by MoDOT and/or the Garver, determine the appropriate design traffic volumes to be used in the analyses. Typically, LOS "D" traffic volumes are used for traffic noise modeling because this is the condition where the combination of traffic volumes and speeds produce the highest noise levels. At LOS "E" or "F," the traffic volumes would be higher, but the lower speeds at these levels of service create less noise.
3. Enter all required parameters into the TNM computer model to simulate the existing conditions.
4. Measure in the field the existing traffic noise levels during periods when LOS "D" traffic volumes exist. Use the measured noise levels to validate the TNM model by showing a difference of 3 dBA or less between the two. If necessary, make appropriate adjustments to the base TNM computer model to reflect the existing conditions as well as possible.
5. Use the calibrated TNM computer model to compute and plot the existing and future 66 dBA sound contours.
6. In areas where eligible receptors exist and the noise levels are or would be expected to be higher than the 66 dBA levels, determine the locations (i.e., usually at the right-of-way limits or just off the edge of shoulder) and heights (up to a maximum of 20 feet) of required walls.
7. Compute the expected reductions in dBA levels for each wall. The reduction must be at least 7 dBA for 67% of first-row receptors and 5dBA for 67% of first-row impacted receptors to justify the construction of a wall. One barrier analysis are included in this scope of work.
8. Compute the expected wall square footage, and compare these estimated areas to the allowed square footage per benefitted receptor. Square footage greater than 1300 Sq. Ft. per benefitted eligible receptor cannot generally be justified according to MoDOT criteria.

9. Prepare summary tables to list the costs and benefits of the potential walls, and identify which walls are eligible for funding, according to MoDOT criteria.
10. Prepare and submit a report which summarizes the findings and noise contours.
11. Revise the study report per comments received from the property owners, City and MoDOT, and submit the final report to MoDOT for review/approval.

Water Quality

Engineer will coordinate with the City, Unity Village, and MDNR on protecting the Unity Village drinking water supply. We will assess the potential for any water quality impacts, including potential contamination of groundwater aquifers or surface waters and document measures to be incorporated to minimize adverse water quality effects. Disturbance of land equal to or greater than one acre will require a National Pollutant Discharge Elimination System (NPDES) permit at the time of construction.

Hazardous Materials

Engineer will conduct a review of MDC's hazardous materials sites and complete a site review documenting potentially hazardous materials sites that could affect construction of the project within the standard ASTM guideline parameters.

1.11 Conceptual Design (10% Submittal)

1.11.1 Traffic Engineering, Modeling, and Trip Generation

The engineer will generate future year traffic volumes, analyze existing and proposed conditions, and assess multiple access management options. The following tasks will be completed to support the development of a preferred option to carry into development of final construction plans.

- The engineer will perform field observations of existing delay within the study area to validate base models
- The engineer will develop traffic volumes for multiple scenarios to be used for analysis from the raw data collected in **Item 1.3**

- Engineer will develop 2019 design traffic volumes for the existing configuration
- Engineer will study background growth trends in area and project base 2030 (interim) and 2040 (ultimate) forecasts
- Engineer will perform Trip Generation for known developments within the study area
 - Conduct Stakeholder Meeting to determine the location/size of the proposed developments within Unity Village and other locations
 - Review Lee's Summit Thoroughfare Plan and prior studies
 - Develop assumptions methodology for stakeholder review
 - Perform trip generation for all study area developments assuming a base driveway configuration
 - Add trip generation to the 2030 (interim) and 2040 (ultimate) base volumes to produce 2030/2040 design volumes
- The Engineer will use the 2030/2040 design volumes and re-route traffic for up to 3 access management scenarios that assume median openings with some driveways having restricted movements. Options to relocate Main Street will be included.
- The engineer will perform capacity analysis for the existing and proposed configurations. The analysis includes:
 - Multi-Modal Level of Service Analysis for three proposed cross-sections of Colbern Road using Complete Streets LOS software
 - Shared-path Level of Service/Suitability analysis
 - Intersection Level of Service analysis using Synchro/SimTraffic software for the following scenarios
 - 2019 Existing Configuration (AM/PM)
 - 2030 Existing Configuration (AM/PM)
 - 2040 Existing Configuration (AM/PM)
 - 2030 Build Configuration (AM/PM) – up to 3 scenarios
 - 2040 Build Configuration (AM/PM) – up to 3 scenarios
 - Supplemental Roundabout Analysis using Sidra (2030/2040 AM/PM)
 - The engineer will summarize all preliminary findings in a meeting with City staff before finalizing any recommendation
- The engineer will produce a selected alternative which includes access management features, bicycle accommodations, traffic signal modifications, future signal locations, roundabout configuration updates, and turn lane needs/storage lengths

- The engineer will produce sections for draft report. After comments from City, the engineer will update all report elements for the final report. The report will include sections documenting the operational performance and safety impacts (via crash modification factors from the HSM) of various alternatives and support of selected alternative.

1.11.2 The conceptual roadway design phase will include development alternative typical sections. The following four typical sections will be developed and evaluated:

- Narrow median west of bridge
- Wide median west of bridge
- Narrow median east of bridge
- Wide median east of bridge

For the new bridge the following typical sections will be developed and evaluated:

- Widen existing bridge
- New Bridge
- Two bridges (one eastbound and one westbound)

For the evaluation the Garver Team will develop pro's and con's based on the following criteria.

- Traffic Operation and Safety Impacts (reported in 1.11.1)
- Utility Impacts
- R/W Impacts
- Long term maintenance
- UPRR Constraints/Procedures
- Cost

Results will be summarized and documented in tabular format.

Conceptual Bridge Plans will be submitted to the UPRR for review.

1.12 Preliminary Design (50% Submittal)

1.12.1 The preliminary design phase submittal will include:

- Title Sheet,
- General Notes and Legend,

- Survey Control and Layout Sheet
- Typical sections,
- Roadway plan & profile sheets showing:
 - Existing topographical data,
 - New horizontal and vertical alignments,
 - Curb and gutter,
 - Enclosed drainage improvements,
 - Sidewalks and trails/paths,
 - Proposed water line, gravity sewer, and sewer force main (if needed),
 - MSE walls (if needed),
 - Existing utilities,
 - Proposed right of way and easements,
- Roundabout Plans
 - Roundabout calculations (speed profiles per FHWA Roundabout Design Guide and City of Lee's Summit Design and Construction Manual Section 5200)
- Drainage area map sheet,
- Driveway Profiles
- Concept MOT and staging plans,
- Pavement marking plans,
- Preliminary lighting layout,
- Cross road culvert sections,
- Cross sections,
- Preliminary quantities,
- Opinion of probable construction cost.

Any City and MoDOT provided review comments will be reviewed and addressed and revised documents will be submitted as per the project schedule. Review comment responses will be documented and a copy will be submitted with the revised plans.

This preliminary design submittal will be for the purpose of setting the horizontal alignment and vertical profile, coordinating the proposed improvements and right of way/easements with the City, and developing an order of magnitude cost estimate for the project. Any City requested changes to the horizontal or vertical alignment after approved preliminary plans may require a scope amendment and a supplemental agreement. Final design will begin upon City notification of preliminary design approval.

Utilize City Design Standards and supplement with MoDOT Design Standards as needed. Design criteria as specified in the City Design Authorization Memo will be utilized as applicable with exceptions being documented and approved by the City prior to implementation.

1.12.2 Water Main Extension and Gravity Sewer Design

- Water and sewer plan & profile sheets drawn at 1"=20', showing:
 - Existing topographical data,
 - Horizontal and vertical alignments of water and sewer relocations where necessary due to conflict or depth, to include the following:
 - water line along Colbern Road from northbound on-ramp of Blue Parkway east approximately 2,000 feet,
 - water line from roughly road station 43+00 to road station 49+00,
 - gravity sewer relocation near the Colbern Road bridge
 - Horizontal and vertical alignments of water line extension from roughly road station 31+00 to road station 84+00,
 - Crossings with proposed or existing drainage structures and utilities,
 - Proposed permanent utility easements,
- Preliminary quantities and opinion of probable construction cost.

1.12.3 Hydraulics and Hydrology

Garver will provide Hydrology and Hydraulics services for a proposed bridge over Colbern Road at Little Cedar Creek.

- The project limits for the analysis will extend approximately 1,000 feet upstream and downstream of the centerline of Colbern Road over the creek.
- Garver will develop discharges for the portion of the creek to be studied. Flows will be developed using the HEC-HMS software to determine the existing watershed and fully urbanized watershed condition discharges for the 10-, 25-, 50, 100-, and 500-year storms. If possible, Garver will also attempt to obtain the Flood Insurance Rate Study hydrologic models for Cedar Creek that were used in the published FEMA study. Garver will compare each of the models and work with the City to choose the most appropriate creek discharges to use to design the proposed bridge.
- Garver will develop a hydraulic model of the existing portion of the tributary to be analyzed using the HEC-RAS software. A hydraulic model will be developed with both existing and fully-urbanized watershed discharges. The models to be created for hydraulic analysis will be an existing bridge and a proposed bridge. Up to two proposed bridges will be analyzed. Garver will attempt to obtain the FEMA hydraulic models used in the FEMA study of the creek. These models will be used to compare results between the proposed bridge and current FEMA conditions.

- Garver will work with the project surveyors to obtain surveyed cross sections of the creek in the study area. The cross section survey effort is described in the survey section of this scope of services.
- Since the current floodplain of the creek is shown as a Zone AE floodplain, a Floodway analysis will be prepared for this scope of services.
- Garver will prepare a drainage report including the following:
 - description of the existing floodplain hydraulic condition;
 - Plots of relevant cross sections and floodplain limits,
 - Tables showing existing and proposed condition hydraulic results such as water surface elevations, average velocities and velocity distribution and other hydraulic parameters;
 - Plots of the floodplain and Floodway boundary;

Submit drainage report to City for review.

1.12.4 Preliminary Bridge Design

The preliminary design phase submittal will include:

- Sounding Request,
- TS&L Drawings,
- Bridge Memorandum,
- Design Layout,
- Preliminary quantities,
- Engineer's opinion of probable construction cost.

For preliminary bridge design, the Engineer will develop a bridge memo and Type, Size, and Location (TS&L) documents for the approved bridge configuration. Preliminary Plan documents will be provided to City for review. Submittal documents will be provided to UPRR for review.

Superstructure and Substructure Design for the two span bridge (135'-135') will be performed in accordance with MoDOT EPG design criteria.

1.12.5 Preliminary Landscape Design

For preliminary corridor landscape design, the Engineer will develop preliminary landscape plans, to include the following:

- Develop plant palette for corridor plant materials
- Preliminary turf restoration plan for all areas disturbed by construction activities
- Concept planting plan with low groundcovers and/or shrubs in strategic locations agreed upon with the City. New trees will be

located in areas outside of rights-of way where existing stands are disturbed by construction activities. No trees will be located within rights-of-way, per City.

- Development of preliminary location and design details for relocation of existing Unity Village limestone columns, limestone walls, and freestanding, precast signage, as necessary.

1.12.6 Preliminary Lighting Layout

Engineer will perform a lighting photometric study to evaluate 1 style of light fixture placed in the raised median, if applicable, or roadside depending on selected typical section for the entire project extents. Lights on the bridge will be anticipate to be mounted outboard.

Lighting design will be performed using the Visual lighting software. Lighting design will conform with the City of Lee's Summit Design Criteria Section 5800 - Street Lighting, City of Lee's Summit Standard Specifications Section 2800 - Street Lighting, APWA KCMO Section 2800 – Street Lights, MoDOT Engineering Policy Guide Category 901 – Lighting, and Illuminating Engineering Society recommendations.

The electrical engineer will conduct a site visit during the preliminary phase, as well as attend 1 other on-site meeting during this phase.

The Engineer will deliver one lighting layout exhibits and an associated opinion of probable construction cost for each under this phase. Additionally, the Engineer will provide a high-level opinion of probable construction cost during the conceptual phase.

1.12.7 Preliminary Airport/FAA Submittals

The Engineer will coordinate the request for land release with the Federal Aviation Administration (FAA) for the parcel of land on the south-east quadrant of the intersection of Colbern Road and Douglas Street which is owned by the Lee's Summit Airport and was acquired through an FAA grant. Included in the request will be a metes and-bounds survey of the acquisition area and a fair market value appraisal to be completed by the City of Lee's Summit appraiser.

The Engineer will submit studies and exhibits for all equipment to be used during construction of the project through the FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) website. In addition, Garver will submit OE/AAA studies for permanent vertical infrastructure that will be constructed with this project as required by the FAA.

1.12.8 Preliminary Sustainability Assessment (Envision Checklist/Scorecard)

Engineer will perform a preliminary sustainability assessment using the ENVISION Checklist/Scorecard. Completed Checklist/Scorecard will be presented to City staff for discussion and the final copy will be submitted to City for record.

1.13 Right of Way Plans (60% Submittal)

1.13.1 The MoDOT and City approved preliminary plans will be updated for the Right of Way Plan submittal to MoDOT. Items needed to be updated or added:

- Update Title Sheet
- Add a summary of takings and remainders sheet
- Addition of takings/remainders to parcels on the plan sheets

1.14 Final Design (PS&E Submittal)

1.14.1 Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included:

- Finalize title sheet,
- Finalize typical section sheets,
- Update approved R/W plan and profile sheets into final construction roadway plan and profile sheets,
- Finalize MSE retaining wall plans and details (if needed),
- Develop concrete jointing details,
- Finalize storm sewer design and plan and profile sheets,
- Develop drop inlet special details (if needed),
- Develop erosion control plans and details,
- Finalize waterline plans and details,
- Finalize gravity sewer plans and details
- Finalize force main plans and details (if needed),
- Finalize MOT and staging plans,
- Finalize culvert sections,
- Finalize pavement marking plans,
- Develop signing plans,
- Finalize lighting plans and details,
- Develop traffic signal modification plans and details
- Finalize cross sections,
- Develop Colbern Road Bid Manual,
- Develop Colbern Road Construction Project Manual,
- Finalize Engineers opinion of probable construction cost.

Engineer will develop the Bid Manual and Construction Project Manual as per the MoDOT LPA Manual Section 136.9.4 Bid Documents. For the sections to be completed by the LPA the Engineer will use the City's standard construction bid documents, modified for this project, and other EJCDC language as applicable.

Any City and MoDOT provided review comments will be reviewed and addressed and revised documents will be submitted as per the project schedule. Review comment responses will be documented and a copy will be submitted with the revised plans.

Prepare, submit, and coordinate approval of a Stormwater Pollution Prevention Plan (SWPPP).

1.14.2 Water Main and Gravity Sewer Final Design and Plans

Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included as part of the PS&E submittal:

- Finalize water and sewer plan & profile sheets (95%)
- Compile applicable City details and develop additional water and sewer details as necessary,
- Coordinate water line support with Engineers bridge engineers,
- Develop water and gravity sewer specifications as necessary to supplement the City's Standard Specifications in the Construction Project Manual,
- Finalize the water and gravity sewer opinion of probable construction cost,
- Submit to Missouri DNR for permitting.

1.14.3 Final Bridge Design/Plans

Prepare complete detailed plans for the construction of one bridge over Little Cedar Creek and UPRR. Upon Lee's Summit and MoDOT approval of the bridge layout, prepare detailed final construction plans for the structure.

Colbern Rd. over Little Cedar Creek and UPRR is anticipated to be a conventional type structure with two structural prestressed concrete spans. The proposed bridge will be skewed to align with UPRR and creek alignment on the existing tangent horizontal alignment with normal cross slopes. The proposed bridge will carry four eleven-foot lanes, two four-foot shoulders, twelve-foot trail on the south and 6-foot sidewalk on the north. Barriers are used between traffic and sidewalk/trail. Median or median barrier will not be required on the bridge. MSE wall will be utilized at the west end of the bridge, and it is anticipated that tall faced

abutments will be used adjacent to the UPRR at the east end of the bridge. A global stability analysis will be performed for all retaining walls.

The consultant will incorporate Aesthetics into the final construction plans for the structure. It is anticipated that the Aesthetics will include form liners and pedestrian rail will be a black fence similar to Pryor Rd. Barrier will contain two three-inch or four-inch diameter conduits for future utilities. A waterline is anticipated on the bridge, located below the deck. Roadway lighting is anticipated on the bridge.

Colbern Rd. at the bridge will be closed during construction. Staged construction will not be required to construct the proposed bridge.

Final design plans will be in accordance with AASHTO LRFD Bridge Design Specifications, Latest Edition with current Interim Revisions, the MoDOT Engineering Policy Guide (EPG), MoDOT standard drawings and specifications, and current Lee's Summit policies/procedures provided to the consultant (if applicable).

Geometry calculations and project cost estimate for bridge will be prepared. Final plans will be provided to Lee's Summit and MoDOT for review. 100% Submittal documents will be provided to the UPRR for review. Standard specifications and details per MoDOT standard format will be provided to Lee's Summit and MoDOT. LRFR load rating summary and AASHTOWARE BrR (formerly VIRTIS) model will be provided to Lee's Summit and MoDOT.

Anticipated sheets include:

- General Plan & Elevation,
- General Notes and Quantities,
- End Bent Details,
- Intermediate Bent Details,
- Prestressed Beam Details,
- Drainage Details, as required,
- Slab Details and Typical Section,
- Expansion Joint Details, as required,
- Barrier Details (Cast-In-Place and Slip-Form option),
- Bridge Approach Slab
- Reinforcement Summary
- Boring Logs,
- As-Built Foundation Data,
- MSE Retaining Wall Plan and Profile,
- MSE Retaining Wall Details.

1.14.4 Final Landscaping Design and Details

Prepare final design and specifications for corridor landscape plan, including:

- Finalize corridor landscape plan, including limits of turf restoration and location of plant materials,
- Finalize planting details and notes,
- Finalize detailing of Unity Village limestone column & wall and stone sign relocations.

1.14.5 Final Lighting Design, Plans, and Details

Engineer will produce final lighting design, construction plans, details, and specification coordination for the design developed in the preliminary phase.

Engineer will coordinate with the local utility as needed for powering of the new roadway lighting.

Lighting design will conform with the City of Lee's Summit Design Criteria Section 5800 - Street Lighting, City of Lee's Summit Standard Specifications Section 2800 - Street Lighting, APWA KCMO Section 2800 – Street Lights, MoDOT Engineering Policy Guide Category 901 – Lighting, and Illuminating Engineering Society recommendations. Electrical design will comply with these standards as well as the National Electric Code, current edition.

The Engineer will deliver a revised opinion of probable construction cost under this phase.

1.14.6 Develop Traffic Signal Modification Plans and Details

Engineer will produce signal modifications design, preliminary and final construction plans, details and specifications for the existing signal at the intersection of Northwest Colbern Road with Northeast Douglas Street.

Engineer will produce preliminary and final construction plans for the removal of the existing signal at the intersection of Northwest Colbern Road with Northwest Blue Parkway, detailing signal equipment and equipment foundation to be removed.

Engineer will coordinate with the local utility as needed for powering of the modified signal.

Engineer will coordinate with City Traffic Engineer for proposed signal pole locations, existing signal timings and interconnect.

Engineer will analyze up to three (3) temporary traffic control scenarios at the intersection of Northwest Colbern Road with Northeast Douglas Street for both morning and evening peak hours. The preferred temporary traffic control scenario will be evaluated with the City Traffic Engineer.

Engineer will produce temporary traffic signal plans at the intersection of Northwest Colbern Road with Northeast Douglas Street. The design may include temporary span wire signals. The engineer will also develop temporary signal timing plans for the preferred alternative to be used during construction.

Signal modification design will conform with the City of Lee's Summit Design Criteria Section 5900 - Traffic Signals, City of Lee's Summit Standard Specifications Section 2900 – Traffic Signals, MoDOT Engineering Policy Guide Category 902 – Lighting, and Manual on Uniform Traffic Control Devices (MUTCD). All signal modification design will comply with these standards as well as with the latest requirements of the National Electrical Code (NEC), National Electrical Safety Code (NESC), standards of the American Society of Testing Materials (ASTM), American Standards Associations (ASA), and National Electrical Manufacturers Association (NEMA).

The traffic engineer will attend one (1) on-site meeting during this project.

The Engineer will deliver an opinion of probable construction cost for preliminary and final plans.

1.14.7 Final Airport/FAA Reviews

Engineer will update the Land Release based on final design and coordinate with the FAA for final approval.

Engineer will update obstruction evaluation studies and exhibits based on the final design for all equipment to be used during construction of the project through the FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) website. In addition, Garver will update OE/AAA studies for permanent vertical infrastructure based on final design as required by the FAA.

1.14.8 Final Sustainability Assessment (Revised Envision Checklist/Scorecard)

Engineer will review the preliminary ENVISION Checklist/Scorecard and update the ENVISION Checklist/Scorecard with any changes made during the final design phase. The updated Checklist/Scorecard will be

presented to City staff for discussion and the final copy will be submitted to City for record.

1.15 Property Acquisition Documents

Provide mapping as required for preparing Right-of-Way/Easement acquisition documents for the City's use in acquiring the property. Documentation will include individual tract maps with a description of temporary and permanent acquisition for each property. The City will provide a standard easement acquisition document or "go-by" example for use by Engineer. The fee for providing property acquisition documentation is based on permanent right of way and temporary construction easements for no more than 20 parcels. Property acquisition document preparation will begin after receiving the City's comments from the Preliminary Design review.

2.0 Bidding/Construction Phase Services

During the bidding and construction phase of the project, Engineer will:

1. Respond to Contractor and City questions as requested by the City during the bid phase of the project.
2. Attend prebid meetings with the City/Contractors as requested by City.
3. Provide as-built drawings as per field mandated changes as approved by the City. Drawings will be provided in both PDF and MicroStation to AutoCAD converted format. Drawings and design files will be delivered on DVD's. Two (2) copies will of the DVD will be submitted.

3.0 Project Deliverables and Permits

The following will be submitted to the City, or others as indicated, by Engineer:

1. One copy of the Geotechnical Report.
2. Three half size (11" x 17") copies and one full size (22" x 34") copy of the Preliminary Design with opinion of probable construction cost.
3. Three half size (11" x 17") copies and one full size (22" x 34") copy of the Right of Way Plans.
4. Three half size (11" x 17") copies and one full size (22" x 34") copy of the Final Design with opinion of probable construction cost.
5. One signed and sealed full size (22" x 34") copy of the revised Final Design, for reproduction, with opinion of probable construction cost.
6. One digital copy of the plans, submitted in items two through five above, in PDF format.

7. One Digital (8.5" x 11") letter size copy of the project bid manual
8. Four hard (8.5" x 11") Letter size copies of the project construction manual and on digital copy in PDF format.
9. One digital copy, in PDF format, of the revised Final Plans to each potentially affected utility company.
10. CADD file submitted to each of the following: the City, utilities and contractor.
11. Two copies of the right-of-way and/or easement acquisition documents.
12. One copy of the traffic study and concept analysis documentation.
13. One copy of the lighting calculations.
14. One copy of the roundabout calculations.
15. One copy of the storm water calculations/drainage report.
16. One copy of the Stormwater Pollution Prevention Plan (SWPPP).
17. One copy of the FAA Request for Land Release
18. One copy of the FAA Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) Studies
19. One copy of the No Rise Certification
20. UPRR Right of Entry Agreement
21. UPRR C & M Agreement
22. Section 404 Nationwide Permit 14
23. Section 401 Water Quality certification (blanket authorization from MDNR in connection with general conditions of Section 404 permit – If met).
24. One copy of the Threatened and Endangered Species Clearance Letter
25. One copy of the Wetland Delineation Report
26. One copy of each Agency Clearance Letter other than listed above
27. One copy of the approved Noise Study
28. One copy of the Cultural Historic Report (if required)
29. One copy of the Archeological Resources Report (if required)
30. One copy of the Bridge Asbestos Report
31. One copy of the Bridge Lead Based Paint Report
32. One copy of the Deminimis Section 4F document (if required)
33. One copy of the Categorical Exclusion 2 (CE2) Clearance Document
34. One copy of the MDNR Construction Permit

4.0 Schedule

Engineer shall begin work under this Agreement upon Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Deliverable Date</u>
Surveys – Design and Property	80 calendar days after NTP
Draft Concept Design and Traffic Study	80 calendar days after NTP
Final Concept Design and Traffic Study	105 calendar days after NTP
Preliminary Design	November 28, 2019
Right of Way Plans	March 5, 2020

Property Acquisition Documents	30 calendar days after City approved Right of Way Plans
Final Design Submittal (90%)	September 17, 2020
Final Design (100%) Submittal	November 12, 2020

These deliverable dates are based on three (3) week City review periods. If review takes longer than three weeks Engineer will update the project schedule/deliverable dates to reflect the change in schedule. Once the NTP date is known, the deliverable dates for preliminary and final design submittals will be identified.

**ARTICLE II
OPTIONAL SERVICES TO BE PROVIDED BY ENGINEER**

Engineer shall provide, if needed by the City, and only upon receipt of written authorization by the Director of Public works, the optional services (“Optional Services”) as outlined as follows:

1.1 General

The following is a list of optional services that can be provided by the Engineer for the Colbern Road from M350 to Douglas Street project.

1.2 Additional Subsurface Utility Engineer (SUE) QLA

Engineer will subcontract with Geotechnology, Inc. to perform subsurface excavation for up to four (4) additional locations to develop accurate location and depth information for underground utilities.

1.3 CLOMR/LOMR

1.3.1 CLOMR

Upon completion of the above tasks, a submittal for a Conditional Letter of Map Revision (CLOMR) will be prepared and submitted to the City for review. The submittal will include a brief report with exhibits, maps, hydraulic models, and draft notification letter (City will prepare and send the notification letters to adjacent property owners) and FEMA MT-2 forms. The CLOMR will include the proposed floodplain modifications determined in the hydraulic modeling task above.

The CLOMR will be submitted to the City. Upon concurrence by the City, the CLOMR will be forwarded to FEMA for final review. Garver

will coordinate with the City, FEMA and the FEMA review consultant to resolve review comments from these entities.

1.3.2 LOMR

Upon completion of the construction of the Colbern Road project and bridge improvements, Garver will prepare a Letter of Map Revision (LOMR) for submittal to the City for review. The submittal will include a brief report with exhibits, maps, hydraulic models, and draft notification letter (City will prepare and send the notification letters to adjacent property owners) and FEMA MT-2 forms. The LOMR will include the proposed floodplain modifications determined from actual project as-built surveys and in the hydraulic modeling task above.

The LOMR will be submitted to the City. Upon concurrence by the City, the LOMR will be forwarded to FEMA for final review. Garver will coordinate with the City, FEMA and the FEMA review consultant to resolve review comments from these entities.

The payment of required FEMA review fees for both the CLOMR and the LOMR will be the responsibility of the City and are not included in Garver's scope of services.

Surveying services to obtain as-built project information are not included in this task.

1.4 Relocate/Modify 12" Forcemain

Preliminary design phase (50%) submittal will include:

- Sanitary Sewer force main profile sheets drawn at 1"=20', showing:
 - Existing topographical data,
 - Horizontal and vertical alignments of sewer force main relocations where necessary due to conflict or depth, east from approximately road station 37+00
 - Proposed permanent utility easements,
- Preliminary quantities and opinion of probable construction cost.

Sanitary Sewer Force Main Final Design

Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included as part of the PS&E submittal:

- Finalize sewer force main plan & profile sheets (95%)
- Compile applicable City details and develop additional force main details as necessary,

- Develop sewer force main specifications as necessary to supplement the City's Standard Specifications in the Construction Project Manual,
- Finalize the sewer force main opinion of probable construction cost,
- Submit to Missouri DNR for permitting.

ARTICLE III SCOPE OF SERVICES TO BE PROVIDED BY CITY

City shall use its best efforts to provide the information to Engineer as described as follows:

- Tenant names
- Available water and sewer locations, size and materials
- Copies of available reports and as-built plans
- Available drainage studies
- Available plats of adjacent properties
- EJCDC Contract Documents, Division One-Special Contract Provisions
- Assist Consultant as needed in gaining right of entry to private property for geotechnical exploration.
- City will coordinate with the construction contractor for the UPRR Construction Submittal.
- City will coordinate the Land Disturbance Permit.
- The City will coordinate with Operation Green Light and provide updated traffic signal timing information (including vehicle and pedestrian crossing intervals) due to the signal modifications anticipated at the NW Colbern Road at NE Douglas Street intersection.

ARTICLE IV PAYMENTS TO THE ENGINEER

For the services performed by Engineer pursuant to this Agreement, and as full compensation therefore, and for all expenditures made and all expenses incurred by Engineer in connection with this Agreement, except as otherwise expressly provided herein, subject to and in conformance with all provisions of this Agreement, City will pay Engineer a maximum fee for Basic Services and Optional Services in the sum of One Million Four Hundred Sixty Two Thousand One Hundred Twenty Seven Dollars (\$1,462,127.00), according to the following provisions:

- A. The cost of all Basic Services covered under Article I shall be billed hourly at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the Basic Services shall be billed as set forth in Exhibit A. The total fees (hourly fees and expenses) for the Basic Services shall not exceed the total sum of One Million Three Hundred Eighty Three Thousand Seven Hundred Twenty Seven Dollars (\$1,383,727.00).

- B. The cost of all Optional Services covered under Article II shall be billed hourly at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the Optional Services shall be billed as set forth in Exhibit A. The total fees (hourly fees and expenses) for the Optional Services shall not exceed the total sum of Seventy Eight Thousand Four Hundred Dollars (\$78,400.00).
- C. If so requested by Engineer, City will make payment monthly for Basic Services and Optional Services that have been satisfactorily completed. The City shall make payment to Engineer within a period not to exceed thirty (30) days from the date an invoice is received by City. All invoices shall contain the following information:
1. Project Name/Task Name/RFP Number/Description of Agreement.
 2. Invoice Number and Date.
 3. Purchase Order Number issued by City.
 4. Itemized statement for the previous month of Labor (including Personnel Description, Title or classification for each person on the Project, Hours Worked, Hourly Rate, and Amount), Itemized Reimbursable Expenses, and Invoice Total.
 5. Description of monthly progress detailing the amount of the services completed to date and projected completion time.
 6. Project Billing Summary containing the Contract or Agreed Maximum Fee Amount, Cumulative Amount Previously Billed, Billing Amount this Invoice, Contract or Agreed Amount Remaining, and Percent of Maximum Fee Billed to Date.

All moneys not paid when due as provided herein shall bear interest at a per annum rate equal to one percent (1%) plus the average *Consumer Price Index for All Urban Consumers (CPI-U)-U.S. City Average* for the time period in which payment is past due; provided, however, that in no event will the amount of interest to be paid by the City exceed 9% per annum.

ARTICLE V COMPLETION TIME

The Basic Services shall be completed in accordance with the following schedule:

- A. The basic services will be ready for construction bidding by December 31, 2020.

The Director of Public Works may, with the mutual consent of the parties, amend the deadlines contained in this Article by written authorization upon a showing of cause for amendment by Engineer.

The Optional Services shall be completed in accordance with the deadlines set by the Director of Public Works and accepted by Engineer at the time said Optional Services are authorized by the Director of Public Works.

ARTICLE VI INSURANCE

- A. **CERTIFICATE OF INSURANCE:** The Engineer shall secure and maintain, throughout the duration of this contract, insurance of such types and in at least the amounts that are required herein. Engineer shall provide certificate(s) of insurance confirming the required protection on an ACORD 25 (or equivalent form). The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate(s). The City reserves the right to require formal copies of any Additional Insured endorsement, as well as the right to require completed copies of all insuring policies applicable to the project. The cost of such insurance shall be included in the Engineer's contract price.

- B. **NOTICE OF CLAIM:** The Engineer shall upon receipt of notice of any claim in connection with this contract promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Engineer shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in excess of \$10,000.00, whether or not such impairment came about as a result of this contract. If the City shall subsequently determine that the Engineer's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the project, the Engineer shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- C. **INDUSTRY RATING:** The City will only accept coverage from an insurance carrier who offers proof that it is licensed to do business in the State of Missouri; carries a Best's policyholder rating of "A" or better; carries at least a Class VII financial rating or is a company mutually agreed upon by the City and the Engineer.

- D. **SUB-CONSULTANT'S INSURANCE:** If any part of the contract is to be sublet, the Engineer shall either:
 - 1. Cover all sub-consultants in the Engineer's liability insurance policy or,
 - 2. Require each sub-consultant not so covered to secure insurance in the minimum amounts required of the Engineer and submit such certificates to the City as outlined herein.

- E. **SELF-INSURED RETENTIONS / DEDUCTIBLES:** Any Engineer that maintains a Self-Insured Retention or Deductible (in excess of \$50,000) must be declared on the

Certificates provided to the City. Such amounts shall be the sole responsibility of the Engineer. The City reserves the right to approve such self-insured retentions/deductibles and may require guarantees from the Engineer for such assumed limits.

F. PROFESSIONAL LIABILITY: Professional Liability, or Errors and Omissions Insurance protection must be carried by Engineer in the minimum amount of \$1,000,000.

G. COMMERCIAL GENERAL LIABILITY POLICY

Limits:

Each occurrence:	\$2,000,000
Personal & Advertising Injury:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Aggregate:	\$2,000,000

Policy must include the following conditions:

- Bodily Injury and Property Damage
- Insured Contract's Contractual Liability
- Explosion, Collapse & Underground (if risk is present)
- Additional Insured: City of Lee's Summit, Missouri

H. AUTOMOBILE LIABILITY: Policy shall protect the Engineer against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:

1. Any Auto
2. or all Owned Autos; Hired Autos; and Non-Owned Autos

Limits:

Each Accident, Combined Single Limits, Bodily Injury and Property Damage:	\$2,000,000
City of Lee's Summit, Missouri does NOT need to be named as additional insured on Automobile Liability	

I. WORKERS' COMPENSATION: This insurance shall protect the Engineer against all claims under applicable state Workers' Compensation laws. The Engineer shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law and contain a waiver of subrogation against the City. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident:	\$100,000 Each Accident
Bodily Injury by Disease:	\$500,000 Policy Limit
Bodily Injury by Disease:	\$100,000 Each Employee

J. GENERAL INSURANCE PROVISIONS

1. The insurance limits outlined above represent the minimum coverage limit and do not infer or place a limit of liability on the Engineer nor has the City assessed the risk that may be applicable to the Engineer.
2. The Engineer's liability program will be primary and any insurance maintained by the City (including self-insurance) will not contribute with the coverage maintained by the Engineer.
3. Coverage limits outlined above may be met by a combination of primary and excess liability insurance programs.
4. Any coverage provided on a Claims Made policy form must contain a 3-year tail option (extended reporting period) or the program must be maintained for 3-years subsequent to completion of the Contract.
5. Any failure on the part of the Engineer with any policy reporting provision shall not affect the coverage provided to the City.
6. When "City" is utilized, this includes its officers, employees and volunteers in respect to their duties for the City.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are agreed to by both parties to this Agreement:

- A. **COVENANT AGAINST CONTINGENT FEES:** Engineer warrants that Engineer has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement, and that Engineer has not paid or agreed to pay any company or person, other than bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- B. **OWNERSHIP OF ENGINEERING DOCUMENTS:** Payment by City to Engineer as aforesaid in Article IV shall vest in City title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material produced by Engineer exclusively for the services performed pursuant to this Agreement up to the time of such payments, and the right to use the same without other or further compensation, provided that any use for another purpose shall be without liability to the Engineer. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk and without liability or exposure to Engineer, and City shall indemnify and hold harmless, to the extent allowed by the Constitution and Laws of the State of Missouri, Engineer from all claims, damages, losses, expenses, including attorneys' fees arising out of or resulting therefrom.

- C. **MODIFICATIONS TO AGREEMENT:** In the event of any changes in the scope of services contained in this Agreement, prior to commencing the services City and Engineer shall enter into a modification of this Agreement describing the changes in the services to be provided by Engineer and City, providing for compensation for any additional services to be performed by Engineer, and providing completion times for said services.
- D. **EMERGENCY CHANGES IN SERVICES:** The Director of Public Works, with the consent of the City Manager, is authorized to execute on behalf of the City modification agreements as provided for in subsection C. above where there is an emergency and the overall compensation authorized in Article IV above, and any supplements or modifications thereto, is not increased. For purposes of this subsection, an “emergency” shall mean those unforeseen circumstances that present an immediate threat to public health, welfare, or safety; or when immediate response is necessary to prevent further damage to public property, machinery, or equipment; or when delay would result in significant financial impacts to the City as determined by the Director of Public Works and the City Manager.

In the event an emergency change in services is authorized by the Director of Public Works and the City Manager pursuant to this provision, the modification agreement shall be submitted to the City Council for ratification at its next available meeting.

- E. **TERMINATION:** In the event of termination by City, if there are any services here under in progress but not completed as of the date of termination, then said Agreement may be extended upon written approval of the City until said services are completed and accepted.
1. Termination for Convenience: The services called for by this Agreement or any supplements thereto may be terminated upon request and for the convenience of City upon thirty (30) days advance written notice. City shall pay Engineer for all services rendered up to the date of termination.
 2. Termination for Cause: This Agreement may also be terminated for cause by City or Engineer. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Engineer for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Engineer up to the date of termination shall be offset by City’s reasonable cost to mitigate or correct the effects of such termination.
 3. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of the Project in a subsequent fiscal year, this Agreement shall be terminated and Engineer shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Engineer but not amortized in the price of the services delivered under this Agreement.

- F. COMPLIANCE WITH LAWS: Engineer shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Engineer shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- G. SUBLETTING ASSIGNMENT OR TRANSFER: Engineer shall not sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written consent of City. The use of subcontractors shall in no way relieve Engineer of his/her primary responsibility for the services. No approval will be necessary for non-professional services such as reproductions, printing, materials, and other services normally performed or provided by others.
- H. CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES: Upon reasonable advance notice and during normal business hours at Engineer's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Engineer and consulting with him/her at such time. Conferences are to be held at the request of City or Engineer.
- I. ENGINEER'S ENDORSEMENT: Engineer shall endorse all plans, specifications, estimates, and engineering data furnished by him/her.
- J. INSPECTION OF DOCUMENTS: Engineer shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Engineer's place of business, by a City representative during the contract period and for three (3) years from the date of final payment for each individual project performed pursuant to this Agreement.
- K. INDEMNIFICATION AND HOLD HARMLESS: Engineer shall indemnify and hold harmless City and its officers, employees, elected officials, and attorneys, each in their official and individual capacities, from and against judgments, damages, losses, expenses, including reasonable attorneys' fees, to the extent caused by the negligent acts, errors, omissions, or willful misconduct of Engineer, or its employees, or subcontractors, in the performance of Engineer's duties under this Agreement, or any supplements or amendments thereto.
- L. LIMITATION OF LIABILITY: In no event will City be liable to Engineer for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Engineer pursuant to Article IV of this Agreement.
- M. PROFESSIONAL RESPONSIBILITY: Engineer will exercise reasonable skill, care, and diligence in the performance of its services in accordance with customarily accepted professional engineering practices. If Engineer fails to meet the foregoing standard, Engineer will perform at its own cost, and without reimbursement from City, the professional engineering services necessary to correct errors and omissions that are caused by Engineer's failure to comply with above standard, and that are reported to Engineer within one year from the completion of Engineer's services for each individual project performed pursuant to this Agreement.

- N. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and any prior agreements, understandings, or other matters, whether oral or written, are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.
- O. CONFLICT: In the event of any conflict, ambiguity, or inconsistency between this Agreement and any other document that may be annexed hereto, the terms of this Agreement shall govern.
- P. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
- Q. OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE: Since Engineer has no control over the cost of labor, materials, or equipment, or over contractor's(s') methods of determining prices, or over competitive bidding or market conditions, the estimate of construction cost and schedule provided for herein is to be made on the basis of Engineer's experience and qualifications and represents Engineer's best judgment as a professional engineer familiar with the construction industry, but Engineer cannot and does not guarantee that the bids or the Project construction cost or schedule will not vary from the opinion of probable construction cost and schedule prepared by Engineer.
- R. TAX EXEMPT: City and its agencies are exempt from State and local sales taxes. Sites of all transactions derived from this Agreement shall be deemed to have been accomplished within the State of Missouri.
- S. SAFETY: In the performance of its services, Engineer shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.
- T. ANTI-DISCRIMINATION CLAUSE: Engineer and its agents, employees, or subcontractors shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
- U. DELAY IN PERFORMANCE: Neither City nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses, or authorizations from any local, State, or Federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Engineer under this Agreement. Engineer and City shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall within a reasonable time of

being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

V. **NO THIRD-PARTY RIGHTS:** The services provided for in this Agreement are for the sole use and benefit of City and Engineer. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Engineer.

W. **NOTICE:** Whenever any notice is required by this Agreement to be made, given or transmitted to any party, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, with notices to City addressed to:

City Engineer
City of Lee's Summit
220 SE Green Street
Lee's Summit, MO 64063

Director of Public Works
City of Lee's Summit
200 SE Green Street
Lee's Summit, MO 64063

and notices to Engineer shall be addressed to:

Garver
Attn: Charles Touzinsky III
7301 West 129th Street, Suite 300
Overland Park, KS 66213

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the notice shall be considered received the third day after the date of postage.

**ARTICLE VIII
ALL OTHER TERMS REMAIN IN EFFECT**

Reserved.

THIS AGREEMENT shall be binding on the parties thereto only after it has been duly executed and approved by City and Engineer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the ___ day of _____, 20__.

CITY OF LEE'S SUMMIT

Stephen A. Arbo, City Manager

ATTEST:

City Clerk, Trisha Fowler Arcuri

APPROVED AS TO FORM:

Nancy K. Yendes, Chief Council of Infrastructure and Planning
Office of City Attorney

ENGINEER:

Garver, LLC
BY: Scott Schuis
TITLE: Vice President

ATTEST:
Chris [Signature]

Project Title: Colbern Road – M350 Hwy to Douglas St

Type: Bridges, Streets & Signals

Activity #56932272

Project Description

This project will widen Colbern Road as a four lane facility with turn lanes, sidewalk, shared-use path, curb, and street lighting from M350 Highway to Douglas Street. Project improvements include bridge work for bicycle/pedestrian accommodations over the UPRR. The shared-use path will be extended to the existing path along Colbern Road east and west of the project limits.

Project Purpose

This project supports improved safety, operations, economic investment within the nearby area, and livability. The project is identified in the Thoroughfare Master Plan. The path is also included in the Greenway Master Plan and Bicycle Transportation Plan. Nearby roadways have been improved, including Lee's Summit Road and Blue Parkway, both of which intersect the project. Interchanges on the east and west end of the project have also been improved. Much of Colbern Road and the surrounding property was annexed by the City from Unity Village within the last decade and improvements to Colbern Road are necessary to accommodate existing traffic demand and any future property development.

Estimated Schedule

Design and Right of Way Acquisition	2019-2021
Construction	2021-2023

Funding Sources

CIP Sales Tax Renewal (2017)	\$10,000,000
Water Tap Fee	\$1,000
Total Lifetime Budget	\$11,000,000

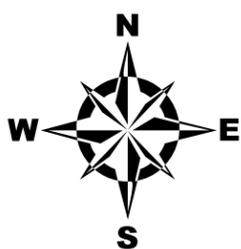
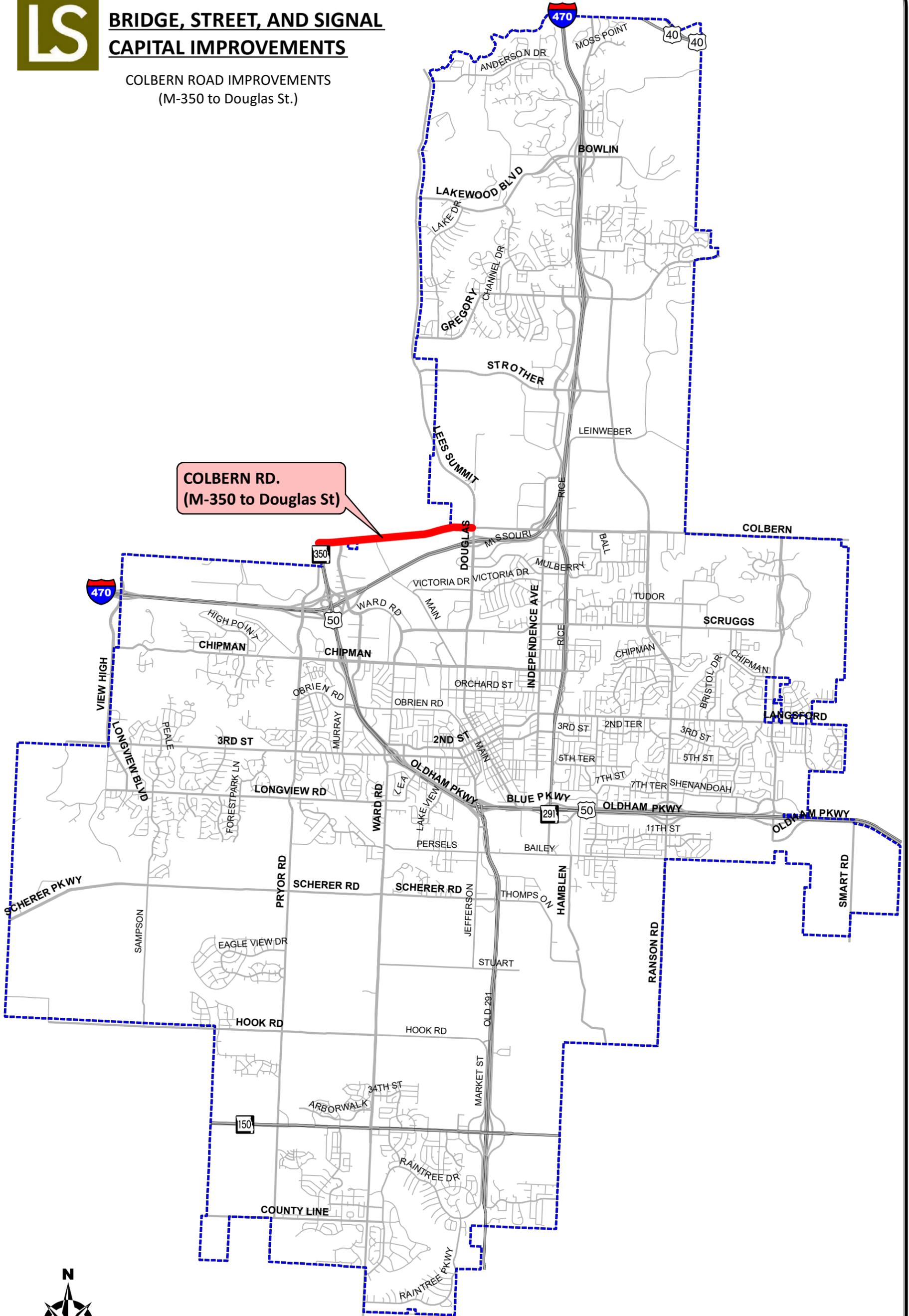
Estimated Annual Operating and Maintenance

\$35,000



BRIDGE, STREET, AND SIGNAL CAPITAL IMPROVEMENTS

COLBERN ROAD IMPROVEMENTS
(M-350 to Douglas St.)



Packet Information

File #: BILL NO. 19-21, **Version:** 1

An Ordinance amending Sections 28-175, 28-176, 28-177, 28-179 and 28-181 of the Code of Ordinances of the City of Lee's Summit governing the License Tax on Building Contractors by deleting outdated or expired content and clarify applicable use of the I.T.E. Trip Generation Manual for traffic generation calculations based on land use categories. (PWC 1/29/19)

Issue/Request:

An Ordinance amending Sections 28-175, 28-176, 28-177, 28-179 and 28-181 of the Code of Ordinances of the City of Lee's Summit governing the License Tax on Building Contractors by deleting outdated or expired content and clarify applicable use of the I.T.E. Trip Generation Manual for traffic generation calculations based on land use categories.

Key Issues:

- o The License Tax was approved by voters in 1997.
- o The License Tax Review committee recommend, by unanimous vote, to update and clarify the ordinance.
- o The License Tax Review committee recommended no changes to the fees at this time.

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of an Ordinance amending Sections 28-175, 28-176, 28-177, 28-179 and 28-181 of the Code of Ordinances of the City of Lee's Summit governing the License Tax on Building Contractors by deleting outdated or expired content and clarify applicable use of the I.T.E. Trip Generation Manual for traffic generation calculations based on land use categories.

SECOND MOTION: I move for adoption of an Ordinance amending Sections 28-175, 28-176, 28-177, 28-179 and 28-181 of the Code of Ordinances of the City of Lee's Summit governing the License Tax on Building Contractors by deleting outdated or expired content and clarify applicable use of the I.T.E. Trip Generation Manual for traffic generation calculations based on land use categories.

Background:

City staff presented the FY2018 update to the License Tax Review Committee on November 29, 2018. This report presents the discussion and recommendations from the Committee. The discussion and data is based on information before the announcement by PRI to sell large parcels of land in Lee's Summit.

Current Status

- The License Tax is a fee for new development or re-development activity that increases traffic
- The City must spend funds received on transportation projects
- The License Tax Fund current balance is \$4.630 million

- Maximum rate approved by voters in 1997 was \$2,116 per residential unit
- Current rates are: \$1,088 per Residential unit;
\$1,000 per trip for Manufacturing/Industrial; \$750 per trip for Commercial
- Several sections of the ordinance adopted in 1997 and 2010 are outdated and confusing
- The ordinance does not clearly define how to calculate fees for some land uses

Projections

- The analysis and presentation occurred before the PRI announcement to release large tracts of land for sale
- Building permit activity reached a peak in 2016-18
- Future years will see declining License Tax revenues due to declining development activity
- \$9.699 million is the projected fund balance in 15 years

Committee Guidance

- Projects funded by the License Tax should be limited to projects identified in the City's Thoroughfare Master Plan (TFMP)
- Projects should exclude site specific projects such as adding a turn lane or signal required by one developer or landowner to complete a project
- Projects that remove impediments to future commercial or industrial development are the preferred use of this fund
- The License Tax funds should continue to manage cash flow so that projects are funded on a pay as you go basis

Actions

- Committee voted unanimously to program into the FY20 CIP NW Main Street to connect from NW Chipman to NW Commerce
- Committee voted unanimously to revise the ordinance to remove outdated sections and to clarify the calculation of fees for all types of development

Impact/Analysis:

There will be no change in fees. The changes in the ordinance are in response to frequent questions and should make the process less confusing.

George Binger III, P.E., Deputy Director of Public Works / City Engineer

City staff recommends approval.

The Public Works Committee voted unanimously 3-0 (Councilmember DeMoro "absent"), to recommend to City Council approval of an Ordinance amending Sections 28-175, 28-176, 28-177, 28-179 and 28-181 of the Code of Ordinances of the City of Lee's Summit governing the License Tax on Building Contractors by deleting outdated or expired content and clarify applicable use of the I.T.E. Trip Generation Manual for traffic generation calculations based on land use categories.

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AN ORDINANCE AMENDING SECTIONS 28-175, 28-176, 28-177, 28-179 AND 28-181 OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT GOVERNING THE LICENSE TAX ON BUILDING CONTRACTORS BY DELETING OUTDATED OR EXPIRED CONTENT AND CLARIFY APPLICABLE USE OF THE I.T.E. TRIP GENERATION MANUAL FOR TRAFFIC GENERATION CALCULATIONS BASED ON LAND USE CATEGORIES.

WHEREAS, Section 28-179 of the City's Code contains the methodology of the calculation of the license tax imposed by the City of Lee's Summit, Missouri ("City") upon building contractors; and,

WHEREAS, the License Tax Review Committee met November 29, 2018 and prepared recommendations regarding the license tax imposed on building contractors (the "License Tax"); and,

WHEREAS, The License Tax Review Committee recommended the following: (1) delete outdated or expired sections to keep the Code current, and (2) calculate the trip generation based on the greater of available and applicable unit of measure in the trip generation manual; and,

WHEREAS, the City wishes to amend sections 28-175, 28-176, 28-177 and 28-181 as recommended by the unanimous vote of the License Tax Committee; and,

WHEREAS, the City Council supports the License Tax Review Committee's recommendations.

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

SECTION 1. That the City Council of the City of Lee's Summit hereby declares its support of the recommendations of the License Tax Review Committee set forth herein.

SECTION 2. That Section 28-178, entitled "Purpose and Intent" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-175. - Purpose and intent.

- A. It is the intent of this division to impose an excise tax to be paid by development that generates new traffic in the City in the form of a license tax on building contractors for the purpose of raising revenue, the proceeds of which shall be used for streets and related improvements throughout the City, including but not limited to the design, construction, reconstruction, repair and maintenance of streets, roads and bridges and related improvements in the City and the acquisition of all necessary rights-of-way therefor, which tax is to be imposed on the basis of the additional vehicle trips generated by any development activity requiring a building permit and resulting in additional vehicle trips as calculated during the afternoon time period (p.m. peak hour) when traffic volume on the adjacent streets is highest.

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- B. It is the intent of this division to establish an administrative review and appeal procedure to ensure that the license tax is assessed and collected in accordance with this division and all applicable laws.
- C. It is not the intent of the City to impose a fee or other exaction pursuant to the general police powers of the City or to regulate construction, growth, or development within the City.
- D. It is the intent that the license tax imposed upon building contractors through this division is a surcharge that is in addition to the annual business license tax paid by building contractors pursuant to Chapter 28, Article II, Division 1 of the Code of Ordinances. It is the intent that the license tax to be paid by a building contractor shall be the annual business license tax imposed pursuant to Chapter 28, Article II, Division 1 of the Code of Ordinances, plus the license tax imposed pursuant to this division.

SECTION 3. That Section 28-176, entitled "Definitions" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-176. - Definitions.

As used in this division:

Area of building means the total floor area of a building measured by square feet.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building contractor means a person that builds a building.

Building permit means the permit required for new construction and additions pursuant to Sections 7-27 and 7-28 of the Lee's Summit City Code of Ordinances, as amended.

City Manager means the City Manager or his designee.

Developer means a person who engages in development.

Development means any man-made change or change of use to improved or unimproved land, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations.

Dwelling unit means one (1) or more rooms constituting all or part of a building and that are arranged, designed, or used exclusively as a single housekeeping unit for one (1) family, and that may include cooking, living, sanitation, and sleeping facilities.

License tax means the tax imposed upon a building contractor pursuant to this division.

License Tax Administrator means the Director of Finance or his designee.

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Non-residential means created or used for any purpose other than residential uses or purposes.

Person means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

P.M. peak hour means the hour between 4:00 p.m. and 6:00 p.m. during the weekdays, Monday through and including Friday, at which the average traffic volume is highest.

Public body means agencies of the Federal or State government, or political subdivisions of the State.

Residential means primarily created or used for a dwelling for one or more persons.

School district means a public school district of the State of Missouri.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner for either residential or non-residential purposes.

Vehicle trip means a single or one-direction vehicle movement with either the origin or the destination (exiting or entering) at the subject building. For trip generation purposes, the total trip ends for a building over a given period of time are the total of all trips entering plus all the trips exiting a site during a designated time period.

SECTION 4. That Section 28-177, entitled "Applicability" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-177. - Applicability.

- A. This division shall be applicable to development requiring a building permit and resulting in additional vehicle trips. Additional vehicle trips shall be calculated during the afternoon time period (p.m. peak hour) when traffic volume on adjacent streets is highest. As used in this section, additional vehicle trips shall mean vehicle trips that add to the total traffic volume on the street network as a result of the new development.
- B. Credits. Any credit granted under this division shall reduce the total license tax owed by a building contractor.
 1. Upon submission of a proper application therefore, the following persons shall be granted a full credit in the amount of the license tax imposed pursuant to this division by the License Tax Administrator:
 - a. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a public body for its governmental use;

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- b. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a school district of the State;
 - c. Rebuilding of an involuntarily damaged or destroyed building, provided that such rebuilding does not result in additional vehicle trips;
 - e. Development requiring a building permit and resulting in additional vehicle trips that is constructed by, or by a building contractor on behalf of, a person that is not subject to any Federal, State or local taxes, including Federal, State and local sales, income, personal property, real property, use, earnings, excise or license taxes. The burden of proof shall be on the building contractor claiming this credit to demonstrate to the License Tax Administrator, by clear and convincing evidence, that the development being constructed by, or by a building contractor on behalf of, a person claiming such credit is exempt from all Federal, State and local taxes as described in this subsection;
2. Upon submission of a proper application therefore, the following persons shall be granted a partial credit from the license tax imposed pursuant to this division by the License Tax Administrator:
 - a. A building contractor that requests a building permit that is required for a change of existing uses within an existing building, except that a change of use from a residential use to a non-residential use shall be granted a credit only for the number of trips that were generated by the building during the p.m. peak time period prior to the change in use;
 - b. A building contractor that requests a building permit that results in the redevelopment of property, provided that a complete application for a building permit to construct a building to replace the existing building is filed within six (6) months following demolition of the existing building, or within a longer period of time as approved by the License Tax Administrator or the City Manager. As used in this Subsection, redevelopment means the demolition of one (1) or more buildings and the subsequent construction of one (1) or more new buildings on the property. The credit shall be granted only for the number of trips that were generated by the previous building during the p.m. peak time period.
 3. In the event that the building is transferred to a person that would not be eligible for a credit hereunder, within a period of one (1) year from the date of the issuance of the building permit, the transferee shall be required to pay the tax imposed by this division.

SECTION 5. That Section 28-179, entitled "Calculation of the License Tax" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-179. - Calculation of the license tax.

A. The City shall calculate the license tax as follows:

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1. The Council shall by ordinance establish the license tax imposed upon a building contractor that shall be calculated by multiplying the trip generation rate by the license tax rate.
2. Trip generation rate. The trip generation rate is a measurement of the number of trips to and from a building for which a building permit application is submitted.
 - a. The License Tax Administrator shall determine the trip generation rate for residential property by multiplying the number of dwelling units by the trip generation rate specified for the specific type of land use category.
 - b. The License Tax Administrator shall determine the trip generation rate for non-residential property by dividing the total floor area of the building, measured in square feet, by one thousand (1,000), and then multiplying that number by the trip generation rate specified for the specific type of land use category. In the absence of building area unit of measure for the proposed use of the development, or the structure on site does not match the proposed primary use of the site, the most applicable measure of trip generation from the *ITE Trip Generation Manual* shall be used.
3. License tax rate. The license tax rate is a measurement of the rate of tax to be paid by building contractors according to land use classifications.

B. Tax rates by land use category.

Land Use Category	Tax Rate
Residential	\$1,088.00 per new trip
Manufacturing/industrial	\$ 1,000.00 per new trip
Commercial	\$ 750.00 per new trip

SECTION 6. That Section 28-181, entitled "Appeals" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-181. - Appeals.

A. *Appeal to the City Manager.*

1. A building contractor or developer (hereinafter "appellant") may appeal the assessment of a license tax to the City Manager by filing a notice of appeal with the City Manager within thirty (30) days following the assessment of the license tax by the License Tax Administrator. If an appellant fails to appeal the assessment of the license tax within thirty (30) days as set forth in this subsection, the assessment of the license tax shall be final and no appeal shall be heard. If the appellant pays the license tax without protest, the appellant waives the right to appeal the assessment of the license tax.

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2. If the license tax is due and payable under the terms of Section 28-178, and an appellant desires to process a building permit application or any certificate of occupancy during the appeal process, the building contractor is required to pay the license tax under protest. If the license tax is paid under protest by the building contractor, an appeal from a final decision of the License Tax Administrator shall not delay processing of the building permit and shall not delay any other permit, license or approval issued by the City.
 3. An appellant may appeal to the City Manager the following decisions:
 - a. The land use classification of the development;
 - b. The number of trips generated by the proposed development;
 - c. Any credit determination pursuant to Section 28-177.B.
 4. Within ten (10) days of receipt of the notice of appeal, or by such date as shall be agreed upon in writing between the appellant and the City, the appellant shall submit to the City Manager copies of all studies, calculations and other documentation appropriate to the determination of the license tax. If a specified basis for the appeal is to challenge the License Tax Administrator's determination of the number of trips generated by the proposed development, the appellant may be required to submit to the City Manager a traffic study prepared by a certified traffic engineer or traffic engineering firm, paid for by the appellant, which sets forth the appellant's proposed trip generation calculations for the development. If the basis for the appeal is a credit determination pursuant to Section 28-177.B., the appellant must submit to the City Manager proof that it is eligible for a credit and the extent of the credit.
 5. The Notice of Appeal filed with the City Manager shall specify the grounds for the review. The City Manager shall consider the appeal. The appellant maintains the burden of proof to demonstrate by clear and convincing evidence that:
 - a. The land use classification of the development is incorrect;
 - b. The number of trips generated by the development, as calculated by the License Tax Administrator, does not reflect the actual number of trips created by the development; or
 - c. The credit determination under Section 28-177.B. is incorrect.
 6. Within thirty (30) days after filing of the notice of appeal, the City Manager shall render a final decision in writing to the appellant regarding assessment, calculation and collection of the license tax.
- B. *Appeal to the Council.***
1. An appeal under this subsection may be heard only if the appellant has received a final decision from the City Manager pursuant to Section 28-181.A.6.
 2. If the license tax is due and payable under the terms of Section 78 and an appellant desires to process a building permit application or any certificate of occupancy after appeal is taken from the final decision of the City Manager, the building contractor is required to pay the license tax under protest. If the license tax is paid under protest by the building contractor, an appeal from a final decision of the City Manager shall not delay processing of the building permit and shall not delay any other permit, license or approval issued by the City.

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3. An appellant may appeal the final decision of the City Manager by filing a Notice of Appeal with the City Clerk within fifteen (15) days following issuance of the final written decision of the City Manager as specified in Section 28-181.A.6. If an appellant fails to appeal the final decision of the City Manager within fifteen (15) days as set forth in this subsection, the assessment of the license tax shall be final and no appeal shall be heard.
 4. An appellant may appeal the following decisions of the City Manager to the Council:
 - a. The land use classification of the development;
 - b. The number of trips generated by the proposed development; or
 - c. Any credit determination pursuant to Section 28-177.B.
 5. Within thirty (30) days of receipt of the Notice of Appeal, or by such date as shall be agreed upon in writing between the appellant and the City, the appellant shall submit to the Public Works Committee copies of all studies, calculations and other documentation appropriate to the determination of the license tax. If a specified basis for the appeal is to challenge the City Manager's determination of the number of trips generated by the proposed development, the appellant may be required to submit to the Public Works Committee a traffic study prepared by a certified traffic engineer or traffic engineering firm, paid for by the appellant, which sets forth the appellant's proposed trip generation calculations for the development. If the basis for the appeal is a credit determination pursuant to Section 28-177.B., the appellant must submit to the Public Works Committee proof that it is eligible for a credit and the extent of the credit.
 6. The Notice of Appeal shall specify the grounds for the appeal, and no argument shall be heard by the Public Works committee that is not set forth in the Notice of Appeal. The Notice of Appeal shall be forwarded to the Public Works Committee along with a recommendation from City staff and the Public Works Committee shall conduct a hearing and submit written recommendations to the Council for consideration by the Council on the appeal, but such recommendations shall be advisory and not be binding upon the Council. The appellant shall receive notice of the hearing by certified mail at least fifteen (15) days prior to the hearing. The burden of proof shall be on the appellant to demonstrate by clear and convincing evidence that:
 - a. The land use classification of the development is incorrect;
 - b. The number of trips generated by the development, as calculated by the License Tax Administrator, does not reflect the actual number of trips created by the development; or
 - c. The credit determination under Section 28-177.B. is incorrect.
 7. Within thirty (30) days after the Council's final decision, the party that submitted the Notice of Appeal shall receive written notice of the decision.
- C. *Calculation of days.* The number of days specified in Section 28-181 shall include weekend days and holidays. The last day of the period shall be included in the computation, unless it is a Saturday, Sunday or a legal holiday, and if it is, the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. A half-holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the Congress of the United States, Missouri legislature or the Council.

BILL NO. 19-21

SECTION 7. 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 _____, 2019.

ATTEST:

Mayor William A. Baird

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this ____ day of _____, 2019.

Mayor William A. Baird

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief of Planning and Infrastructure
Nancy K. Yendes

EXHIBIT A

DIVISION 6. - BUILDING CONTRACTORS

Sec. 28-175. - Purpose and intent.

- A. It is the intent of this division to impose an excise tax to be paid by development that generates new traffic in the City in the form of a license tax on building contractors for the purpose of raising revenue, the proceeds of which shall be used for streets and related improvements throughout the City, including but not limited to the design, construction, reconstruction, repair and maintenance of streets, roads and bridges and related improvements in the City and the acquisition of all necessary rights-of-way therefor, which tax is to be imposed on the basis of the additional vehicle trips generated by any development activity requiring a building permit and resulting in additional vehicle trips as calculated during the afternoon time period (p.m. peak hour) when traffic volume on the adjacent streets is highest.
- B. It is the intent of this division to establish an administrative review and appeal procedure to ensure that the license tax is assessed and collected in accordance with this division and all applicable laws.
- ~~C. It is the intent of this division to authorize the creation of administrative guidelines to further carry out the purposes and intent of this division.~~
- ~~D.~~ It is not the intent of the City to impose a fee or other exaction pursuant to the general police powers of the City or to regulate construction, growth, or development within the City.
- ~~E.~~ It is the intent that the license tax imposed upon building contractors through this division is a surcharge that is in addition to the annual business license tax paid by building contractors pursuant to Chapter 28, Article II, Division 1 of the Code of Ordinances. It is the intent that the license tax to be paid by a building contractor shall be the annual business license tax imposed pursuant to Chapter 28, Article II, Division 1 of the Code of Ordinances, plus the license tax imposed pursuant to this division.

(Ord. No. 4592, § 2, 3-17-1998)

Sec. 28-176. - Definitions.

As used in this division:

Area of building means the total floor area of a building measured by square feet.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building contractor means a person that builds a building.

Building permit means the permit required for new construction and additions pursuant to Sections 7-27 and 7-28 of the Lee's Summit City Code of Ordinances, as amended.

City Manager means the City Manager or his designee.

Developer means a person who engages in development.

Development means any man-made change or change of use to improved or unimproved land, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations.

Dwelling unit means one (1) or more rooms constituting all or part of a building and that are arranged, designed, or used exclusively as a single housekeeping unit for one (1) family, and that may include cooking, living, sanitation, and sleeping facilities.

License tax means the tax imposed upon a building contractor pursuant to this division.

License Tax Administrator means the Director of Finance or his designee.

Non-residential means created or used for any purpose other than residential uses or purposes.

Person means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

P.M. peak hour means the hour between 4:00 p.m. and 6:00 p.m. during the weekdays, Monday through and including Friday, at which the average traffic volume is highest.

Public body means agencies of the Federal or State government, or political subdivisions of the State.

Residential means primarily created or used for a dwelling for one or more persons.

School district means a public school district of the State of Missouri.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner for either residential or non-residential purposes.

Vehicle trip means a single or one-direction vehicle movement with either the origin or the destination (exiting or entering) at the subject building. For trip generation purposes, the total trip ends for a building over a given period of time are the total of all trips entering plus all the trips exiting a site during a designated time period.

(Ord. No. 4592, § 4, 3-17-1998)

Sec. 28-177. - Applicability.

- A. This division shall be applicable to development requiring a building permit and resulting in additional vehicle trips. Additional vehicle trips shall be calculated during the afternoon time period (p.m. peak hour) when traffic volume on adjacent streets is highest. As used in this section, additional vehicle trips shall mean vehicle trips that add to the total traffic volume on the street network as a result of the new development.
- B. Credits. Any credit granted under this division shall reduce the total license tax owed by a building contractor.
 1. Upon submission of a proper application therefore, the following persons shall be granted a full credit in the amount of the license tax imposed pursuant to this division by the License Tax Administrator:
 - a. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a public body for its governmental use;
 - b. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a school district of the State;
 - c. Rebuilding of an involuntarily damaged or destroyed building, provided that such rebuilding does not result in additional vehicle trips;
 - ~~d. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a person that has entered into a development agreement with the City, executed and dated prior to the enactment of Ordinance No. 4592, wherein the development agreement contains:
 - 1) A specific clause that provides that the person shall not be required to pay any excise tax, impact fee, or a special assessment imposed by the City after the date of such agreement; and
 - 2) A commitment by the person entering into the development agreement with the City to construct or reconstruct, or provide a financial contribution for, street improvements in the City, and which financial contributions and/or street improvements enhance the City's street network.~~

e. Development requiring a building permit and resulting in additional vehicle trips that is constructed by, or by a building contractor on behalf of, a person that is not subject to any Federal, State or local taxes, including Federal, State and local sales, income, personal property, real property, use, earnings, excise or license taxes. The burden of proof shall be on the building contractor claiming this credit to demonstrate to the License Tax Administrator, by clear and convincing evidence, that the development being constructed by, or by a building contractor on behalf of, a person claiming such credit is exempt from all Federal, State and local taxes as described in this subsection;

~~f. A building contractor that requests a building permit for which a plat application was approved by the appropriate approving authority on or before December 31, 1997, and for which a complete building permit application, as determined by the Building Official, is submitted on or before March 31, 1999. As used in this subsection, plat application shall mean final plat, preliminary plat, and minor plat. All credits granted pursuant to this subsection shall not affect the amount of funds required under the City's escrow/letter of credit policy for improvements as provided in Article I, Section XXII of Ordinance No. 3719, as amended (Design and Construction Manual);~~

~~g. A building contractor that requests a building permit that is required for utilization of currently underutilized facilities within an existing building. As used in this subsection, underutilized means not fully occupied or being used to full capacity.~~

2. Upon submission of a proper application therefore, the following persons shall be granted a partial credit from the license tax imposed pursuant to this division by the License Tax Administrator:

a. A building contractor that requests a building permit that is required for a change of existing uses within an existing building, except that a change of use from a residential use to a non-residential use shall be granted a credit only for the number of trips that were generated by the building during the p.m. peak time period prior to the change in use;

b. A building contractor that requests a building permit that results in the redevelopment of property, provided that a complete application for a building permit to construct a building to replace the existing building is filed within six (6) months following demolition of the existing building, or within a longer period of time as approved by the License Tax Administrator or the City Manager. As used in this Subsection, redevelopment means the demolition of one (1) or more buildings and the subsequent construction of one (1) or more new buildings on the property. The credit shall be granted only for the number of trips that were generated by the previous building during the p.m. peak time period.

~~c. From April 1, 2010 through April 1, 2011, any building contractor that requests a building permit for construction of residential property shall be given a twenty five (25) percent credit on the license tax imposed by this division for such permit.~~

3. In the event that the building is transferred to a person that would not be eligible for a credit hereunder, within a period of one (1) year from the date of the issuance of the building permit, the transferee shall be required to pay the tax imposed by this division.

(Ord. No. 4592, § 5, 3-17-1998; Ord. No. 6911, § 1, 3-18-2010)

Sec. 28-178. - Assessment and collection of the license tax.

A. Upon submission of a building permit application, the License Tax Administrator shall:

1. Determine the applicability of this division to the development for which the building permit is submitted;

2. If this division is not applicable, the License Tax Administrator shall notify the applicant in writing of its inapplicability, and the City shall process the building permit application in accordance with all applicable City ordinances and regulations;

3. If this division is applicable, the License Tax Administrator shall calculate and assess the license tax in accordance with this division. The applicable license tax shall be calculated pursuant to Section 28-179. Assessment shall be completed within fifteen (15) days of submission of a building permit application, unless the applicant is notified otherwise in writing by the License Tax Administrator.
- B. The imposition of the license tax pursuant to this division does not alter, negate, supersede or otherwise affect any of the requirements of the City, including the City zoning ordinance and subdivision regulations (Unified Development Ordinance), and County, State and Federal legislation or regulations that may be applicable to a development that may impose street network improvements.
 - C. The funds collected pursuant to this division shall be deposited in the account, established by Ordinance No. 4574, of the general fund of the City and used for the purposes specified in Section 28-175.A.
 - D. The license tax shall be due and payable as follows:
 1. *Residential development.* The license tax shall be due and payable prior to the issuance of a building permit for residential development.
 2. *Non-residential development.*
 - a. Shell buildings. For non-residential development structures that are shell buildings constructed for the purpose of speculative development (hereinafter, "shell buildings"), the license tax may be due and payable at the time of issuance of any certificate of occupancy for a tenant finish building permit, upon written request of the applicant to the Building Official. The applicant shall make the written request to the Building Official to exercise the provisions of this section at the time of application for a building permit for the shell building.
 - b. Other than shell buildings. For non-residential development structures other than shell buildings, the license tax shall be due and payable prior to the issuance of any certificate of occupancy, unless the building contractor arranges for payment over a period of years, in accordance with this division.
 - c. Payment over a period of years. For non-residential development structures other than shell buildings, the building contractor may arrange for payment of the license tax over a period of five (5) years, in accordance with the following:
 - 1) Application shall be made in writing to the Building Official prior to the time the license tax is due and payable.
 - 2) Upon submittal of the application, twenty (20) percent of the license tax shall be paid and financial assurance shall be posted, sufficient to assure the payment of the remaining license tax.
 - 3) The anniversary date shall be one year from the date that a complete application was submitted. If the anniversary date falls on a Saturday, Sunday or legal holiday, as defined in Section 28-181.C., the anniversary date shall be considered the first business day after the anniversary date.
 - 4) A payment equal to twenty (20) percent of the license tax, plus interest, shall be due and payable by 12:00 p.m. CST, on each of the first four (4) anniversary dates until the full license tax, plus interest, is paid.
 - 5) Financial assurance shall be posted, sufficient to assure the payment of the remaining license tax by 12:00 p.m. CST, on each of the first three (3) anniversary dates until the full license tax, plus interest is paid.
 - 6) If payment and posting of financial assurance is not made in accordance with the terms of this division, the full amount of the excise tax shall be immediately due and payable.

- 7) Financial assurance shall be in the form of an irrevocable letter of credit, from a bank with sufficient financial capability as determined by the Director of Finance.
 - 8) Interest shall be calculated annually on the outstanding balance of the license tax. The interest rate shall be the rate earned on the City's pooled cash in accordance with the City's investment policy, for the prior fiscal year.
 - 9) There shall be no prepayment penalty.
- E. It shall be unlawful to occupy a building unless the license tax for that building has been paid, or unless payment over a period of years has been arranged.

(Ord. No. 4592, § 6, 3-17-1998; Ord. No. 5036, § 1, 9-21-2000; Ord. No. 6963, § 1, 8-12-2010)

Sec. 28-179. - Calculation of the license tax.

A. The City shall calculate the license tax as follows:

- 1. The Council shall by ordinance establish the license tax imposed upon a building contractor that shall be calculated by multiplying the trip generation rate by the license tax rate.
- 2. Trip generation rate. The trip generation rate is a measurement of the number of trips to and from a building for which a building permit application is submitted.
 - a. The License Tax Administrator shall determine the trip generation rate for residential property by multiplying the number of dwelling units by the trip generation rate specified for the specific type of land use category.
 - b. The License Tax Administrator shall determine the trip generation rate for non-residential property by dividing the total floor area of the building, measured in square feet, by one thousand (1,000), and then multiplying that number by the trip generation rate specified for the specific type of land use category. In the absence of building area unit of measure for the proposed use of the development, or the structure on site does not match the proposed primary use of the site, the most applicable measure of trip generation from the ITE Trip Generation Manual shall be used.
- 3. License tax rate. The license tax rate is a measurement of the rate of tax to be paid by building contractors according to land use classifications.

B. Tax rates by land use category.

Land Use Category	Tax Rate
Residential	\$1,088.00 per new trip
Manufacturing/industrial	\$ 1,000.00 per new trip
Commercial	\$ 750.00 per new trip

(Ord. No. 4592, § 7, 3-17-1998; Ord. No. 6438, § 1, 6-21-2007; Ord. No. 7657, § 1, 6-18-2015; Ord. No. 7899, § 2, 6-23-2016; Ord. No. 8398, § 2, 6-7-2018)

Sec. 28-180. - Administration of division.

- A. The License Tax Administrator shall perform all duties imposed by this division unless otherwise provided.
- B. The City Manager shall have the authority to create administrative guidelines that are necessary to effectuate and carry out the intent and purposes of this division. No administrative guidelines shall take effect until adopted by resolution by the Council.

(Ord. No. 4592, § 8, 3-17-1998)

Sec. 28-181. - Appeals.

A. *Appeal to the City Manager.*

1. A building contractor or developer (hereinafter "appellant") may appeal the assessment of a license tax to the City Manager by filing a notice of appeal with the City Manager within thirty (30) days following the assessment of the license tax by the License Tax Administrator. If an appellant fails to appeal the assessment of the license tax within thirty (30) days as set forth in this subsection, the assessment of the license tax shall be final and no appeal shall be heard. If the appellant pays the license tax without protest, the appellant waives the right to appeal the assessment of the license tax.
2. If the license tax is due and payable under the terms of Section 28-178, and an appellant desires to process a building permit application or any certificate of occupancy during the appeal process, the building contractor is required to pay the license tax under protest. If the license tax is paid under protest by the building contractor, an appeal from a final decision of the License Tax Administrator shall not delay processing of the building permit and shall not delay any other permit, license or approval issued by the City.
3. An appellant may appeal to the City Manager the following decisions:
 - a. The land use classification of the development;
 - b. The number of trips generated by the proposed development;
 - c. Any credit determination pursuant to Section 28-177.B.
4. Within ten (10) days of receipt of the notice of appeal, or by such date as shall be agreed upon in writing between the appellant and the City, the appellant shall submit to the City Manager copies of all studies, calculations and other documentation appropriate to the determination of the license tax. If a specified basis for the appeal is to challenge the License Tax Administrator's determination of the number of trips generated by the proposed development, the appellant may be required to submit to the City Manager a traffic study prepared by a certified traffic engineer or traffic engineering firm, paid for by the appellant, which sets forth the appellant's proposed trip generation calculations for the development. If the basis for the appeal is a credit determination pursuant to Section 28-177.B., the appellant must submit to the City Manager proof that it is eligible for a credit and the extent of the credit.
5. The Notice of Appeal filed with the City Manager shall specify the grounds for the review. The City Manager shall consider the appeal. The appellant maintains the burden of proof to demonstrate by clear and convincing evidence that:
 - a. The land use classification of the development is incorrect;
 - b. The number of trips generated by the development, as calculated by the License Tax Administrator, does not reflect the actual number of trips created by the development; or
 - c. The credit determination under Section 28-177.B. is incorrect.
6. Within thirty (30) days after filing of the notice of appeal, the City Manager shall render a final decision in writing to the appellant regarding assessment, calculation and collection of the license tax.

B. *Appeal to the Council.*

1. An appeal under this subsection may be heard only if the appellant has received a final decision from the City Manager pursuant to Section 28-181.A.6.
2. If the license tax is due and payable under the terms of Section 78 and an appellant desires to process a building permit application or any certificate of occupancy after appeal is taken from the final decision of the City Manager, the building contractor is required to pay the license tax under protest. If the license tax is paid under protest by the building contractor, an appeal from a final decision of the City Manager shall not delay processing of the building permit and shall not delay any other permit, license or approval issued by the City.
3. An appellant may appeal the final decision of the City Manager by filing a Notice of Appeal with the City Clerk within fifteen (15) days following issuance of the final written decision of the City Manager as specified in Section 28-181.A.6. If an appellant fails to appeal the final decision of the City Manager within fifteen (15) days as set forth in this subsection, the assessment of the license tax shall be final and no appeal shall be heard.
4. An appellant may appeal the following decisions of the City Manager to the Council:
 - a. The land use classification of the development;
 - b. The number of trips generated by the proposed development; or
 - c. Any credit determination pursuant to Section 28-177.B.
5. Within thirty (30) days of receipt of the Notice of Appeal, or by such date as shall be agreed upon in writing between the appellant and the City, the appellant shall submit to the Public Works Committee copies of all studies, calculations and other documentation appropriate to the determination of the license tax. If a specified basis for the appeal is to challenge the City Manager's determination of the number of trips generated by the proposed development, the appellant may be required to submit to the Public Works Committee a traffic study prepared by a certified traffic engineer or traffic engineering firm, paid for by the appellant, which sets forth the appellant's proposed trip generation calculations for the development. If the basis for the appeal is a credit determination pursuant to Section 28-177.B., the appellant must submit to the Public Works Committee proof that it is eligible for a credit and the extent of the credit.
6. The Notice of Appeal shall specify the grounds for the appeal, and no argument shall be heard by the Public Works committee that is not set forth in the Notice of Appeal. The Notice of Appeal shall be forwarded to the Public Works Committee along with a recommendation from City staff and the Public Works Committee shall conduct a hearing and submit written recommendations to the Council for consideration by the Council on the appeal, but such recommendations shall be advisory and not be binding upon the Council. The appellant shall receive notice of the hearing by certified mail at least fifteen (15) days prior to the hearing. The burden of proof shall be on the appellant to demonstrate by clear and convincing evidence that:
 - a. The land use classification of the development is incorrect;
 - b. The number of trips generated by the development, as calculated by the License Tax Administrator, does not reflect the actual number of trips created by the development; or
 - c. The credit determination under Section 28-177.B. is incorrect.
7. Within thirty (30) days after the Council's final decision, the party that submitted the Notice of Appeal shall receive written notice of the decision.

- C. *Calculation of days.* The number of days specified in Section 28-181 shall include weekend days and holidays. The last day of the period shall be included in the computation, unless it is a Saturday, Sunday or a legal holiday, and if it is, the period runs until the end of the next day which is not a Saturday, Sunday or a legal

holiday. A half-holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the Congress of the United States, Missouri legislature or the Council.

(Ord. No. 4592, § 9, 3-17-1998; Ord. No. 5036, § 2, 9-21-2000)

Sec. 28-182. - Annual review.

- A. Beginning in the calendar year 1999 and annually thereafter, the City Manager, with the assistance of the Codes Administration, Finance and Public Works Departments, shall prepare a report on the subject of the license tax, which report shall include:
 - 1. Recommendations on amendments, if appropriate, to this division. Any increase in the license tax rates shall become effective on July 1 of the calendar year in which the rates are increased;
 - 2. Proposed changes to the license tax calculation methodology, including the trip generation estimates and the land use categories, if appropriate;
 - 3. Analysis of costs and revenues resulting from the license tax imposed pursuant to this division;
 - 4. The status of the implementation and administration of this division;
 - 5. A summary of the appeals taken from the imposition of the license tax imposed pursuant to this division.
- B. The City Manager, in preparing the annual report, shall, at a minimum, obtain and review the following information:
 - 1. A statement from the Finance Department summarizing the revenue collected through the license tax and disbursed during the preceding year;
 - 2. A statement from the Codes Administration Department summarizing the applications for building permits subject to the license tax approved during the preceding year; and
 - 3. A statement from the Public Works Department regarding all street projects funded with license tax proceeds and initiated, advanced or completed during the preceding year.
- C. License Tax Review Committee.
 - 1. The report shall be presented to the License Tax Review Committee. The Mayor shall appoint, upon the advice and consent of a majority of the Council, the members of the License Tax Review Committee for two-year terms. The License Tax Review Committee shall be composed of five (5) members, including the Chair of the Public Works Committee, two (2) citizens of the City, a local developer, and one City staff appointment. The Chair of the License Tax Review Committee shall be the Chair of the Public Works Committee.
 - 2. The License Tax Review Committee's primary purpose shall be to review and comment on the annual report prepared by the City Manager. The Committee's comments shall be forwarded to the Council.
- D. Based on the annual report, the comments of the License Tax Review Committee, and other factors as the Council deems relevant and appropriate, the Council may amend this division.
- E. The annual review shall be completed by the date of the third regularly scheduled meeting of the Council in the month of March of each year.

(Ord. No. 4592, § 10, 3-17-1998)

Sec. 28-183. - Rules of construction.

The provisions of this division shall be liberally construed to effectively carry out its purposes.

(Ord. No. 4592, § 11, 3-17-1998)

Secs. 28-184—28-204. - Reserved.

Packet Information

File #: BILL NO. 19-22, **Version:** 1

An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$60,000,000 in connection with the Streets of West Pryor Commercial Project; and authorizing certain documents and actions in connection therewith.

Issue/Request:

An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$60,000,000 in connection with the Streets of West Pryor Commercial Project; and authorizing certain documents and actions in connection therewith.

Key Issues:

This ordinance will authorize the issuance of the Chapter 100 bonds in order to allow for the sales tax exemption on the purchase of construction materials for the commercial portions of the Streets of West Pryor project.

Proposed City Council Motion:

I move for second reading anAn Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$60,000,000 in connection with the Streets of West Pryor Commercial Project; and authorizing certain documents and actions in connection therewith.

Background:

The City Council approved the Streets of West Pryor TIF Plan and other financing items on January 8, 2019, including approval of the Master Plan for Industrial Development Projects for the Streets of West Pryor Development. As approved, the Master Plan allows for the Developer to use the City's sales tax exemption certificate for the purchase of construction materials used in the construction of the project improvements, along with a set PILOTs schedule for the two apartment complexes. The TIF Plan contained a project budget which itemizes the project costs and lists the items that are reimbursable from public sources (TIF, CID, TDD) and the Chapter 100 cost savings.

This ordinance allows for the Chapter 100 transaction to implement the Master Plan with respect to the commercial areas of the project.

Impact/Analysis:

This Chapter 100 transaction, along with the other Chapter 100 transactions that will be separately approved by ordinance, allows for approximately \$6.05 million in sales tax savings for the overall project.

Timeline:

Developer is taking steps to start construction of the project this year.

File #: BILL NO. 19-22, **Version:** 1

David Bushek, Chief Counsel of Economic Development & Planning
Mark Dunning, Assistant City Manager
David Martin, Gilmore & Bell

Staff recommends approval of the Ordinance.

BILL NO. 19-22

AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$60,000,000 IN CONNECTION WITH THE STREETS OF WEST PRYOR COMMERCIAL PROJECT; AND AUTHORIZING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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 has previously approved the Master Plan for Industrial Development Projects for the Streets of West Pryor Development (the "Master Plan"); and,

WHEREAS, in furtherance of the Master Plan, a project has been proposed consisting of the construction of various commercial buildings and a portion of the site work related to a senior apartments complex (the "Project") within the Streets of West Pryor development; and,

WHEREAS, the City desires to finance 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 and from no other source, the City has determined that it is appropriate that the Bonds be sold to Streets of West Pryor, LLC, a Missouri limited liability company (the "Developer"), or its assignees, 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 documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

BILL NO. 19-22

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. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), in an aggregate principal amount not to exceed \$60,000,000, 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 Developer 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 3. 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 4. 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 UMB Bank, N.A., as trustee (the "Trustee"), pursuant to which the 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;

BILL NO. 19-22

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Developer, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Developer pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Developer which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and certain payments in lieu of taxes; and

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Developer, pursuant to which the Developer agrees to purchase the Bonds.

SECTION 5. 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 6. 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 (including documentation subordinating the City's interest in the Project and the land underlying the Project to a lender providing financing for the Project, providing for a mortgage of the fee interest in the Project and underlying land and/or assigning any interests in the Project and underlying land to third parties) and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents.

SECTION 7. 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.

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BILL NO. 19-22

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this ____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

**CITY OF LEE'S SUMMIT, MISSOURI,
the City**

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of February 1, 2019

Relating to:

**\$60,000,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Streets of West Pryor - Commercial Project)
Series 2019**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of February 1, 2019 (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 **UMB BANK, 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 an ordinance (the “Ordinance”) on February ___, 2019, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019, in the maximum principal amount of \$60,000,000 (the “Bonds”), for the purpose of improving certain real property in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of commercial facilities 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 Streets of West Pryor, LLC, a Missouri 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 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 (the "Unassigned Rights"), 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.

“Assigned Property” means that portion of the Project Site subject to an Assignment and Assumption Agreement, together with the portion of the Project located thereon.

“Assignment and Assumption Agreement” means an agreement executed by the Company and an assignee, and acknowledged and consented to by the City, in substantially the form attached as **Exhibit D** to 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. The initial Authorized Company Representative with respect to a Partial Assignee shall be as set forth in the respective Assignment and Assumption Agreement.

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019, in the maximum aggregate principal amount of \$60,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Lee’s Summit, Missouri, Bond Fund – Streets of West Pryor – Commercial Project” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds, dated as of February 1, 2019, 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 payment office of the Trustee are required or authorized by law to remain closed.

“Certificate of Occupancy” means a temporary or permanent certificate of occupancy issued by the City to the Company or a Partial Assignee with respect to a portion of the Project.

“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.

“Company” means Streets of West Pryor, LLC, a Missouri limited liability company, and its successors or assigns, and includes each Partial Assignee to the extent of its interest in and obligation with respect to the Bond Purchase Agreement, the Lease and the Bonds.

“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 – Streets of West Pryor – Commercial Project” created in **Section 501** hereof.

“Cumulative Outstanding Principal Amount” means, with respect to the Bonds, 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, and, with respect to any Subseries, the portion of the amount described above that is attributable to such Subseries.

“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 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 February 1, 2019, 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.

“Lender” has the meaning set forth in the Lease.

“Mixed Use Portion” means the portion of the Project Site described as such on **Exhibit A** hereto and on **Exhibit A** to the Lease.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Missouri, 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, including any Subseries, as recorded on the bond registration records maintained by the Trustee.

“Partial Assignee” means any assignee of rights under a partial assignment pursuant to an Assignment and Assumption Agreement.

“Partial Assignment” means the assignment of all rights of the Company under the Lease and the Bond Purchase Agreement to, and the assumption of all obligations of the Company under the Lease and the Bond Purchase Agreement by, a Partial Assignee, with respect to a defined portion of the Mixed Use Portion of the Project Site and a defined portion of the total authorized principal amount of the Bonds, as set forth in an Assignment and Assumption Agreement.

“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.

“Person” or **“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; provided that, with respect to any Subseries, references to “Project” shall mean the applicable Assigned Property.

“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 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 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 – Streets of West Pryor – Commercial Project” 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; provided that, with respect to any Subseries, references to “Project Improvements” shall mean such portion of the Project Improvements as is located on the applicable Assigned Property.

“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.

“Redevelopment Agreement” means the Tax Increment Financing Contract between the City and Streets of West Pryor, LLC, relating to the Streets of West Pryor Tax Increment Financing Plan.

“S&P” means S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC, its successors and assigns, and if such company 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.

“**Senior Apartments Portion**” means the portion of the Project Site described as such on **Exhibit A** hereto and on **Exhibit A** to the Lease.

“**State**” means the State of Missouri.

“**Subseries**” means (1) any subseries of the Bonds issued to a Partial Assignee in accordance with this Indenture, and (2) the Bonds retained by the original Company after any subseries is issued to a Partial Assignee.

“**Subaccount**” or “**Subaccounts**” means the subaccount of the Project Fund and the subaccount of the Bond Fund established with respect to a Subseries.

“**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 UMB Bank, 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.

(f) If any portion of the Project Site has been assigned pursuant to an Assignment and Assumption Agreement, the provisions of this Indenture shall apply individually with respect to each Assigned Property, Subseries, Partial Assignee and related Subaccounts. Each “Event of Default” or “default” hereunder and all remedies relating thereto shall be individual to the particular Assigned Property, Subseries, Partial Assignee and related Subaccounts and shall not create an “Event of Default” or “default” or trigger remedies hereunder with respect to any other Assigned Property, Subseries, Partial Assignee or related Subaccounts. If any portion of the Project Site has become Assigned Property, application of this Indenture to the remainder of the Project Site and the Subseries and Subaccounts with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property and the Subseries and Subaccounts relating to the Assigned Property.

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 (Streets of West Pryor - Commercial Project), Series 2019,” with such appropriate subseries designations as may become necessary in accordance with this Indenture. The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$60,000,000.

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 initially 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 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 (or any Subseries), the Trustee is authorized to make the final or any interim payments of principal on such Bonds or Subseries 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 or Subseries 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. This subsection shall also apply with respect to the Company or any Partial Assignee that is the sole Owner of any Subseries.

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.

(e) Upon deposit with the Trustee of a fully executed Assignment and Assumption Agreement, surrender to the Trustee of the Bonds held by the then-current Owner, and compliance with the other requirements of this Section, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds (1) a new fully registered Subseries, registered in the name of the Partial Assignee designated in the Assignment and Assumption Agreement, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the principal amount of such Bonds to be transferred to the Partial Assignee as stated in the Assignment and Assumption Agreement, of the same maturity and bearing interest at the same rate, and designated as "Subseries [B], [C] or [D]" or as is otherwise sequentially appropriate, and (2) a new fully registered Subseries, registered in the name of the original Company, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the maximum total principal amount of Bonds allowed under **Section 201** of this Indenture, less the maximum principal amount of all Subseries that have been issued on or before such date, of the same maturity and bearing interest at the same rate, and designated as "Subseries A."

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 \$60,000,000 for the purpose of providing funds to pay the costs of the Project and the costs of issuing the Bonds, which Bonds shall be designated “City of Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019.” The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on **December 1, 2021** (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 Lease, and the Bond Purchase Agreement;

(2) Original executed counterparts of this Indenture, the Lease, and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto (with such changes as may be agreed to by the City);

(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 are in proper form and have been duly authorized in accordance with the Constitution and statutes of the State of Missouri, including the Act, and constitute valid and legally binding special 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, 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.

(e) Following the initial issuance and delivery of the Bonds, the Company (or any Partial Assignee) may submit additional requisition certificates in accordance with **Section 4.4** of the Lease, and the Trustee shall, based solely on the amount set forth in the requisition, endorse the Bonds (or applicable Subseries) 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 (or applicable Subseries) shall be the date of receipt of each requisition certificate by the Trustee. 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 or if the requisitions for any Subseries exceed the maximum Cumulative Outstanding Principal Amount of such Subseries.

(f) The Bonds shall bear interest at the rate of 5.00% 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, 2019, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$60,000,000 and further provided that the Bonds shall be paid in full no later than **December 1, 2021**. 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,” including separate entries for each Subseries. 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 or applicable Subseries as “Principal Amount Redeemed,” and shall enter the then Outstanding principal amount of the Bonds (including each applicable Subseries) 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 or any Subseries thereof 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 or applicable Partial Assignee, (1) in whole, if the Company or applicable Partial Assignee 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 or applicable Partial Assignee prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds or Subseries thereof are to be redeemed, (1) Bonds aggregating at least 10% of the maximum aggregate principal amount of the Bonds or applicable Subseries thereof 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 and applicable Subseries 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 and each Subseries are subject to mandatory redemption as follows:

(1) the Bonds are (or if any Subseries have been issued, each Subseries is) subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund, or Subaccount of the Bond Fund, as applicable, 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 (or Assigned Property, as applicable), such Bonds to be redeemed 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, and

(2) the Bonds are (or if any Subseries have been issued, each Subseries is) subject to mandatory redemption, in whole, on the date that is 60 days (or the next Business Day if such date is not a business day) after the issuance of a Certificate of Occupancy by the City for the Project

(or such portion as is located on the Assigned Property relating to such Subseries); provided that if a Certificate of Occupancy is issued in October or November of a given year, the mandatory redemption date shall be December 1 of such year.

Any redemption of Bonds pursuant to this subsection (b) 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 subsection (b)(1), above, 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 or any Subseries 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 (or applicable Partial Assignee's) direction, deliver to the Company or applicable Partial Assignee the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds, or any Subseries, are to be called for redemption as provided in **Section 301(a)** hereof, the Company (or Partial Assignee) 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. Notice with respect any Subseries shall be given by the Company or Partial Assignee, as applicable.

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 – Streets of West Pryor – Commercial Project” (herein called the “Project Fund”);
- (b) “City of Lee’s Summit, Missouri, Costs of Issuance Fund – Streets of West Pryor – Commercial Project” (herein called the “Costs of Issuance Fund”); and
- (c) “City of Lee’s Summit, Missouri, Bond Fund – Streets of West Pryor – Commercial Project” (herein called the “Bond Fund”).

In connection with the delivery of any Subseries under **Section 206(e)** of this Indenture, the Trustee shall create Subaccounts in the Project Fund and the Bond Fund with the same Subseries letter designation as is given to the Subseries of Bonds. Deposits, disbursements, transfers and payments relating to each Subseries shall be accounted for within the Subaccounts relating to such Subseries. Amounts in a Subaccount shall not be applied with respect to any Subseries other than the Subseries for which such Subaccount was created.

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(e)** and **(g)** 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(e)** and **(g)** 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. 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 by the date that is six months 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) If the Bonds have more than one Owner (or, if Subseries have been issued, if any Subseries has more than one Owner), the Trustee shall notify the Company or applicable Partial Assignee 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 such party 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. This subsection shall apply individually with respect to each Subseries.

(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 and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company or Partial Assignee, as applicable, 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 of 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 or Partial Assignee, as applicable, 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 or Partial Assignee, as applicable, and the Owner thereof shall be entitled to look only to the Company or Partial Assignee, as applicable, for payment, and then only to the extent of the amount so repaid, and the Company or Partial Assignee, as applicable, shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 605. Repayment 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 or Partial Assignee, as applicable, 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, or Partial Assignee, as applicable, 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, or Partial Assignee, as applicable, 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 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 (including a Partial Assignee, if applicable) 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 (including a Partial Assignee, if applicable) 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, provided that, if any portion of the Project Site has become Assigned Property, such a default shall be individual to the Assigned Property (or the remainder of the Project Site with respect to which the original Company maintains rights and obligations, as applicable) and the applicable Subseries and shall not constitute an Event of Default with respect to the Bonds of another Subseries; 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 (including a Partial Assignee, if applicable), and the Company (including a Partial Assignee, if applicable) 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 (including a Partial Assignee, if applicable) 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 (including a Partial Assignee, if applicable), 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 (including a Partial Assignee, if applicable) 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 Lease to the City for its own account. 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 if 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(I)** 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) 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(I)** 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)** (but only with respect to Unassigned Rights) 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, 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, any balance remaining in the Bond Fund shall be paid 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 original 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 (including Partial Assignees) of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company (including Partial Assignees) 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 (or Partial Assignee's, as applicable) 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 (including Partial Assignees) 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. The Trustee shall charge a separate set of reasonable fees for each Subseries as if it were a separate series of originally issued bonds. Responsibility for payment of fees relating to each Subseries shall fall to the Partial Assignee with respect to such Subseries.

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, nothing in this Indenture 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; for any of which the consent of the Owners of 100% of the principal amount of the affected Bonds then Outstanding is required.

(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 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, 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 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 or each Subseries is wholly owned by the Company or applicable Partial Assignee. 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 (including Partial Assignees) 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, or emailed, 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:

UMB BANK, N.A.
1010 Grand Blvd, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

(c) To the Company:

Streets of West Pryor, LLC
7200 W. 132nd Street, Suite 150
Overland Park, KS 66207
Attention: Matt Pennington
E-mail: matt@drakekc.com

With a copy to:

Levy Craig, a Professional Corporation
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
Attention: Jeff Bauer
E-mail: jbauer@levycraig.com

Any notices to Partial Assignees in their capacity as a component of the Company shall be given at the addresses set forth in the Assignment and Assumption Agreements relating to such Partial Assignees. Any notice required to be given to the Company with respect to a Subseries, Subaccount or any Assigned Property shall be given to the applicable Partial Assignee.

(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: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

UMB BANK, N.A.,
as Trustee

[SEAL]

By _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

Mixed Use Portion

[**INSERT LEGAL DESCRIPTION**]

Senior Apartments Portion

[**INSERT LEGAL DESCRIPTION**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

A project consisting of the construction of a mixed-use development intended to contain a hotel, retail space, office uses, restaurants, associated infrastructure, and other uses permitted from time to time in accordance with the Redevelopment Agreement. Additionally included are site and preparatory work relating to a senior apartment facility.

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
\$60,000,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(STREETS OF WEST PRYOR - COMMERCIAL PROJECT)
SERIES 2019
[**SUBSERIES ___**]**

Interest Rate

5.00%

Maturity Date

December 1, 2021

Dated Date

February __, 2019

OWNER:

MAXIMUM PRINCIPAL AMOUNT:

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, 2019, 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 the outstanding principal amount of this Bond pursuant to the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is [**the sole bond issued from a series of**] [**a subseries of a series of**] duly authorized Bonds of the City designated “City of Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019,” in the maximum aggregate principal amount of \$60,000,000 (the “Bonds”), issued for the purpose of improving certain real property located 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 commercial facility (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to Streets of West Pryor, LLC, a Missouri limited liability company (together with any permitted assignees, the “Company”), under the terms of a Lease Agreement dated as of February 1, 2019 (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 February 1, 2019 (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 UMB BANK, 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 – Streets of West Pryor – Commercial Project”

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 agent, 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 \$60,000,000.

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 Indenture.

By: _____
Mayor

Registration Date: _____

UMB BANK, 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 _____ agent 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.

PLACE SIGNATURE MEDALLION BELOW:

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Lee's Summit, Missouri
220 SE Green Street
Lee's Summit, Missouri 64063
Attention: City Clerk

UMB BANK, N.A., as Trustee
1010 Grand Blvd, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

Re: \$60,000,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019 of the City of Lee's Summit, Missouri, [**Subseries ____**]

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 February 1, 2019 (the "Indenture"), between the City of Lee's Summit, Missouri (the "City") and UMB Bank, 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 Streets of West Pryor, LLC, a Missouri limited liability company (together with its permitted assignees, the "Company"), under a Lease Agreement dated as of February 1, 2019 (the "Lease"), with the City, 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 or with the express written consent of the City.

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 208(d)** of the Indenture.

Dated: _____, 20__

[PURCHASER OF BONDS]

By: _____
Name: _____
Title: _____

**CITY OF LEE'S SUMMIT, MISSOURI,
As Lessor,**

AND

**STREETS OF WEST PRYOR, LLC,
As Lessee**

LEASE AGREEMENT

Dated as of February 1, 2019

Relating to:

**\$60,000,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Streets of West Pryor - Commercial Project)
Series 2019**

Certain rights of the City of Lee's Summit, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of February 1, 2019, between the City and the Trustee.

LEASE AGREEMENT

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Appendix I: PILOT Payment Schedule

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of February 1, 2019 (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 **STREETS OF WEST PRYOR, LLC**, a limited liability company organized and existing under the laws of the State of Missouri, 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 ____, 2019, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019, in the maximum principal amount of \$60,000,000 (the “Bonds”), for the purpose of improving certain real property in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of commercial facilities 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 UMB Bank, 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. 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.

“Assigned Property” means that portion of the Project Site subject to an Assignment and Assumption Agreement, together with the portion of the Project located thereon.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Company” means Streets of West Pryor, LLC, a Missouri limited liability company, and its successors or assigns, and includes each Partial Assignee to the extent of its interest in and obligation with respect to the Bond Purchase Agreement, the Lease and the Bonds.

“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.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Lender” means any person who from time to time has made a loan to Company which is secured by a Mortgage.

“Mortgage” means any mortgage or deed of trust (together with all related loan documents and security agreements) 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.

“PILOT Payments” or **“PILOTS”** means the payments in lieu of taxes provided for in **Article VI** hereof.

“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 and this Lease, (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) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with any Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease),

and (g) any encumbrance noted in a title report included in the transcript of proceedings relating to the Bonds.

“Permitted Facility” means facilities permitted by the Redevelopment Agreement as described in **Exhibit B** and associated improvements and uses.

“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.

Section 1.4. Application of Lease Terms.

(a) The City acknowledges that the Company intends to assign its rights and obligations under the Lease, Indenture and Bond Purchase Agreement to one or more Partial Assignees pursuant to

one or more Assignment and Assumption Agreements. With respect to the Assigned Property described in such Assignment and Assumption Agreements, the City further acknowledges and agrees that upon the full execution of an Assignment and Assumption Agreement (including acknowledgment and consent thereto by the City), the Company shall be released of all of its obligations under the Lease, Indenture and Bond Purchase Agreement with respect to such Assigned Property (including the portion of the Project located thereon). The City and Company further acknowledge and agree that all references to (i) the term “Company” as used herein shall mean, as applicable, either the Company or a Partial Assignee in the event of a Partial Assignment, (ii) the term “Project Site” as used herein shall mean, as applicable, the Project Site or the Assigned Property in the event of a Partial Assignment, (iii) the term “Project” as used herein shall mean, as applicable, the Project or that portion of the Project located on the Assigned Property in the event of a Partial Assignment, (iv) the term “Bonds” as used herein shall mean, as applicable, the Bonds or any applicable Subseries in the event of a Partial Assignment, (v) the term PILOT Payments shall mean, as applicable, PILOT Payments or that portion of the PILOT Payments that the Partial Assignee agreed to pay under the applicable Assignment and Assumption Agreement, and (vi) the term “Bond Fund” shall mean, as applicable, the Bond Fund and all Subaccounts created for the Subseries relating to the Assigned Property and Assigned Project in the event of a Partial Assignment, all as the context reasonably requires.

(b) Notwithstanding, any provisions to the contrary contained in this Lease, it is the parties intent that the rights and obligations of the Company under this Lease and any Partial Assignee under a Partial Assignment relate only to the portion of the Project and Project Site leased by the Company or Partial Assignee from time to time and that (i) a default by the Company in the performance of its obligations under the Lease, with respect to the portion of the Project and Project Site leased by the Company shall not be deemed to be a default by any Partial Assignee with respect to the Assigned Property and Assigned Project of such Partial Assignee and the City in exercising and enforcing its rights under the Lease will look solely to the Company and the portion of the Project and Project Site leased by the Company at the time of the default in the exercise and enforcement of its rights and (ii) a default by any Partial Assignee in the performance of its obligations under the Partial Assignment with respect to the Assigned Property leased by such Partial Assignee, shall not be deemed to be a default by the Company with respect to the Project and Project Site leased by the Company pursuant to the Lease and shall not be deemed to be a default by any other Partial Assignee with respect to the Assigned Property leased by such other Partial Assignee pursuant to a Partial Assignment, and the City, in exercising and enforcing its rights and obligations under the Lease with respect to the defaulting Partial Assignee shall look solely to the defaulting Partial Assignee and the Assigned Property and Assigned Project of the defaulting Partial Assignee in the exercise and enforcement of its rights.

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 Missouri and is 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 actual 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, 2021**.

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 and this Lease. 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 material accordance with the Plans and Specifications and in a manner materially consistent with the description of the Project Improvements included in **Exhibit B** to this Lease. 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, which shall not be unreasonably conditioned or delayed. 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; 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. Moneys on deposit in a Subaccount of the Project Fund shall be applied with respect to the applicable Subseries.

(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 and any Permitted Encumbrances.

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 is it 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, 2019 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, 2021** (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(e)** and **Section 208(g)** 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.

In furtherance of the foregoing and of **Section 204(e)** and **Section 208(g)** of the Indenture, and notwithstanding any other provision in this Lease, the Indenture or the Bond Purchase Agreement, and provided that the Company is the sole Bondowner, the Company may set-off each Basic Rent payment against the City's obligation to the Company as Bondowner, in lieu of delivery of a payment of Basic Rent on any date on which principal of or interest on the Bonds is payable, without providing notice of such set-off to the Trustee. 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. Notwithstanding anything to the contrary contained herein, the provisions of this **Section 5.1** shall apply with respect to the Company or any Partial Assignee that is the sole Owner of any Subseries.

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 or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) the PILOT Payments required by **Article VI** of this Lease (provided that no invoice need be provided to the Company for the PILOT Payments, which shall be due at such time and in such amount as described in **Article VI**; and

(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; TAX ABATEMENT

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 code of ordinances 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 PILOT Payments due under this Lease to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project 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. 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 Lease shall be 2019. Notwithstanding any other provision of this Lease to the contrary, the last year of such exemption period shall be **2021**. 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 VI**. The City and the Company hereby agree that the tax abatement provided by this Lease shall only apply to property financed with the proceeds of the Bonds and shall not apply to property not financed with proceeds of the Bonds (and specifically shall not apply to personal property relating to the Project other than construction materials).

Section 6.5. Payments In Lieu of Taxes for Project. The Company covenants and agrees to make PILOT Payments to the City on or before each December 1, commencing December 1, 2019, in the amounts, and in the years, set forth in **Appendix I** attached hereto. Any PILOT Payments due under this Lease 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 6.6. Distribution of PILOT Payments. Within 30 days of the date of receipt of each PILOT Payment, the City or designated billing/collection agent shall distribute each PILOT Payment among the taxing jurisdictions.

Section 6.7. 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 6.4** 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 6.8. 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 Lease, 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 1 of each year continuing until December 1 of the year in which this Lease expires or is terminated.

Section 6.9. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Lease 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 6.10. PILOTS Following Cessation of Construction. If for any reason the Company ceases construction of the Project during the term of this Lease, the PILOT Payments set forth in **Section 6.5** 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 construction including the year of cessation of construction. “Ceases construction” or “cessation of construction” for the purpose of this paragraph means the Company completely vacates, abandons and permanently ceases construction for a period of 90 consecutive days during the term of this Lease, 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 Lease has been transferred pursuant to this Lease and the Project construction continues thereafter.

Section 6.11. Sales Tax Exemption. Promptly after the issuance of the Bonds, the City will issue a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into the Project on the Project Site and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City’s furnishing of the exemption certificate.

ARTICLE VII

INSURANCE

Section 7.1. Title Report. Before conveying title to any real property to the City, the Company will provide a report 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 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 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 the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$25,000). 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 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 generally accepted accounting principles.

Section 7.6. Certificate of Compliance. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2019 with a certificate of an Authorized Company Representative certifying compliance with this **Article VII**.

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 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 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 Lender. 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 Mortgage 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 any Lender under a Mortgage (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, and any Lender under a Mortgage (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 any Lender under a Mortgage (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; Application of Article.

(a) 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.

(b) For purposes of application of this **Article IX** with respect to any Assigned Property, references to the Project shall mean the portion thereof located on the Assigned Property, references to the Project Fund and Bond Fund shall mean the Subaccounts created for the Subseries relating to such Assigned Property, references to the Bonds shall mean the applicable Subseries and references to the Company shall mean the Partial Assignee. If any portion of the Project Site has become Assigned Property, application of this **Article IX** to the remainder of the Project Site with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property and the Subaccounts and Subseries relating to the Assigned Property.

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; 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 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 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. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security

interests therein, to any Lender. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 13.1(c)**.

(c) With respect to a future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(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 Lender;

(2) the City shall serve upon each such Lender (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 Lender (at the address, if any, provided to the City);

(3) each Lender 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 Lender 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 each Lender under this **Section 10.4(c)** 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 Lender and permitting such Lender (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 Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (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) such Lenders (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 Mortgage(s).

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such 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.

(e) This Lease is subject to any Mortgage.

(f) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender, without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(g) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the City or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(h) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the City Manager, in his or her discretion, without further approval of the City Council.

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 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 (or Subseries, if this Section is being applied to a Partial Assignee) outstanding and expressly assumes in writing all of the obligations of the Company contained in this Lease, or (B) if not the Owner of 100% in principal amount of the Bonds (or Subseries, if this Section is being applied to a Partial Assignee) outstanding, expressly assumes in writing all the obligations of the Company contained in this Lease; and, further provided, that if not the Owner of 100% in principal amount of the Bonds (or Subseries, if this Section is being applied to a Partial Assignee) 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) \$50,000,000. 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. The Trustee shall, pursuant to **Section 805** of the Indenture, 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 PILOT Payments and other payments due and payable pursuant to **Article VI** hereof 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. Any portion of the Project may be purchased pursuant to this Section by payment of the purchase price described above, provided that such purchase price shall be calculated with respect to the portion of the Bonds attributable to the costs requisitioned for such portion of the Project, the Trustee's fees then due and owing with respect to the Bonds or Subseries to which the purchased portion of the Project relates and the PILOT Payments that are allocable to such portion of the Project. From and after the date of closing of a purchase of a portion of the Project, the PILOT Payments attributable to such portion of the Project (allocated on a land acreage basis) shall no longer be due under this Lease and the City shall provide to the Company or Partial Assignee, as applicable, a revised schedule of PILOT Payments.

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 payments due under **Article VI** of this Lease. 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.

Section 11.5. Application of Article. For purposes of application of this **Article XI** with respect to any Assigned Property, references to the Project shall mean the portion thereof located on the Assigned Property, references to the Project Site shall mean the Assigned Property, references to the Bond Fund shall mean the Subaccount created for the Subseries relating to such Assigned Property, references to the Bonds shall mean the applicable Subseries, references to the Company shall mean the Partial Assignee, references to the PILOT Payments shall mean those PILOT Payments that the Partial Assignee agreed to pay under the applicable Assignment and Assumption Agreement, and references to other fees to be paid under this Lease shall mean such portion of such fees as are attributable to the Assigned Property and the Subseries. If any portion of the Project Site has become Assigned Property, application of this **Article XI** to the remainder of the Project Site with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property and the Subaccounts and Subseries relating to the Assigned Property.

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; 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; 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 Company fails to construct the Project as a Permitted Facility within the term of this Lease.

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.

Section 12.8. Application of Article. If any portion of the Project Site has been assigned pursuant to an Assignment and Assumption Agreement, this **Article XII** and the rights and obligations hereunder shall be applied individually with respect to each Assigned Property, Subseries, and Partial Assignee. Each "Event of Default" or "default" shall be individual to the particular Assigned Property, Subseries, and Partial Assignee and shall not create an "Event of Default" or "default" with respect to any other Assigned Property, Subseries, or Partial Assignee. If any portion of the Project Site has become Assigned Property, application of this Article to the remainder of the Project Site with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property and the Subaccounts and Subseries relating to the Assigned Property.

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, units or space within the Project to be used for purposes commonly associated with the use of a Permitted Facility.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease (excluding subleases as contemplated in the last section of subsection (b), above) 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 \$10,000,000 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 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.

(d) In addition to the assignments permitted in subsections (a), (b), and (c) of this Section, the Company may assign all of its rights and obligations under this Lease and the Bond Purchase Agreement with respect to any portion of the Project Site, pursuant to an Assignment and Assumption Agreement in the form attached to this Lease as **Exhibit D** to this Lease, provided that the City acknowledges and consents to such assignment by executing the signature page provided in **Exhibit D**. In connection with any such assignment, the Company shall deliver a completed copy of the Assignment and Assumption Agreement at least 15 days prior to the proposed effective date of such Assignment and Assumption Agreement. The City shall not unreasonably delay, condition or withhold consent to any such assignment. The City agrees that the City Manager, in his discretion, may execute any such

acknowledgment and consent on behalf of the City and that the City Clerk may attest and affix the seal of the City. Upon the execution of the Assignment and Assumption Agreement, the Company shall be released from further duties, obligations and liabilities under this Lease, the Bond Purchase Agreement and Indenture with respect to the Assigned Property.

(e) The City agrees that any requested consent or signature of the City to any sublease or assignment under this Article, including any related document, may be given by the City Manager, in his or her discretion, without further approval of the City Council.

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. Notices with respect to Assigned Property shall be given to the appropriate Partial Assignee.

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, teletypes, 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, 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.

Section 15.12. 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 December 1 of each year during the term of this Lease, beginning December 1, 2019, and also upon execution of this Lease.

[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: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

Very truly yours,

STREETS OF WEST PRYOR, LLC,
a Missouri limited liability company

By: _____

Name:

Title:

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

Mixed Use Portion

[**INSERT LEGAL DESCRIPTION**]

Senior Apartments Portion

[**INSERT LEGAL DESCRIPTION**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

A project consisting of the construction of a mixed-use development intended to contain a hotel, retail space, office uses, restaurants, associated infrastructure, and other uses permitted from time to time in accordance with the Redevelopment Agreement. Additionally included are site and preparatory work relating to a senior apartment facility.

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

[**SUBSERIES ____**]

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF FEBRUARY 1, 2019, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF FEBRUARY 1, 2019, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI AND STREETS OF WEST PRYOR, 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.

[STREETS OF WEST PRYOR, LLC**]**
[PARTIAL ASSIGNEE**]**

By: _____
Authorized Company Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
--------------------------	--------------------	---------------

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: ASSIGNMENT AND ASSUMPTION AGREEMENT

DATE OF DOCUMENT: _____, 20__

ASSIGNOR: STREETS OF WEST PRYOR, LLC

ASSIGNOR'S MAILING ADDRESS: 7200 W. 132nd Street, Suite 150
Overland Park, KS 66207
Attention: Matt Pennington

ASSIGNEE: [**ASSIGNEE**]

ASSIGNEE'S MAILING ADDRESS: _____

Attention: _____

RETURN DOCUMENTS TO: David Martin
Gilmore & Bell, P.C.
2405 Grand Boulevard, Suite 1100
Kansas City, Missouri 64108

LEGAL DESCRIPTION: See **Exhibit A**

REFERENCE DOCUMENT: Lease Agreement dated as of February 1, 2019, notice of which was given by Memorandum of Lease Agreement, recorded with the Jackson County Recorder of Deeds on February ____, 2019 as Instrument No. _____.

This cover page is attached solely for the purpose of complying with the requirements stated in §§59.310.2; 59.313.2 Revised Missouri Statutes.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of _____, 20__ (the “Assignment”), is between **STREETS OF WEST PRYOR, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Assignor”), and [**Assignee**], a _____ organized and existing under the laws of the State of _____ (the “Assignee”);

RECITALS:

1. The City of Lee’s Summit, Missouri, 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 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”) authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Commercial Project), Series 2019, in the maximum principal amount of \$60,000,000 (the “Bonds”), for the purpose of improving certain real property in the City (the “Project Site”), including the construction and improvement of commercial facilities on the Project Site (the “Project Improvements”).

3. Pursuant to the Ordinance, the City has entered into a (a) Lease Agreement (the “Lease”) with the Assignor under which the City has agreed to lease the Project Site and the Project Improvements to the Assignor in consideration of rental payments by the Assignor that will be sufficient to pay the principal of and interest on the Bonds, and pursuant to which Lease the Assignor has agreed to make certain payments in lieu of taxes, and (b) a Bond Purchase Agreement (the “Bond Purchase Agreement,” together with the Lease, the “Bond Documents”) with the Assignor, in its role as “Company” under the Lease and in its role as “Purchaser” under the Bond Purchase Agreement, under which the Assignor has agreed to purchase the Bonds.

4. The Assignor now desires to assign to the Assignee all rights of the Assignor under the Bond Documents with respect to the real property described on **Exhibit A** hereto (the “Assigned Property”), the portion of the Project to be located on the Assigned Property, and the portion of the Bonds described herein (the “Assigned Bonds”), provided that the Assignee shall assume all duties, liabilities and obligations of the Assignor under the Bond Documents related thereto (which is also a condition of the City’s consent to this Assignment).

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements contained herein, the Assignor and Assignee do represent, covenant and agree as follows:

1. Assignment. The Assignor hereby assigns to the assignee all rights of the Assignor as “Company” and as “Purchaser” under the Bond Documents, to the extent relating to the Assigned Property, the portion of the Project to be located on the Assigned Property, and the Assigned Bonds.

2. Assumption. The Assignee hereby assumes all duties, liabilities and obligations of the Assignor under the Bond Documents, whether incurred as “Company” or as “Purchaser” thereunder, to the extent relating to the Assigned Property, the portion of the Project to be located on the Assigned Property, and the Assigned Bonds.

3. Assigned Bonds. The Assignor hereby assigns \$_____ maximum principal amount of the Bonds held by Assignor to Assignee. Of this amount, \$_____ has been advanced to date pursuant to Section 208 of the Trust Indenture relating to the Bonds (the “Indenture”). The Assigned Bonds transferred to the Assignee shall be registered in the name of the Assignee and designated “Subseries ____”.

4. Notice Address. The notice address of the Assignee, for purposes of notices to be given under the Bond Documents and **Section 1403** of the Indenture, is:

[**Assignee**]

Attention: _____

5. PILOT Payments to be Paid by Assignee. The portion of the PILOT Payments shown on **Appendix I** to the Lease that is allocable to the Assigned Property and that shall be paid by the Assignee in accordance with the Lease is hereby agreed to be as follows:

ASSIGNED PROPERTY PILOT PAYMENT SCHEDULE

<u>Year</u>	<u>Amount</u>
2019	
2020	
2021	

6. Allocation of Fees under the Lease. The Assignee shall pay as its share of Additional Rent under the Lease, the following:

(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, so far as the same relate to the Assigned Bonds, including the annual fees of the Trustee for administration of the Assigned Bonds and the Subaccounts (as defined under the Indenture) relating thereto;

(b) all costs incident to the payment of the principal of and interest on the Assigned Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all the Assigned Bonds;

(c) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Assignee or the Assigned Property or in connection with a failure of the Assignee to perform its obligations under the Lease or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) the PILOT Payments described above in **Section 5** of this Assignment; and

(e) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of the Lease, to the extent allocable to the Assigned Property or the Assigned Bonds (provided that costs common to the entire Project Site shall be apportioned to the Assigned Property by acreage).

7. Severability. If any provision of this Assignment 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.

8. Execution in Counterparts. This Assignment 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.

9. Governing Law. This Assignment shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

10. 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 Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed in their respective corporate names to be attested by their duly authorized officers, all as of the date first above written.

STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, as *Assignor*

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF MISSOURI)
)SS.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **STREETS OF WEST PRYOR, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and said officer acknowledged said instrument to be executed for the purpose therein stated and as the free act and deed of said company.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

The City of Lee's Summit, Missouri hereby acknowledges and consents to the foregoing Assignment and Assumption Agreement (the "Assignment"). The Assignor under the Assignment is hereby released from further duties, liabilities and obligations under the "Bond Documents" described in the Assignment, but only with respect to the Assigned Property.

CITY OF LEE'S SUMMIT, MISSOURI

[SEAL]

By: _____
Name:
Title: City Manager

ATTEST:

By: _____
Name:
Title: City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the **CITY MANAGER** of the **CITY OF LEE'S SUMMIT, MISSOURI**, and that the seal affixed hereto is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

Assignment and Assumption Agreement
Lee's Summit (Streets of West Pryor - Multifamily Apartments Project)
Series 2019

EXHIBIT A

LEGAL DESCRIPTION OF ASSIGNED PROPERTY

APPENDIX I

PILOT PAYMENT SCHEDULE

<u>Year</u>	<u>Amount</u>
2019	\$8,403
2020	8,403
2021	8,403

\$60,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(STREETS OF WEST PRYOR - COMMERCIAL PROJECT)
SERIES 2019

DATED AS OF FEBRUARY 1, 2019

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, Streets of West Pryor, LLC, a Missouri 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 an ordinance passed by the governing body of the City on February ___, 2019 (the "Ordinance") and a Trust Indenture dated as of February 1, 2019 (the "Indenture"), by and between the City and UMB Bank, 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 and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Streets of West Pryor, LLC, a Missouri 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, or the Indenture; 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 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 \$60,000,000.

As used herein, the term "Closing Date" shall mean February ____, 2019, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean \$_____.

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 \$60,000,000; 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, 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.

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 address of the City as provided in the Indenture for notices to the City required thereunder; 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 address of the Company as provided in the Indenture for notices to the Company thereunder.

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 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]

Very truly yours,

STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, as Purchaser and Company

By: _____

Name:

Title:

Accepted and Agreed to:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

Packet Information

File #: BILL NO. 19-23, **Version:** 1

An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$17,000,000 in connection with the Streets of West Pryor Grocery Store Development; and authorizing certain documents and actions in connection therewith.

Issue/Request:

An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$17,000,000 in connection with the Streets of West Pryor Grocery Store Development; and authorizing certain documents and actions in connection therewith.

Key Issues:

This ordinance will authorize the issuance of the Chapter 100 bonds in order to allow for the sales tax exemption on the purchase of construction materials for the grocery store in the Streets of West Pryor project.

Proposed City Council Motion:

I move for second reading of an An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$17,000,000 in connection with the Streets of West Pryor Grocery Store Development; and authorizing certain documents and actions in connection therewith.

Background:

The City Council approved the Streets of West Pryor TIF Plan and other financing items on January 8, 2019, including approval of the Master Plan for Industrial Development Projects for the Streets of West Pryor Development. As approved, the Master Plan allows for the Developer to use the City's sales tax exemption certificate for the purchase of construction materials used in the construction of the project improvements, along with a set PILOTs schedule for the two apartment complexes. The TIF Plan contained a project budget which itemizes the project costs and lists the items that are reimbursable from public sources (TIF, CID, TDD) and the Chapter 100 cost savings.

This ordinance allows for the Chapter 100 transaction to implement the Master Plan with respect to the grocery store in the project.

Impact/Analysis:

This Chapter 100 transaction, along with the other Chapter 100 transactions that will be separately approved by ordinance, allows for approximately \$6.05 million in sales tax savings for the overall project.

Timeline:

Developer is taking steps to start construction of the project this year.

David Bushek, Chief Counsel of Economic Development & Planning

File #: BILL NO. 19-23, **Version:** 1

Mark Dunning, Assistant City Manager
David Martin, Gilmore & Bell

Recommendation: Staff recommends approval of the Ordinance.

BILL NO. 19-23

AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$17,000,000 IN CONNECTION WITH THE STREETS OF WEST PRYOR GROCERY STORE DEVELOPMENT; AND AUTHORIZING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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 has previously approved the Master Plan for Industrial Development Projects for the Streets of West Pryor Development (the "Master Plan"); and,

WHEREAS, in furtherance of the Master Plan, a project has been proposed consisting of the construction of a grocery store (the "Project") within the Streets of West Pryor development; 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 and from no other source, the City has determined that it is appropriate that the Bonds be sold to Streets of West Pryor, LLC, a Missouri limited liability company (the "Developer"), or its assignee, 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 documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

BILL NO. 19-23

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. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Grocery Store Project), in an aggregate principal amount not to exceed \$17,000,000, 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 Developer, or its assignee, 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 3. 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 4. 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 UMB Bank, N.A., as trustee (the "Trustee"), pursuant to which the 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;

BILL NO. 19-23

(b) Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), between the City and the Developer, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Developer pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Developer which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and certain payments in lieu of taxes;

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Developer, pursuant to which the Developer agrees to purchase the Bonds; and

(d) Assignment and Assumption Agreement dated as of the date set forth therein, between the Developer and the company named therein (the “Company”), pursuant to which the Developer assigns to the Company all rights and the Company assumes all obligations of the Developer under the Lease Agreement and the Bond Purchase Agreement, and pursuant to which the City acknowledges and consents to such assignment and assumption.

SECTION 5. 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 6. 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 (including documentation subordinating the City’s interest in the Project and the land underlying the Project to a lender providing financing for the Project, providing for a mortgage of the fee interest in the Project and underlying land and/or assigning any interests in the Project and underlying land to third parties) and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents.

SECTION 7. 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.

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BILL NO. 19-23

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

**CITY OF LEE'S SUMMIT, MISSOURI,
the City**

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of February 1, 2019

Relating to:

**\$17,000,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Streets of West Pryor - Grocery Store Project)
Series 2019**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of February 1, 2019 (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 **UMB BANK, 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 an ordinance (the “Ordinance”) on February ____, 2019, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Grocery Store Project), Series 2019, in the maximum principal amount of \$17,000,000 (the “Bonds”), for the purpose of improving certain real property 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 Streets of West Pryor, LLC, a Missouri 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 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 (the "Unassigned Rights"), 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 (Streets of West Pryor - Grocery Store Project), Series 2019, in the maximum aggregate principal amount of \$17,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Lee’s Summit, Missouri, Bond Fund – Streets of West Pryor – Grocery Store Project” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds, dated as of February 1, 2019, 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 payment office of the Trustee are required or authorized by law to remain closed.

“Certificate of Occupancy” means a temporary or permanent certificate of occupancy issued by the City with respect to a portion of the Project.

“**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.

“**Company**” means Streets of West Pryor, LLC, a Missouri 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 – Streets of West Pryor – Grocery Store Project” 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 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 February 1, 2019, 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.

“Lender” has the meaning set forth in the Lease.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Missouri, 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, provided that the final Payment Date shall be April 1, 2021.

“Person” or **“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 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 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 – Streets of West Pryor – Grocery Store Project” 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 S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC, its successors and assigns, and if such company 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 UMB Bank, 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 (Streets of West Pryor - Grocery Store Project), Series 2019.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$17,000,000.

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 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 \$17,000,000 for the purpose of providing funds to pay the costs of the Project and the costs of issuing the Bonds, which Bonds shall be designated "City of Lee's Summit, Missouri, Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Grocery Store Project), Series 2019." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on **April 1, 2021** (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 Lease, and the Bond Purchase Agreement;

(2) Original executed counterparts of this Indenture, the Lease, and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto (with such changes as may be agreed to by the City);

(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 are in proper form and have been duly authorized in accordance with the Constitution and statutes of the State of Missouri, including the Act, and constitute valid and legally binding special 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, 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.

(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 on 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 receipt of each requisition certificate by the Trustee. 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 5.00% 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, 2019, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$17,000,000 and further provided that the Bonds shall be paid in full no later than **April 1, 2021**. 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 as follows:

(1) 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, such Bonds to be redeemed 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, and

(2) the Bonds are subject to mandatory redemption, in whole, on the date that is 60 days (or the next Business Day if such date is not a business day) after the issuance of a Certificate of Occupancy by the City for the Project; provided that if a Certificate of Occupancy is issued in October or November of a given year, the mandatory redemption date shall be December 1 of such year.

Any redemption of Bonds pursuant to this subsection (b) 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 subsection (b)(1), above, 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 – Streets of West Pryor – Grocery Store Project" (herein called the "Project Fund");
- (b) "City of Lee's Summit, Missouri, Costs of Issuance Fund – Streets of West Pryor – Grocery Store Project" (herein called the "Costs of Issuance Fund"); and
- (c) "City of Lee's Summit, Missouri, Bond Fund – Streets of West Pryor – Grocery Store Project" (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(e)** and **(g)** 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(e)** and **(g)** 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. 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 by the date that is six months 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) If the Company is not the sole Owner of the Bonds, 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 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.

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 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 Lease to the City for its own account. 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 if 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(i)** 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) 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(i)** 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)** (but only with respect to Unassigned Rights) 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, 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, 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(l)** 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 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, nothing in this Indenture 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; for any of which the consent of the Owners of 100% of the principal amount of the affected Bonds then Outstanding is required.

(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 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, 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:

UMB BANK, N.A.
1010 Grand Blvd, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

(c) To the Company:

Streets of West Pryor, LLC
7200 W. 132nd Street, Suite 150
Overland Park, KS 66207
Attention: Matt Pennington
E-mail: matt@drakekc.com

With a copy to:

Levy Craig, a Professional Corporation
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
Attention: Jeff Bauer
E-mail: jbauer@levycraig.com

(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: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

UMB BANK, N.A.,
as Trustee

[SEAL]

By _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[**INSERT LEGAL DESCRIPTION**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

A single story grocery store consisting of approximately 63,000 square feet of commercial building structure. The building structure will be approximately 40 feet in height and consist of reinforced concrete exterior wall panels and a steel roof structure. The exterior wall finishes will include a variety of materials including brick, cast stone, Kalwall system, wood veneer panels, textured concrete surfaces, aluminum storefront and glass. The floor plan will include the provision for specialty service suites within the main building footprint in addition to the grocery-oriented retail business. The development also includes the construction of approximately 300 surface parking stalls on a 7.3 acre site with proper vehicular circulation. The vehicular circulation includes the provision for truck loading and handicap parking. The grounds adjacent to the grocery building including the surface parking will be landscaped with a variety of plant species. In addition the grounds will be provided with pedestrian circulation paths and site lighting integrated with the overall shopping center development. The site development will also include construction of required utilities to serve the grocery structure and proper storm water collection and management system.

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
\$17,000,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(STREETS OF WEST PRYOR - GROCERY STORE PROJECT)
SERIES 2019**

Interest Rate

5.00%

Maturity Date

April 1, 2021

Dated Date

February __, 2019

OWNER:

MAXIMUM PRINCIPAL AMOUNT:

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, 2019, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date (upon which all accrued and unpaid interest shall be due). 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 (Streets of West Pryor - Grocery Store Project), Series 2019,” in the maximum aggregate principal amount of \$17,000,000 (the “Bonds”), to be issued for the purpose of improving certain real property located 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 commercial facility (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to Streets of West Pryor, LLC, a Missouri limited liability company (together with any permitted assignee, the “Company”), under the terms of a Lease Agreement dated as of February 1, 2019 (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 February 1, 2019 (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 UMB BANK, 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 – Streets of West Pryor – Grocery Store Project”

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 agent, 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 \$17,000,000.

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 Indenture.

By: _____
Mayor

Registration Date: _____

UMB BANK, 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 _____ agent 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.

PLACE SIGNATURE MEDALLION BELOW:

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Lee's Summit, Missouri
220 SE Green Street
Lee's Summit, Missouri 64063
Attention: City Clerk

UMB BANK, N.A., as Trustee
1010 Grand Blvd, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

Re: \$17,000,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Grocery Store Project), Series 2019 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 February 1, 2019 (the "Indenture"), between the City of Lee's Summit, Missouri (the "City") and UMB Bank, 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 [**Streets of West Pryor, LLC, a Missouri limited liability company (the "Company"), under a**] [**_____, a _____ (the "Company"), as assignee of rights and obligations under a**] Lease Agreement dated as of February 1, 2019 (the "Lease"), with the City, 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 or with the express written consent of the City.

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 208(d)** of the Indenture.

Dated: _____, 20____

[PURCHASER OF BONDS]

By: _____

Name: _____

Title: _____

**CITY OF LEE'S SUMMIT, MISSOURI,
As Lessor,**

AND

**STREETS OF WEST PRYOR, LLC,
As Lessee**

LEASE AGREEMENT

Dated as of February 1, 2019

Relating to:

**\$17,000,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Streets of West Pryor - Grocery Store Project)
Series 2019**

Certain rights of the City of Lee's Summit, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of February 1, 2019, between the City and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of February 1, 2019 (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 **STREETS OF WEST PRYOR, LLC**, a limited liability company organized and existing under the laws of the State of Missouri, 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 ___, 2019, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Grocery Store Project), Series 2019, in the maximum principal amount of \$17,000,000 (the “Bonds”), for the purpose of improving certain real property 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. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, 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. 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.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Lender” means any person who from time to time has made a loan to Company which is secured by a Mortgage.

“Mortgage” means any mortgage or deed of trust (together with all related loan documents and security agreements) 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.

“PILOT Payments” or **“PILOTS”** means the payments in lieu of taxes provided for in **Article VI** hereof.

“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 and this Lease, (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) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with any Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease), and (g) any encumbrance noted in a title report included in the transcript of proceedings relating to the Bonds.

“Permitted Facility” means a grocery store facility as described in **Exhibit B** and associated improvements and uses.

“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 Missouri and is 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 **April 1, 2021**.

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 and this Lease. 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 and in a manner materially consistent with the description of the Project Improvements included in **Exhibit B** to this Lease. 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; 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 and any Permitted Encumbrances.

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, 2019 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 **April 1, 2021** (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, plus the interest on the Bonds accrued and unpaid on such date. 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(e)** and **Section 208(g)** 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.

In furtherance of the foregoing and of **Section 204(e)** and **Section 208(g)** of the Indenture, and notwithstanding any other provision in this Lease, the Indenture or the Bond Purchase Agreement, and provided that the Company is the sole Bondowner, the Company may set-off each Basic Rent payment against the City's obligation to the Company as Bondowner, in lieu of delivery of a payment of Basic Rent on any date on which principal of or interest on the Bonds is payable, without providing notice of such set-off to the Trustee. 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.

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 or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) the PILOT Payments required by **Article VI** of this Lease (provided that no invoice need be provided to the Company for the PILOT Payments, which shall be due at such time and in such amount as described in **Article VI**; and

(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; TAX ABATEMENT

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 PILOT Payments due under this Lease to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project 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. 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 Lease shall be 2019. Notwithstanding any other provision of this Lease to the contrary, exemption shall end on **April 1, 2021**. 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 VI**. The City and the Company hereby agree that the tax abatement provided by this Lease shall only apply to property financed with the proceeds of the Bonds and shall not apply to property not financed with proceeds of the Bonds (and specifically shall not apply to personal property relating to the Project other than construction materials).

Section 6.5. Payments In Lieu of Taxes for Project. The Company covenants and agrees to make PILOT Payments to the City on or before each December 1, commencing December 1, 2019, in the amounts, and in the years, set forth in **Appendix I** attached hereto (provided that the last such payment shall be made on April 1, 2021). Any PILOT Payments due under this Lease 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 6.6. Distribution of PILOT Payments. Within 30 days of the date of receipt of each PILOT Payment, the City or designated billing/collection agent shall distribute each PILOT Payment among the taxing jurisdictions.

Section 6.7. 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 6.4** 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 6.8. 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 Lease, 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 1 of each year continuing until December 1 of the year in which this Lease expires or is terminated.

Section 6.9. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Lease 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 6.10. PILOTS Following Cessation of Construction. If for any reason the Company ceases construction of the Project during the term of this Lease, the PILOT Payments set forth in **Section 6.5** 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 construction including the year of cessation of construction. "Ceases construction" or "cessation of construction" for the purpose of this paragraph means the Company completely vacates, abandons and permanently ceases construction for a period of 90 consecutive days during the term of this Lease, 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 Lease has been transferred pursuant to this Lease and the Project construction continues thereafter.

Section 6.11. Sales Tax Exemption. Promptly after the issuance of the Bonds, the City will issue a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into the Project on the Project Site and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the exemption certificate.

ARTICLE VII

INSURANCE

Section 7.1. Title Report. Before conveying title to any real property to the City, the Company will provide a report 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 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 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 the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$25,000). 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 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 generally accepted accounting principles.

Section 7.6. Certificate of Compliance. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2019 with a certificate of an Authorized Company Representative certifying compliance with this **Article VII**.

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 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 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 Lender. 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 Mortgage 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 any Lender under a Mortgage (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, and any Lender under a Mortgage (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 any Lender under a Mortgage (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; 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 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 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. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security interests therein, to any Lender. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 13.1(c)**.

(c) With respect to a future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(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 Lender;

(2) the City shall serve upon each such Lender (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 Lender (at the address, if any, provided to the City);

(3) each Lender 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 Lender 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 each Lender under this **Section 10.4(c)** 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 Lender and permitting such Lender (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 Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (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) such Lenders (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 Mortgage(s).

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such 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.

(e) This Lease is subject to any Mortgage.

(f) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender,

without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(g) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the City or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(h) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the City Manager, in his or her discretion, without further approval of the City Council.

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 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, 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, 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) \$50,000,000. 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. The Trustee shall, pursuant to **Section 805** of the Indenture, 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 PILOT Payments and other payments due and payable pursuant to **Article VI** hereof 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 payments due under **Article VI** of this Lease. 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; 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; 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 Company fails to construct the Project as a Permitted Facility within the term of this Lease.

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, units or space within the Project to be used for purposes commonly associated with the use of a Permitted Facility.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease (excluding subleases as contemplated in the last section of subsection (b), above) 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 \$10,000,000 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 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.

(d) The City agrees that any requested consent or signature of the City to any sublease or assignment under this Article, including any related document, may be given by the City Manager, in his or her discretion, without further approval of the City Council.

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, teletypes, 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, 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.**

Section 15.12. 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 December 1 of each year during the term of this Lease, beginning December 1, 2019, and also upon execution of this Lease.

[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: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

Very truly yours,

STREETS OF WEST PRYOR, LLC,
a Missouri limited liability company

By: _____

Name:

Title:

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[**INSERT LEGAL DESCRIPTION**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

A single story grocery store consisting of approximately 63,000 square feet of commercial building structure. The building structure will be approximately 40 feet in height and consist of reinforced concrete exterior wall panels and a steel roof structure. The exterior wall finishes will include a variety of materials including brick, cast stone, Kalwall system, wood veneer panels, textured concrete surfaces, aluminum storefront and glass. The floor plan will include the provision for specialty service suites within the main building footprint in addition to the grocery-oriented retail business. The development also includes the construction of approximately 300 surface parking stalls on a 7.3 acre site with proper vehicular circulation. The vehicular circulation includes the provision for truck loading and handicap parking. The grounds adjacent to the grocery building including the surface parking will be landscaped with a variety of plant species. In addition the grounds will be provided with pedestrian circulation paths and site lighting integrated with the overall shopping center development. The site development will also include construction of required utilities to serve the grocery structure and proper storm water collection and management system.

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF FEBRUARY 1, 2019, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF FEBRUARY 1, 2019, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI AND STREETS OF WEST PRYOR, 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.

STREETS OF WEST PRYOR, LLC

By: _____
Authorized Company Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
--------------------------	--------------------	---------------

APPENDIX I

PILOT PAYMENT SCHEDULE

<u>Year</u>	<u>Amount</u>
2019	\$9,404
2020	9,404
2021	2,350

\$17,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(STREETS OF WEST PRYOR - GROCERY STORE PROJECT)
SERIES 2019

DATED AS OF FEBRUARY 1, 2019

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, Streets of West Pryor, LLC, a Missouri 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 an ordinance passed by the governing body of the City on February ___, 2019 (the "Ordinance") and a Trust Indenture dated as of February 1, 2019 (the "Indenture"), by and between the City and UMB Bank, 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 and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Streets of West Pryor, LLC, a Missouri 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, or the Indenture; 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 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 \$17,000,000.

As used herein, the term "Closing Date" shall mean February ____, 2019, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean \$_____.

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 \$17,000,000; 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, 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.

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 address of the City as provided in the Indenture for notices to the City required thereunder; 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 address of the Company as provided in the Indenture for notices to the Company thereunder.

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 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]

Very truly yours,

STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, as Purchaser and Company

By: _____

Name:

Title:

Accepted and Agreed to:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: ASSIGNMENT AND ASSUMPTION AGREEMENT

DATE OF DOCUMENT: February 1, 2019

ASSIGNOR: STREETS OF WEST PRYOR, LLC

ASSIGNOR'S MAILING ADDRESS: 7200 W. 132nd Street, Suite 150
Overland Park, KS 66207
Attention: Matt Pennington

ASSIGNEE: SUPER MARKET DEVELOPERS, INC.

ASSIGNEE'S MAILING ADDRESS: 5000 Kansas Avenue
Kansas City, KS 66106
Attention: General Counsel

RETURN DOCUMENTS TO: David Martin
Gilmore & Bell, P.C.
2405 Grand Boulevard, Suite 1100
Kansas City, Missouri 64108

LEGAL DESCRIPTION: See **Exhibit A**

REFERENCE DOCUMENT: Lease Agreement dated as of February 1, 2019, notice of which was given by Memorandum of Lease Agreement, recorded with the Jackson County Recorder of Deeds on February __, 2019 as Instrument No. _____.

This cover page is attached solely for the purpose of complying with the requirements stated in §§59.310.2; 59.313.2 Revised Missouri Statutes.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of February 1, 2019 (the “Assignment”), is between **STREETS OF WEST PRYOR, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Assignor”), and **SUPER MARKET DEVELOPERS, INC.**, a corporation organized and existing under the laws of the State of Missouri (the “Assignee”);

RECITALS:

1. The City of Lee’s Summit, Missouri, 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 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”) authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Grocery Store Project), Series 2019, in the maximum principal amount of \$[**Principal Amount**] (the “Bonds”), for the purpose of improving certain real property 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”).

3. Pursuant to the Ordinance, the City has entered into a (a) Lease Agreement (the “Lease”) with the Assignor under which the City has agreed to lease the Project Site and the Project Improvements to the Assignor in consideration of rental payments by the Assignor that will be sufficient to pay the principal of and interest on the Bonds, and pursuant to which Lease the Assignor has agreed to make certain payments in lieu of taxes, and (b) a Bond Purchase Agreement (the “Bond Purchase Agreement,” together with the Lease, the “Bond Documents”) with the Assignor, in its role as “Company” under the Lease and in its role as “Purchaser” under the Bond Purchase Agreement, under which the Assignor has agreed to purchase the Bonds.

4. The Assignor now desires to assign to the Assignee all rights of the Assignor under the Bond Documents, provided that the Assignee shall assume all duties, liabilities and obligations of the Assignor under the Bond Documents (which is also a condition of the City’s consent to this Assignment).

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements contained herein, the Assignor and Assignee do represent, covenant and agree as follows:

1. Assignment. The Assignor hereby assigns to the assignee all rights of the Assignor as “Company” and as “Purchaser” under the Bond Documents.

2. Assumption. The Assignee hereby assumes all duties, liabilities and obligations of the Assignor under the Bond Documents, whether incurred as “Company” or as “Purchaser” thereunder.

3. Bond Issuance. The Bond shall be initially purchased by and registered in the name of the Assignee.

4. Notice Address. The notice address of the Assignee, for purposes of notices to be given to the Company under **Section 1403** of the Trust Indenture relating to the Bonds, is:

Super Market Developers, Inc.
5000 Kansas Avenue
Kansas City, KS 66106
Attention: General Counsel
Email: awglegal@awginc.com

With a copy to:

Payne & Jones, Chartered
11000 King
Overland Park, KS 66210
Attention; Stephen D. McGiffert
Email: sdm@paynejones.com

5. Severability. If any provision of this Assignment 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.

6. Execution in Counterparts. This Assignment 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.

7. Governing Law. This Assignment shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

8. 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 Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed in their respective corporate names to be attested by their duly authorized officers, all as of the date first above written.

STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, as *Assignor*

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF MISSOURI)
)SS.
COUNTY OF _____)

On this _____ day of February, 2019, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **STREETS OF WEST PRYOR, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and said officer acknowledged said instrument to be executed for the purpose therein stated and as the free act and deed of said company.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

SUPER MARKET DEVELOPERS, INC. , a Missouri corporation, as *Assignee*

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF _____)
)SS.
COUNTY OF _____)

On this ____ day of February, 2019, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **SUPER MARKET DEVELOPERS, INC.** , a Missouri corporation, and that said instrument was signed on behalf of said company by authority of its board of directors, and said officer acknowledged said instrument to be executed for the purpose therein stated and as the free act and deed of said company.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

The City of Lee's Summit, Missouri hereby acknowledges and consents to the foregoing Assignment and Assumption Agreement (the "Assignment"). The Assignor under the Assignment is hereby released from further duties, liabilities and obligations under the "Bond Documents" described in the Assignment.

CITY OF LEE'S SUMMIT, MISSOURI

[SEAL]

By: _____
Name: Bill Baird
Title: Mayor

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this _____ day of February, 2019, before me, the undersigned, a Notary Public, appeared **BILL BAIRD**, to me personally known, who, being by me duly sworn, did say that (s)he is the **MAYOR** of the **CITY OF LEE'S SUMMIT, MISSOURI**, and that the seal affixed hereto is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

Assignment and Assumption Agreement
Lee's Summit (Streets of West Pryor - Grocery Store Project)
Series 2019

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[**INSERT LEGAL DESCRIPTION**]

Packet Information

File #: BILL NO. 19-24, **Version:** 1

An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$48,000,000 in connection with the Streets of West Pryor Apartment Development; and authorizing certain documents and actions in connection therewith.

Issue/Request:

Ordinance to approve the Chapter 100 transaction for the market rate apartments in the Streets of West Pryor project.

Key Issues:

This ordinance will authorize the issuance of the Chapter 100 bonds in order to allow for the sales tax exemption on the purchase of construction materials for the market rate apartments in the Streets of West Pryor project, and also establish a fixed schedule for the Payments in Lieu of Taxes (PILOTs) for the apartments for a 10-year period.

Proposed City Council Motion:

I move for second reading of An Ordinance authorizing the City of Lee's Summit, Missouri to issue Taxable Industrial Development Revenue Bonds in a principal amount not to exceed \$48,000,000 in connection with the Streets of West Pryor Apartment Development; and authorizing certain documents and actions in connection therewith.

Background:

The City Council approved the Streets of West Pryor TIF Plan and other financing items on January 8, 2019, including approval of the Master Plan for Industrial Development Projects for the Streets of West Pryor Development. As approved, the Master Plan allows for the Developer to use the City's sales tax exemption certificate for the purchase of construction materials used in the construction of the project improvements, along with a set PILOTs schedule for the two apartment complexes. The TIF Plan contained a project budget which itemizes the project costs and lists the items that are reimbursable from public sources (TIF, CID, TDD) and the Chapter 100 cost savings.

This ordinance allows for the Chapter 100 transaction to implement the Master Plan with respect to the market rate apartments of the project.

Impact/Analysis:

This Chapter 100 transaction, along with the other Chapter 100 transactions that will be separately approved by ordinance, allows for approximately \$6.05 million in sales tax savings for the overall project. This approval will also establish the PILOTs schedule for the apartments using a rate of \$1135/door/year, which will result in an overall PILOT starting at approximately \$284,000/year after construction is complete.

Timeline:

Developer is taking steps to start construction of the project this year.

David Bushek, Chief Counsel of Economic Development & Planning

Mark Dunning, Assistant City Manager

David Martin, Gilmore & Bell

Recommendation: Staff recommends approval of the Ordinance.

BILL NO. 19-24

AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$48,000,000 IN CONNECTION WITH THE STREETS OF WEST PRYOR APARTMENT DEVELOPMENT; AND AUTHORIZING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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 has previously approved the Master Plan for Industrial Development Projects for the Streets of West Pryor Development (the "Master Plan"); and,

WHEREAS, in furtherance of the Master Plan, a project has been proposed consisting of the construction of a 250-unit multifamily apartment complex (the "Project") within the Streets of West Pryor development; 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 and from no other source, the City has determined that it is appropriate that the Bonds be sold to Streets of West Pryor, LLC, a Missouri limited liability company (the "Developer"), or its assignee, 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 documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

BILL NO. 19-24

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. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Multifamily Apartments Project), in an aggregate principal amount not to exceed \$48,000,000, 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 Developer, or its assignee, 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 3. 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 4. 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 UMB Bank, N.A., as trustee (the "Trustee"), pursuant to which the 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;

BILL NO. 19-24

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Developer, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Developer pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Developer which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and certain payments in lieu of taxes;

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Developer, pursuant to which the Developer agrees to purchase the Bonds; and

(d) Assignment and Assumption Agreement dated as of the date set forth therein, between the Developer and the company named therein (the "Company"), pursuant to which the Developer assigns to the Company all rights and the Company assumes all obligations of the Developer under the Lease Agreement and the Bond Purchase Agreement, and pursuant to which the City acknowledges and consents to such assignment and assumption.

SECTION 5. 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 6. 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 (including documentation subordinating the City's interest in the Project and the land underlying the Project to a lender providing financing for the Project, providing for a mortgage of the fee interest in the Project and underlying land and/or assigning any interests in the Project and underlying land to third parties) and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents.

SECTION 7. 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.

[remainder of page intentionally left blank]

BILL NO. 19-24

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

**CITY OF LEE'S SUMMIT, MISSOURI,
the City**

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of February 1, 2019

Relating to:

**\$48,000,000
(Aggregate Maximum Principal Amount)
City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Streets of West Pryor - Multifamily Apartments Project)
Series 2019**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of February 1, 2019 (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 **UMB BANK, 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 an ordinance (the “Ordinance”) on February ___, 2019, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Multifamily Apartments Project), Series 2019, in the maximum principal amount of \$48,000,000 (the “Bonds”), for the purpose of improving certain real property 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 Streets of West Pryor, LLC, a Missouri 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 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 (the "Unassigned Rights"), 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 (Streets of West Pryor - Multifamily Apartments Project), Series 2019, in the maximum aggregate principal amount of \$48,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Lee’s Summit, Missouri, Bond Fund – Streets of West Pryor – Multifamily Apartments Project” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds, dated as of February 1, 2019, 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 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.

“Company” means Streets of West Pryor, LLC, a Missouri 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 – Streets of West Pryor – Multifamily Apartments Project” 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 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 February 1, 2019, 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.

“Lender” has the meaning set forth in the Lease.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Missouri, 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.

“Person” or **“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 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 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 – Streets of West Pryor – Multifamily Apartments Project” 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 S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC, its successors and assigns, and if such company 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 UMB Bank, 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 (Streets of West Pryor - Multifamily Apartments Project), Series 2019.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$48,000,000.

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 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 \$48,000,000 for the purpose of providing funds to pay the costs of the Project and the costs of issuing the Bonds, which Bonds shall be designated "City of Lee's Summit, Missouri, Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Multifamily Apartments Project), Series 2019." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on **December 1, 2030** (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 Lease, and the Bond Purchase Agreement;

(2) Original executed counterparts of this Indenture, the Lease, and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto (with such changes as may be agreed to by the City);

(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 are in proper form and have been duly authorized in accordance with the Constitution and statutes of the State of Missouri, including the Act, and constitute valid and legally binding special 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, 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.

(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 on 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 receipt of each requisition certificate by the Trustee. 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 5.00% 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, 2019, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$48,000,000 and further provided that the Bonds shall be paid in full no later than **December 1, 2030**. 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 – Streets of West Pryor – Multifamily Apartments Project” (herein called the “Project Fund”);
- (b) “City of Lee’s Summit, Missouri, Costs of Issuance Fund – Streets of West Pryor – Multifamily Apartments Project” (herein called the “Costs of Issuance Fund”); and
- (c) “City of Lee’s Summit, Missouri, Bond Fund – Streets of West Pryor – Multifamily Apartments Project” (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(e)** and **(g)** 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(e)** and **(g)** 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. 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 by the date that is six months 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) If the Company is not the sole Owner of the Bonds, 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 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.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal of 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 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 Lease to the City for its own account. 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 if 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(i)** 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) 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(i)** 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)** (but only with respect to Unassigned Rights) 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, 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, 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(l)** 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, nothing in this Indenture 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; for any of which the consent of the Owners of 100% of the principal amount of the affected Bonds then Outstanding is required.

(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 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, 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, or by email, 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:

UMB BANK, N.A.
1010 Grand Blvd, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

(c) To the Company:

Streets of West Pryor, LLC
7200 W. 132nd Street, Suite 150
Overland Park, KS 66207
Attention: Matt Pennington
E-mail: matt@drakekc.com

With a copy to:

Levy Craig, a Professional Corporation
4520 Main Street, Suite 1600
Kansas City, Missouri 641 1 1
Attention: Jeff Bauer
E-mail: jbauer@levycraig.com

(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: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

UMB BANK, N.A.,
as Trustee

[SEAL]

By _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[**INSERT LEGAL DESCRIPTION**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

A four-story apartment complex including a clubhouse and swimming pool integral with the overall apartment facility design. The building structure will be approximately 60 feet high and consist of wood frame walls and wood roof structure. The exterior wall finishes will include a variety of materials including brick, fiber cement wall panel siding, extruded aluminum siding and synthetic stucco. The apartments will include a mix of approximately 187 single bedroom units and 63 two-bedroom units. The development also includes the construction of approximately 208 surface parking stalls. In addition, the parking plan includes 308 lower level garage parking stalls located beneath the main apartment structure. The apartment site will be provided with proper vehicular circulation and includes the provision for truck loading and handicap parking. The grounds adjacent to the apartment building including the surface parking will be landscaped with a variety of plant species. In addition, the grounds will be provided with pedestrian circulation paths and site lighting integrated with the overall shopping center development. The site development will also include construction of required utilities to serve the apartment complex and proper storm water collection and management system.

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
\$48,000,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(STREETS OF WEST PRYOR - MULTIFAMILY APARTMENTS PROJECT)
SERIES 2019**

Interest Rate

5.00%

Maturity Date

December 1, 2030

Dated Date

February __, 2019

OWNER:

MAXIMUM PRINCIPAL AMOUNT:

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, 2019, 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 (Streets of West Pryor - Multifamily Apartments Project), Series 2019,” in the maximum aggregate principal amount of \$48,000,000 (the “Bonds”), to be issued for the purpose of improving certain real property located 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 commercial facility (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to Streets of West Pryor, LLC, a Missouri limited liability company (together with any permitted assignee, the “Company”), under the terms of a Lease Agreement dated as of February 1, 2019 (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 February 1, 2019 (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 UMB BANK, 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 – Streets of West Pryor – Multifamily Apartments Project”

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 agent, 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 \$48,000,000.

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 Indenture.

By: _____
Mayor

Registration Date: _____

UMB BANK, 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 _____ agent 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.

PLACE SIGNATURE MEDALLION BELOW:

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Lee's Summit, Missouri
220 SE Green Street
Lee's Summit, Missouri 64063
Attention: City Clerk

UMB BANK, N.A., as Trustee
1010 Grand Blvd, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

Re: \$48,000,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Multifamily Apartments Project), Series 2019 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 February 1, 2019 (the "Indenture"), between the City of Lee's Summit, Missouri (the "City") and UMB Bank, 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 [**Streets of West Pryor, LLC, a Missouri limited liability company (the "Company"), under a**] [**_____, a _____ (the "Company"), as assignee of rights and obligations under a**] Lease Agreement dated as of February 1, 2019 (the "Lease"), with the City, 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 or with the express written consent of the City.

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 208(d)** of the Indenture.

Dated: _____, 20____

[PURCHASER OF BONDS]

By: _____

Name: _____

Title: _____

**CITY OF LEE'S SUMMIT, MISSOURI,
As Lessor,**

AND

**STREETS OF WEST PRYOR, LLC,
As Lessee**

LEASE AGREEMENT

Dated as of February 1, 2019

Relating to:

\$48,000,000

(Aggregate Maximum Principal Amount)

City of Lee's Summit, Missouri

Taxable Industrial Development Revenue Bonds

(Streets of West Pryor - Multifamily Apartments Project)

Series 2019

Certain rights of the City of Lee's Summit, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of February 1, 2019, between the City and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of February 1, 2019 (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 **STREETS OF WEST PRYOR, LLC**, a limited liability company organized and existing under the laws of the State of Missouri, 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 ____, 2019, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Multifamily Apartments Project), Series 2019, in the maximum principal amount of \$48,000,000 (the “Bonds”), for the purpose of improving certain real property 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. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, 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. 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.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Lender” means any person who from time to time has made a loan to Company which is secured by a Mortgage.

“Mortgage” means any mortgage or deed of trust (together with all related loan documents and security agreements) 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.

“PILOT Payments” or **“PILOTS”** means the payments in lieu of taxes provided for in **Article VI** hereof.

“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 and this Lease, (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) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with any Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease), and (g) any encumbrance noted in a title report included in the transcript of proceedings relating to the Bonds.

“Permitted Facility” means a facility comprised of rentable space operated for profit by the Company in accordance with this Lease, including a residential apartment complex and associated uses.

“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 Missouri and is 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, 2030**.

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 and this Lease. 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 and in a manner materially consistent with the description of the Project Improvements included in **Exhibit B** to this Lease. 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; 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 and any Permitted Encumbrances.

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, 2019 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, 2030** (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(e)** and **Section 208(g)** 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.

In furtherance of the foregoing and of **Section 204(e)** and **Section 208(g)** of the Indenture, and notwithstanding any other provision in this Lease, the Indenture or the Bond Purchase Agreement, and provided that the Company is the sole Bondowner, the Company may set-off each Basic Rent payment against the City's obligation to the Company as Bondowner, in lieu of delivery of a payment of Basic Rent on any date on which principal of or interest on the Bonds is payable, without providing notice of such set-off to the Trustee. 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.

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 or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) the PILOT Payments required by **Article VI** of this Lease (provided that no invoice need be provided to the Company for the PILOT Payments, which shall be due at such time and in such amount as described in **Article VI**; and

(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; TAX ABATEMENT

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 PILOT Payments due under this Lease to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project 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. 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 Lease shall be 2019. Notwithstanding any other provision of this Lease to the contrary, the last year of such exemption period shall be **2030**. 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 VI**. The City and the Company hereby agree that the tax abatement provided by this Lease shall only apply to property financed with the proceeds of the Bonds and shall not apply to property not financed with proceeds of the Bonds (and specifically shall not apply to personal property relating to the Project other than construction materials).

Section 6.5. Payments In Lieu of Taxes for Project. The Company covenants and agrees to make PILOT Payments to the City on or before each December 1, commencing December 1, 2019, in the amounts, and in the years, set forth in **Appendix I** attached hereto. Any PILOT Payments due under this Lease 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 6.6. Distribution of PILOT Payments. Within 30 days of the date of receipt of each PILOT Payment, the City or designated billing/collection agent shall distribute each PILOT Payment among the taxing jurisdictions.

Section 6.7. 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 6.4** 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 6.8. 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 Lease, 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 1 of each year continuing until December 1 of the year in which this Lease expires or is terminated.

Section 6.9. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Lease 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 6.10. PILOTS Following Cessation of Operations. If for any reason the Company ceases operations of the Project during the term of this Lease, the PILOT Payments set forth in **Section 6.5** 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 Lease, 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 Lease has been transferred pursuant to this Lease and the Project continues in operation thereafter.

Section 6.11. Sales Tax Exemption. Promptly after the issuance of the Bonds, the City will issue a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into the Project on the Project Site and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the exemption certificate.

ARTICLE VII

INSURANCE

Section 7.1. Title Report. Before conveying title to any real property to the City, the Company will provide a report 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 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 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 the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$25,000). 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 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 generally accepted accounting principles.

Section 7.6. Certificate of Compliance. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2019 with a certificate of an Authorized Company Representative certifying compliance with this **Article VII**.

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 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 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 Lender. 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 Mortgage 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 any Lender under a Mortgage (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, and any Lender under a Mortgage (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 any Lender under a Mortgage (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; 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 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 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. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security interests therein, to any Lender. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 13.1(c)**.

(c) With respect to a future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(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 Lender;

(2) the City shall serve upon each such Lender (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 Lender (at the address, if any, provided to the City);

(3) each Lender 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 Lender 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 each Lender under this **Section 10.4(c)** 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 Lender and permitting such Lender (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 Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (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) such Lenders (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 Mortgage(s).

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such 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.

(e) This Lease is subject to any Mortgage.

(f) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender, without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(g) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the City or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(h) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the City Manager, in his or her discretion, without further approval of the City Council.

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 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, 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, 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) \$50,000,000. 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. The Trustee shall, pursuant to **Section 805** of the Indenture, 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 PILOT Payments and other payments due and payable pursuant to **Article VI** hereof 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 payments due under **Article VI** of this Lease. 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; 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; 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 Company fails to operate the Project as a Permitted Facility, other than temporary closures customary in the applicable industry, for a period of 90 days.

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, units or space within the Project to be used for purposes commonly associated with the use of a Permitted Facility.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease (excluding subleases as contemplated in the last section of subsection (b), above) 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 \$10,000,000 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 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.

(d) The City agrees that any requested consent or signature of the City to any sublease or assignment under this Article, including any related document, may be given by the City Manager, in his or her discretion, without further approval of the City Council.

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, teletypes, 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, 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.**

Section 15.12. 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 December 1 of each year during the term of this Lease, beginning December 1, 2019, and also upon execution of this Lease.

[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: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

Very truly yours,

STREETS OF WEST PRYOR, LLC,
a Missouri limited liability company

By: _____

Name:

Title:

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[**INSERT LEGAL DESCRIPTION**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

A four-story apartment complex including a clubhouse and swimming pool integral with the overall apartment facility design. The building structure will be approximately 60 feet high and consist of wood frame walls and wood roof structure. The exterior wall finishes will include a variety of materials including brick, fiber cement wall panel siding, extruded aluminum siding and synthetic stucco. The apartments will include a mix of approximately 187 single bedroom units and 63 two-bedroom units. The development also includes the construction of approximately 208 surface parking stalls. In addition, the parking plan includes 308 lower level garage parking stalls located beneath the main apartment structure. The apartment site will be provided with proper vehicular circulation and includes the provision for truck loading and handicap parking. The grounds adjacent to the apartment building including the surface parking will be landscaped with a variety of plant species. In addition, the grounds will be provided with pedestrian circulation paths and site lighting integrated with the overall shopping center development. The site development will also include construction of required utilities to serve the apartment complex and proper storm water collection and management system.

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF FEBRUARY 1, 2019, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF FEBRUARY 1, 2019, BETWEEN CITY OF LEE’S SUMMIT, MISSOURI AND STREETS OF WEST PRYOR, 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.

STREETS OF WEST PRYOR, LLC

By: _____
Authorized Company 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

PILOT PAYMENT SCHEDULE

<u>Year</u>	<u>Amount</u>
2019	\$902
2020	42,563
2021	141,875
2022	283,750
2023	283,750
2024	290,844
2025	290,844
2026	290,844
2027	290,844
2028	290,844
2029	298,115
2030	298,115

\$48,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(STREETS OF WEST PRYOR - MULTIFAMILY APARTMENTS PROJECT)
SERIES 2019

DATED AS OF FEBRUARY 1, 2019

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, Streets of West Pryor, LLC, a Missouri 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 an ordinance passed by the governing body of the City on February ___, 2019 (the "Ordinance") and a Trust Indenture dated as of February 1, 2019 (the "Indenture"), by and between the City and UMB Bank, 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 and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Streets of West Pryor, LLC, a Missouri 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, or the Indenture; 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 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 \$48,000,000.

As used herein, the term "Closing Date" shall mean February ____, 2019, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean \$_____.

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 \$48,000,000; 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, 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.

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 address of the City as provided in the Indenture for notices to the City required thereunder; 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 address of the Company as provided in the Indenture for notices to the Company thereunder.

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 sent, received or stored by electronic means. Copies, teletypes, 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]

Very truly yours,

STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, as Purchaser and Company

By: _____

Name:

Title:

Accepted and Agreed to:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: Bill Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: ASSIGNMENT AND ASSUMPTION AGREEMENT

DATE OF DOCUMENT: February 1, 2019

ASSIGNOR: STREETS OF WEST PRYOR, LLC

ASSIGNOR'S MAILING ADDRESS: 7200 W. 132nd Street, Suite 150
Overland Park, KS 66207
Attention: Matt Pennington

ASSIGNEE: PEARL CAPITAL MANAGEMENT, LLC

ASSIGNEE'S MAILING ADDRESS: 919 N. East Street
Indianapolis, IN 46202
Attention: Jeff Tegethoff, Manager

RETURN DOCUMENTS TO: David Martin
Gilmore & Bell, P.C.
2405 Grand Boulevard, Suite 1100
Kansas City, Missouri 64108

LEGAL DESCRIPTION: See **Exhibit A**

REFERENCE DOCUMENT: Lease Agreement dated as of February 1, 2019, notice of which was given by Memorandum of Lease Agreement, recorded with the Jackson County Recorder of Deeds on February __, 2019 as Instrument No. _____.

This cover page is attached solely for the purpose of complying with the requirements stated in §§59.310.2; 59.313.2 Revised Missouri Statutes.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of February 1, 2019 (the “Assignment”), is between **STREETS OF WEST PRYOR, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Assignor”), and **PEARL CAPITAL MANAGEMENT, LLC**, a limited liability company organized and existing under the laws of the State of Indiana (the “Assignee”);

RECITALS:

1. The City of Lee’s Summit, Missouri, 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 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”) authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Streets of West Pryor - Multifamily Apartments Project), Series 2019, in the maximum principal amount of \$[**Principal Amount**] (the “Bonds”), for the purpose of improving certain real property 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”).

3. Pursuant to the Ordinance, the City has entered into a (a) Lease Agreement (the “Lease”) with the Assignor under which the City has agreed to lease the Project Site and the Project Improvements to the Assignor in consideration of rental payments by the Assignor that will be sufficient to pay the principal of and interest on the Bonds, and pursuant to which Lease the Assignor has agreed to make certain payments in lieu of taxes, and (b) a Bond Purchase Agreement (the “Bond Purchase Agreement,” together with the Lease, the “Bond Documents”) with the Assignor, in its role as “Company” under the Lease and in its role as “Purchaser” under the Bond Purchase Agreement, under which the Assignor has agreed to purchase the Bonds.

4. The Assignor now desires to assign to the Assignee all rights of the Assignor under the Bond Documents, provided that the Assignee shall assume all duties, liabilities and obligations of the Assignor under the Bond Documents (which is also a condition of the City’s consent to this Assignment).

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements contained herein, the Assignor and Assignee do represent, covenant and agree as follows:

1. Assignment. The Assignor hereby assigns to the assignee all rights of the Assignor as “Company” and as “Purchaser” under the Bond Documents.

2. Assumption. The Assignee hereby assumes all duties, liabilities and obligations of the Assignor under the Bond Documents, whether incurred as “Company” or as “Purchaser” thereunder.

3. Bond Issuance. The Bond shall be initially purchased by and registered in the name of the Assignee.

4. Notice Address. The notice address of the Assignee, for purposes of notices to be given to the Company under **Section 1403** of the Trust Indenture relating to the Bonds, is:

Pearl Capital Management
919 N. East Street
Indianapolis, IN 46202
Attention: Jeff Tegethoff, Manager
Email: jeff@pearl-companies.com

With a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
Clayton, Missouri 63105
Attention: David G. Richardson
Email: David.Richardson@huschblackwell.com

5. Severability. If any provision of this Assignment 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.

6. Execution in Counterparts. This Assignment 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.

7. Governing Law. This Assignment shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

8. 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 Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed in their respective corporate names to be attested by their duly authorized officers, all as of the date first above written.

STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, as *Assignor*

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF MISSOURI)
)SS.
COUNTY OF _____)

On this _____ day of February, 2019, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **STREETS OF WEST PRYOR, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and said officer acknowledged said instrument to be executed for the purpose therein stated and as the free act and deed of said company.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

PEARL CAPITAL MANAGEMENT, LLC, an Indiana limited liability company, as *Assignee*

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF _____)
)SS.
COUNTY OF _____)

On this ____ day of February, 2019, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of **PEARL CAPITAL MANAGEMENT, LLC**, an Indiana limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and said officer acknowledged said instrument to be executed for the purpose therein stated and as the free act and deed of said company.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

The City of Lee's Summit, Missouri hereby acknowledges and consents to the foregoing Assignment and Assumption Agreement (the "Assignment"). The Assignor under the Assignment is hereby released from further duties, liabilities and obligations under the "Bond Documents" described in the Assignment.

CITY OF LEE'S SUMMIT, MISSOURI

[SEAL]

By: _____
Name: Bill Baird
Title: Mayor

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) **SS.**
COUNTY OF JACKSON)

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public, appeared **BILL BAIRD**, to me personally known, who, being by me duly sworn, did say that (s)he is the **MAYOR** of the **CITY OF LEE'S SUMMIT, MISSOURI**, and that the seal affixed hereto is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

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

Typed or Printed Name: _____
Notary Public in and for said State

[SEAL]

My commission expires: _____

Assignment and Assumption Agreement
Lee's Summit (Streets of West Pryor - Multifamily Apartments Project)
Series 2019

EXHIBIT A
PROJECT SITE

The following described real estate located in Jackson County, Missouri:

[**INSERT LEGAL DESCRIPTION**]

Packet Information

File #: BILL NO. 19-25, **Version:** 1

An Ordinance determining and declaring the necessity of acquiring for public use certain Permanent Easements and Temporary Construction Easements for streambank stabilization improvements associated with the Streambank Stabilization Projects in Lee's Summit, Missouri; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land; and authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations.

Issue/Request:

An Ordinance determining and declaring the necessity of acquiring for public use certain Permanent Easements and Temporary Construction Easements for streambank stabilization improvements associated with the Streambank Stabilization Projects in Lee's Summit, Missouri; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land; and authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations.

We are asking approval to bring forth a condemnation ordinance to acquire the needed easements.

Key Issues:

- The eroding streambank at 2nd and Independence is in urgent need of repair to mitigate the risk of future erosion that would undermine and collapse 2nd Street
- The project is for public purpose of preserving existing public infrastructure
- Permanent and temporary easements are required for the work
- One remaining property owner and the City have not reached an agreement through good faith negotiations

Proposed City Council Motion:

I move for a second reading an Ordinance determining and declaring the necessity of acquiring for public use certain Permanent Easements and Temporary Construction Easements for streambank stabilization associated with the Streambank Stabilization Projects; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land, and authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations.

Background:

This project is one of four streambank stabilization projects programmed in the FY2019 Capital Improvement plan.

Erosion of the streams have created the risk of undermining public streets near NE Bristol Drive, NE Douglas Street, NE 2nd Street and SW 3rd Street. Each of sites require temporary and permanent easements to complete the work, and five out of the 6 easements have been acquired through good faith negotiations.

The purpose of 2nd Street project is to stabilize the streambank that is threatening the public sidewalk and roadway along 2nd Street near Independence Avenue. The bank stabilization work will consist of installing a precast concrete block wall along the south side of the creek and armoring the channel to reduce the risk of potentially catastrophic failure. In order to complete the work, a permanent drainage easement and temporary construction easements are required along 2nd Street.

The segment of the stream to be improved is currently owned by the City, whereas the adjoin segments are privately owned. As part of the negotiations, the property owner requested additional work along the stream to improve private property that would cost \$180,000, which far exceeds the costs necessary to acquire the easement at a fair market value price.

City Staff is requesting to proceed with eminent domain proceedings based on the public necessity for the project and the inability to obtain the necessary easement through good faith negotiations. Staff has followed state statutes in providing necessary notices, correspondence, valuations and other requirements necessary to initiate legal proceedings.

Timeline:

Start: We will bid the project once we have the easements.

Finish: Construction work is estimated to take 45 days.

Dena Mezger, Director of Public Works

Recommendation: Staff recommends approval.

BILL NO. 19-25

AN ORDINANCE DETERMINING AND DECLARING THE NECESSITY OF ACQUIRING FOR PUBLIC USE CERTAIN PERMANENT EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS FOR STREAMBANK STABILIZATION IMPROVEMENTS ASSOCIATED WITH THE STREAMBANK STABILIZATION PROJECTS IN LEE'S SUMMIT, MISSOURI; AUTHORIZING THE CITY MANAGER AND HIS DESIGNEES TO NEGOTIATE FOR THE PURPOSE OF ACQUIRING THE NECESSARY INTERESTS IN LAND; AND AUTHORIZING THE CITY ATTORNEY AND HIS DESIGNEES TO INSTITUTE CONDEMNATION PROCEEDINGS IF SUCH INTERESTS IN LAND CANNOT BE ACQUIRED BY PURCHASE THROUGH GOOD FAITH NEGOTIATIONS.

WHEREAS, the City Council for the City of Lee's Summit, Missouri deems it necessary, desirable, advisable and in the public interest to obtain certain permanent easements and temporary construction easements for the purpose of constructing a concrete block wall to stabilize the stream near SE 2nd Street and NE Independence Ave that would protect the existing public infrastructure in Lee's Summit, as specified in the project plans on file in the City of Lee's Summit Public Works Department, together with all appurtenances thereto, under, over, upon, across and through certain tracts of land within Lee's Summit, Jackson County, Missouri; and,

WHEREAS, the City has the authority by virtue of Sections 88.010 to 88.070, 88.073, and 82.240 of the Revised Statutes of the State of Missouri, 2000, as amended, and by virtue of the Charter of the City of Lee's Summit, Missouri, to acquire private property by condemnation proceedings for any public or municipal use, including uses or purposes stated herein.

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

SECTION 1. That it is hereby found, determined and declared that it is necessary and in the public interest for the public purpose of a concrete block wall to stabilize the stream near SE 2nd Street and NE Independence Ave as depicted in Exhibit A attached hereto and incorporated by reference as if fully set forth herein in the City of Lee's Summit, Jackson County, Missouri, pursuant to plans and specifications on file with the Lee's Summit Public Works Department, to acquire, by purchase or condemnation proceedings, certain permanent easements and temporary construction easements for such public improvements, including but not limited to installation, maintenance and repair of a concrete block wall, and all work incidental and subsidiary thereto all of which are situated in the City of Lee's Summit, Jackson County, Missouri, and are legally described in Exhibit "B" attached hereto and incorporated by reference as if fully set forth herein.

SECTION 2. That the City Manager and his designees are hereby authorized to negotiate with the owners of property herein described for the purpose of acquiring certain permanent easements and temporary construction easements, relating to the property herein described.

SECTION 3. That the City Manager and his designees are hereby authorized to execute necessary documents, to pay and disburse funds to property owners, others holding property rights and escrow agents pursuant to negotiated agreements.

BILL NO. 19-25

SECTION 4. That, in the event of failure, following good faith negotiations, to reach agreement on the amount of compensation to be paid for such permanent easements and temporary construction easements, and the acquisition thereof by purchase, the City Attorney and his designees, including special counsel, are hereby authorized and directed to institute condemnation proceedings for the purpose of acquiring such permanent easements and temporary construction easements in the manner provided by the Revised Statutes of Missouri.

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

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief of Litigation *Zachary T. Cartwright*

Z:\LEE'S SUMMIT MO\CITY OF LEE'S SUMMIT\STORMWATER\2017 STREAM BANK STABILIZATION\JOB FILE\ROW\2ND EXHIBIT A LOT 3.DWG

LEGEND

-  PERMANENT DRAINAGE EASEMENT
2249 SQUARE FEET
-  EXISTING DRAINAGE AND UTILITY EASEMENT
-  TEMPORARY CONSTRUCTION EASEMENT
1646 SQUARE FEET
-  BRUSH TO BE REMOVED
-  PROPERTY LINES

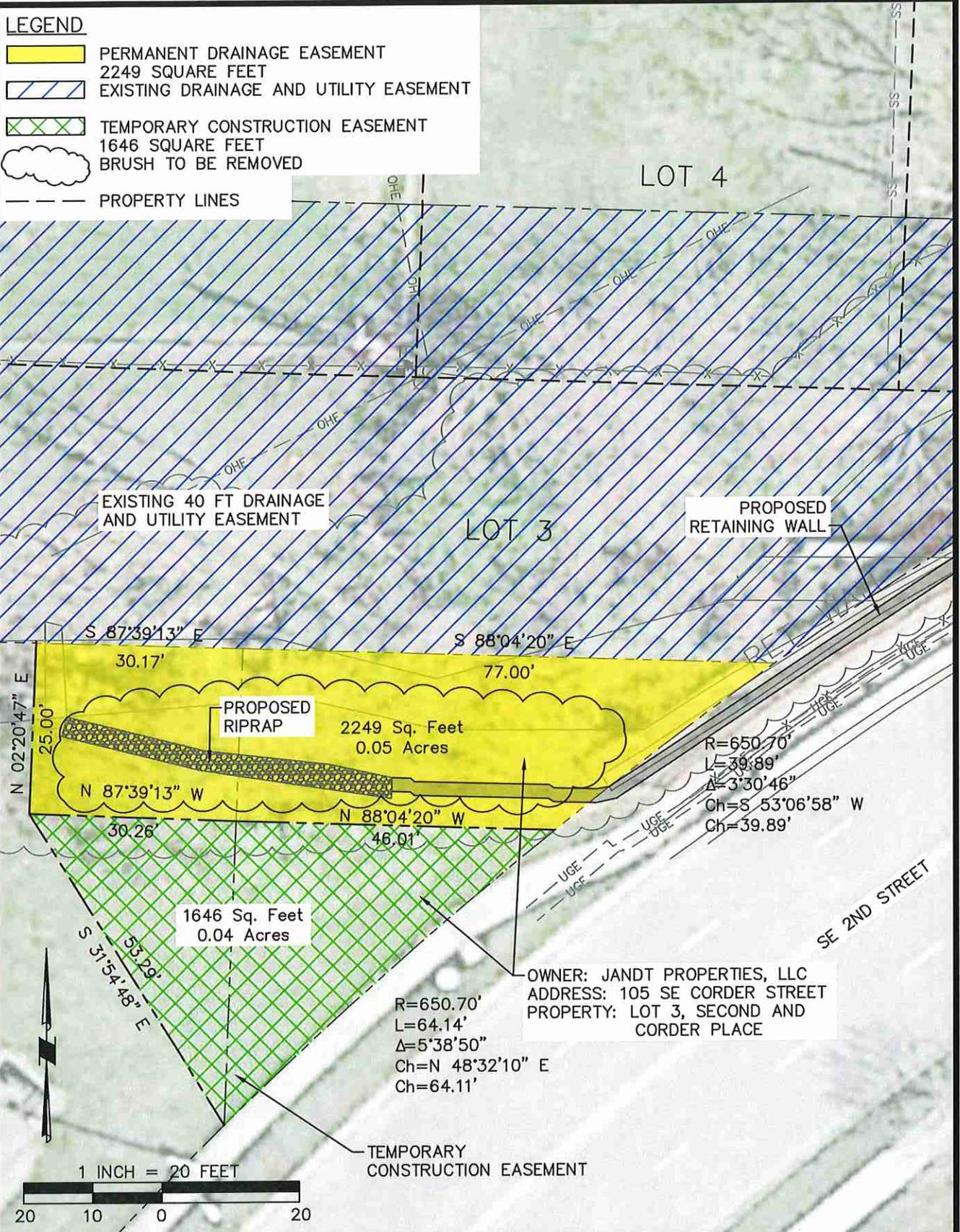


EXHIBIT "A"
SE 2ND STREET LEE'S SUMMIT, MISSOURI

CITY OF LEE'S SUMMIT
08/13/2018



ALLGEIER, MARTIN and ASSOCIATES, INC

CONSULTING ENGINEERS and SURVEYORS
7231 EAST 24th STREET JOPLIN, MISSOURI 64804 (417) 680-7200

Z:\LEE'S SUMMIT MO\CITY OF LEE'S SUMMIT\STORMWATER\2017 STREAM BANK STABILIZATION\JOB FILE\ROW\2ND EXHIBIT A LOT 3.DWG

EXHIBIT A
LEGAL DESCRIPTION

PROJECT: STREAMBANK STABILIZATION, SE SECOND STREET
DATE: AUGUST 8, 2018
OWNER: JANDT PROPERTIES, LLC
ADDRESS: 105 SE CORDER STREET

PERMANENT DRAINAGE EASEMENT:

A tract of land in Lot 3, SECOND AND CORDER PLACE, a subdivision in Lee's Summit, Jackson County, Missouri, being more fully described as follows:

Commencing at the Northwest corner of said Lot 3;
thence S 03°12'30"W along the West line thereof, 40.00 feet to a point on the South line of an existing Drainage Easement;
thence S 87°39'13"E along said South line, 70.00 feet to the Point Of Beginning;
thence S 87°39'13"E along said South line, 30.17 feet;
thence S 88°04'20"E along said South line, 77.00 feet to a point on the West right-of-way line of Second Street;
thence Southwesterly along said right-of-way on a nontangent curve to the left having a radius of 650.70 feet and a central angle of 03°30'46", an arc distance of 39.89 feet (chord = S 53°06'58"W, 39.89 feet);
thence N 88°04'20"W, 46.01 feet;
thence N 87°39'13"W, 30.26 feet;
thence N 02°20'47"E, 25.00 feet to the Point Of Beginning.
Containing 0.05 acre (2,249 square feet), more or less.
Basis of Bearings: Missouri State Plane Coordinate System, West Zone.

TEMPORARY EASEMENT

A tract of land in Lot 3, SECOND AND CORDER PLACE, a subdivision in Lee's Summit, Jackson County, Missouri, being more fully described as follows:

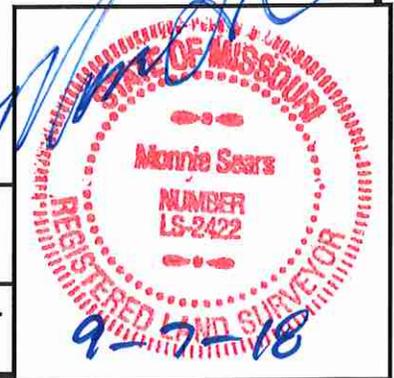
Commencing at the Northwest corner of said Lot 3;
thence S 03°12'30"W along the West line thereof, 40.00 feet to a point on the South line of an existing Drainage Easement;
thence S 87°39'13"E along said South line, 70.00 feet;
thence S 02°20'47"W, 25.00 feet to the Point Of Beginning;
thence S 31°54'48"E, 53.29 feet to a point on the West right-of-way line of Second Street;
thence Northeasterly along said right-of-way on a nontangent curve to the right having a radius of 650.70 feet and a central angle of 05°38'50", an arc distance of 64.14 feet (chord = N 48°32'10"E, 64.11 feet);
thence N 88°04'20"W, 46.01 feet;
thence N 87°39'13"W, 30.26 feet to the Point Of Beginning.
Containing 0.04 acre (1,646 square feet), more or less.
Basis of Bearings: Missouri State Plane Coordinate System, West Zone.

EXHIBIT A LEGAL DESCRIPTION
LEE'S SUMMIT, MISSOURI

CITY OF LEE'S SUMMIT
08/13/2018



ALLGEIER, MARTIN and ASSOCIATES, INC.
CONSULTING ENGINEERS and SURVEYORS
7231 EAST 24th STREET JOPLIN, MISSOURI 64804 (417) 680-7200



Packet Information

File #: BILL NO. 19-01, **Version:** 1

An Ordinance approving rezoning from District AG and R-1 to District RP-3 and Preliminary Development Plan located at the southwest corner of SW Pryor Road and SW MO-150 Highway, proposed Allera development in accordance with the provisions of Chapter 33 of the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.

(Note: This Bill was first read by City Council on January 22, 2019.)

Proposed City Council Motion:

I move for adoption of an Ordinance approving rezoning from District AG and R-1 to District RP-3 and Preliminary Development Plan located at the southwest corner of SW Pryor Road and SW MO-150 Highway, proposed Allera development in accordance with the provisions of Chapter 33 of the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.

Josh Johson, AICP, Asst. Dir. of Plan Services

BILL NO. 19-01

AN ORDINANCE APPROVING REZONING FROM DISTRICT AG AND R-1 TO DISTRICT RP-3 AND PRELIMINARY DEVELOPMENT PLAN LOCATED AT THE SOUTHWEST CORNER OF SW PRYOR ROAD AND SW MO-150 HIGHWAY, PROPOSED ALLERA DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 33 OF THE UNIFIED DEVELOPMENT ORDINANCE OF LEE'S SUMMIT CODE OF ORDINANCES, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2018-184 submitted by Olsson Associates, requesting approval of a rezoning from District AG (Agricultural district) and R-1 (Single-Family Residential) to RP-3 (Planned Residential Mixed Use) and preliminary development plan on land located at the southwest corner of SW Pryor Road and SW M-150 Highway was referred to the Planning Commission to hold a public hearing; and,

WHEREAS, the Unified Development Ordinance provides for the approval of a rezoning and preliminary development plan by the City following public hearings by the Planning Commission and City Council, and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for the consideration of the rezoning and preliminary development plan on December 13, 2018, and rendered a report to the City Council recommending that the rezoning and preliminary development plan be approved; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on January 8, 2019, and rendered a decision to approve the rezoning and preliminary development plan for said property.

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

SECTION 1. That a rezoning and preliminary development plan is hereby approved on the following described property:

A tract of land in the Northeast Quarter of the Northeast Quarter of Section 35, Township 47 North, Range 32 West of the 5th Principal Meridian, including part of Lots 1, 2 and 3, SALVAGGIO'S RANCH, a subdivision of land, all in Lee's Summit, Jackson County, Missouri being bounded and described as follows: Commencing at the Northeast corner of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along the East line of said Northeast Quarter, 658.78 feet to the Southeast corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°08'29" West, along the South line of said North Half, 50.00 feet to the Southeast Corner of said Lot 3, said point also being on the Westerly right of way line of SW Prior Road as now established and the Point of Beginning of the tract of land to be herein described; thence South 88°08'29" East, along said North Line and along said Westerly right of way line, 10.00 feet; to the Westerly right of way line of said SW Pryor Road as established by Document 1963I814460, in Book 1634, at page 487, being on a line that 40.00 West of and parallel with the East line of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along last said Westerly right of way line and said parallel line, 658.80 feet to a point on the South line of the Northeast Quarter of the Northeast Quarter

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of said Section 35; thence North 88°09'45" West, along said South line, 1280.31 feet to the Southwest corner of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°10'22" East, along the West line of the Northeast Quarter of the Northeast Quarter of said Section 35, 659.27 feet to the Southwest corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence South 88°08'29" East, along the South line of said North Half of the Northeast Quarter of the Northeast Quarter of said Section 35, 329.96 feet to the Southwest corner of the East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°09'46" East, along the West line of East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35, 558.45 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0064160, being 80.00 feet right of centerline Station 316+29.79 (Station 316+29.51 Deed); thence South 88°11'07" East, along said Southerly right of way line 170.21 feet to a point that is 80.00 feet right of centerline Station 318+00.00; thence South 58°26'25" East, along said Southerly right of way line, 40.31 feet to a point that is 100.00 feet right of centerline Station 318+35.00; thence South 88°11'07" East, along said Southerly right of way line, 30.00 feet to a point that is 100.00 feet right of centerline Station 318+65.00; thence North 76°55'17" East, along said Southerly right of way line, 97.27 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0006361, being 75.00 feet right of centerline Station 319+59.00; thence South 88°11'07" East, along said Southerly right of way line, 126.00 feet to a point that is 75.00 feet right of centerline Station 320+85.00; thence North 85°28'29" East, along said Southerly right of way line, 90.55 feet to a point that is 65.00 feet right of centerline Station 321+75.00; thence South 88°11'07" East, along said Southerly right of way line and along the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0006351, 175.00 feet to a point that is 65.00 feet right of centerline Station 323+50.00; thence South 82°44'41" East, along said Southerly right of way line, 105.48 feet to a point that is 75.00 feet right of centerline Station 324+55.00; thence South 88°11'07" East, along said Southerly right of way line, 45.00 feet to a point that is 75.00 feet right of centerline Station 325+00.00; thence South 49°40'27" East, along said Southerly right of way line, 88.33 feet to a point that is 130.00 feet right of centerline Station 325+69.12 (Station 325+69.30 Deed), said point also being on the East line of said Lot 2, SALVAGGIO'S RANCH and on the West right of way of said SW Pryor Road as now established; thence South 02°08'00" West, along said East lot line and said West right of way line, 509.17 feet to the Point of Beginning. Containing 1,370,951 square feet or 31.473 acres, more or less.

SECTION 2. That the following conditions of approval apply:

1. A modification shall be granted to the required minimum lot width of 50', to allow for a minimum lot width of 38'.
2. A modification shall be granted to the required minimum 20' rear yard setback, to allow for a minimum 15' rear yard setback.
3. A modification shall be granted to the required low impact landscaping screening buffer, to allow for no landscaping screening buffer.
4. Development shall be in accordance with the preliminary development plan, date stamped November 20, 2018.
5. Development shall be subject to the recommended road improvements outlined in the Transportation Impact Analysis prepared by Michael Park, dated December 4, 2018.

BILL NO. 19-01

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, 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 Chapter 33, the City's Unified Development Ordinance, of the Code of Ordinances for the City of Lee's Summit.

SECTION 5. 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 _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this ____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

The City of Lee's Summit
Action Letter - Draft
Planning Commission

Thursday, December 13, 2018

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

Call to Order

Roll Call

Present: 6 - Board Member Carla Dial
Board Member Jason Norbury
Board Member Dana Arth
Board Member Don Gustafson
Board Member Jeff Sims
Board Member John Lovell

Absent: 3 - Board Member Donnie Funk
Board Member Herman Watson
Board Member Jake Loveless

Approval of Agenda

A motion was made by Board Member Sims, seconded by Board Member Arth, that this agenda be approved. The motion carried unanimously.

Public Comments

There were no public comments at the meeting.

1. Approval of Consent Agenda

A. [TMP-1093](#) Appl. #PL2018-183 - VACATION OF EASEMENT - 837 NW Donovan Rd;
Northpoint Development, applicant

A motion was made by Board Member Sims, seconded by Board Member Dial, that this application be approved. The motion carried unanimously.

B. [2018-2435](#) Minutes of the November 8, 2018, Planning Commission meeting

A motion was made by Board Member Sims, seconded by Board Member Dial, that the minutes be approved. The motion carried unanimously.

Public Hearings

- 2 [2018-2324](#) Continued Appl. #PL2018-079 - REZONING from AG to RP-4 and PRELIMINARY DEVELOPMENT PLAN - Artisan Point Apartments, approximately 35 acres generally located at the northeast corner of SE Blackwell Rd and SE Blue Pkwy; Case Development, LLC, applicant (continued to a date certain of January 24, 2019, at staff's request)

Chairperson Norbury opened the hearing at 5:05 p.m. and announced that staff had requested that continued application PL2018-079 be continued to a date certain of January 24, 2019. He asked for a motion to continue.

Mr. Gustafson made a motion to continue continued application PL2018-079 be continued to a date certain of January 24, 2019. Mr. Sims seconded.

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

A motion was made by Board Member Gustafson, seconded by Board Member Sims, that this application be continued to the Planning Commission, due back on 1/24/2019. The motion carried unanimously.

- 3 [2018-2314](#) Continued Appl. #PL2018-136 - PRELIMINARY DEVELOPMENT PLAN - Pergola Park, 5th Plat, approximately 59 acres generally located west and north of Old Longview Lake; Inspired Homes, Inc., applicant (continued to a date certain of January 10, 2019, at the applicant's request)

Chairperson Norbury opened the hearing at 5:05 p.m. and announced that the applicant had requested that continued Application PL2018-136 be continued to a date certain of February 28, 2019. He asked for a motion to continue.

Mr. Gustafson made a motion to continue continued application PL2018-136 be continued to a date certain of February 28, 2019. Mr. Sims seconded.

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

A motion was made by Board Member Gustafson, seconded by Board Member Sims, that this application be continued to the Planning Commission, due back on 2/28/2019. The motion carried unanimously.

- 4 [2018-2489](#) Appl. #PL2018-178 - REZONING from AG to CP-2 and PRELIMINARY DEVELOPMENT PLAN - O'Reilly Auto Parts, 140 SE M-150 Hwy; Esterly Schneider & Assoc., applicant (application withdrawn by the applicant)

Chairperson Norbury opened the hearing at 5:06 p.m. and announced that Application PL2018-178 had been withdrawn by the applicant. He then closed the hearing.

Application withdrawn

- 5 [2018-2491](#) Appl. #PL2018-184 - REZONING from AG and R-1 to RP-3 and PRELIMINARY DEVELOPMENT PLAN - Allera, approximately 32 acres located at the southwest corner of SW Pryor Rd and SW M-150 Hwy; Olsson Associates, applicant

Chairperson Norbury opened the hearing at 5:06 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Vincent Walker was present representing Summit Homes. He stated that Summit Homes was a residential developer and builder, with homes in about 20 different communities in the Kansas City metro area. He introduced Ms. Shannon Buster, engineer with Olsson Associates and Mr. Travis Roof from Summit Homes. Their newest project, Allera, would include 159 single-family homes, which would be their most recent designs, the "Gowery Collection." A colored rendering showed a streetscape with elevations of these designs. Mr. Walker observed that they were aware via conversations with staff and previous comments from the Commission about encouraging more efficient land use and providing more affordable housing and design to meet today's needs. In view of the modifications requested from City staff and the architecture being designed specifically for this development, it was intended to address a void in the single-family new construction housing market.

Rising construction and land costs had put new entry-level homes out of reach for many people. The proposed homes offered low maintenance, energy efficiency, open and efficient floor plans and modern features. Over the last 18 months, the average existing home price in Lee's Summit was \$249,000; with the average newly constructed single-family home being \$395,000. This kind of home at \$200,000-\$250,000 was almost nonexistent, leaving the local entry-level, work force market totally reliant on existing housing. There were not enough of these homes to meet the demand, which caused prices to rise further. "Work force housing" was defined as housing for the American middle class in general: workers with moderate to middle incomes. Mr. Walker gave as examples police officers, teachers, firefighters and municipal, manufacturing and service workers. A good supply of this kind of housing made it more likely that children growing up in Lee's Summit would continue to live there as adults and start families.

Mr. Walker displayed a slide showing median household income in Lee's Summit as \$80,494, breaking the work force down into various job and career categories. In general, private home ownership tended to stabilize a community; and Lee's Summit could not fill this need with existing housing and the multi-family market. Another factor driving Summit Homes' design and architecture was the evolving non-traditional family structure in the younger generations. Demand for oversize product that required a lot of maintenance had declined, and approaches encouraging tighter-knit communities and relationships with neighbors, with outdoor spaces and more amenities were becoming more popular, with one result being the growing multi-family housing market. Millennials in particular would become the largest buying group over the next few years, and valued community and social interaction at the same time as a 'lock and leave' attitude. Home ownership was still important, but new housing choices needed to reflect these changing preferences. With this goal, Summit Homes was trying to blend architecture and development in presenting this project to the City. The meetings with City staff had helped find common solutions to the project's challenges.

Ms. Buster stated that the applicant was in agreement with staff's recommendations.

Following the applicant's presentation, Chairperson Norbury asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-18 into the record. He stated that the application was for rezoning of 31.473 acres at the southwest intersection of Pryor Road and M-50 Highway, from Agricultural (AG) and Single-Family Residential (R-1) to Planned Residential Mixed Use (RP-3). This would be a three-phase development, with a total of 159 single-family lots and 12 common area tracts. The property currently had three unplatted and two platted parcels; with the platted parcels zoned R-1 and including an existing single-family home. The three unplatted parcels were undeveloped, with one zoned AG and the other two, R-1. The applicants proposed a housing type not currently available in Lee's Summit. These homes would range from 1,300 to 1,900 square feet and cost \$200,000-\$250,000.

The plan was for lots with a minimum area of 38x110 feet, making the minimum lot size 4,180 square feet. RP-3 zoning allowed both single-family and multi-family uses; however, the

applicant proposed only single-family homes for the project. Any change from this would have to come back to the Commission for approval. Concerning amenities, the applicants planned an "Amenity Area" that would include a swimming pool, playground and sports court as well as open space. Development of the Amenity Area would require a separate preliminary development plan. A color elevation showed two-story homes with lap siding, metal and composite roofing materials and some textured siding. Four different floor plans were offered.

The Comprehensive Plan identified this area as Planned Mixed Use Residential, with both mixed density and low density. This project deviated slightly from the Comprehensive Plan in that it would combine two residential districts into one land use category with one housing type. Staff considered this location to be a good setting for the proposed land use as well as surrounding ones. It also met the objective of providing a diverse housing type that met the market's identified needs. Staff recommended approval of the proposed rezoning.

The applicants requested three modifications, which staff supported. The UDO required RP-3 developments to provide low-impact screening where an RP-3 use was adjacent to R-1. The applicants asked to eliminate this UDO requirement, as the proposed development would be single-family homes although not necessarily in R-1 zoning. They planned to install landscaping buffers along SW Pryor and M-150 Highway. The other two modifications would be to lot width and rear yard setbacks. The UDO required a minimum lot width of 50 feet for single-family homes in RP-3 zoning, while the plan called for a maximum width of 38 feet. Similarly, they requested a modification to allow for a 15-foot rear yard setback in lieu of the required 20 feet. Mr. McGuire emphasized that this was not a typical single-family home development and so did not necessarily fit into the choice of zoning districts. For the lot width in particular, the proposed homes would be narrow compared with most other single-family homes in Lee's Summit, and so could be on more narrow lots. Mr. McGuire pointed out that a majority 101 of the 159 lots would back up to open space, giving the appearance of deeper lots.

The first three of staff's five Recommendation Items addressed these requested modifications. Item 4 stipulated that the development would be "in accordance with the preliminary development plan date stamped November 20, 2018"; with Item 5 requiring that the development be "subject to the recommended road improvements outlined in the Transportation Impact Analysis prepared by Michael Park, dated December 4, 2018."

Following Mr. McGuire's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Ms. Debbie Thompson stated that she and her husband owned the property directly to the south. She was not sure that the lots mentioned were that deep. The Thompsons' fence was 3 feet over the property line and met all State fence requirements for adverse position. Further, their land was agricultural and she wanted to know if there would be any provision prohibiting Allera residents from bothering the livestock or feeding them. However, the fence was the main issue.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Mr. Gustafson asked about street parking and driveway accesses. Ms. Buster confirmed that each unit would have a two-car garage, with the driveway space in front of each garage counting as two additional spaces per unit. Also, the streets were designed to have 20 to 25 feet between driveways: long enough for at least one parked car. A typical parking space was about 18 feet deep. There would also on-street parallel parking all around the Amenity Area. Mr. Gustafson asked if the driveways would be flared out at the ends, and Ms. Buster answered that they would; however, driveways might be designed to narrow a little at the street. The applicants were aware that people often bought homes in subdivisions and found

that parking for parties are family events was short. Ms. Buster acknowledged that this was an issue for a development that had any density. Mr. Gustafson then asked if a sidewalk was proposed along M-150 Highway, and Ms. Buster answered that it was. It was on the latest version of the plan.

Mr. Gustafson asked if the primary purpose of the requested RP-3 zoning was to allow for higher density. Mr. McGuire answered that this was correct. RP-3 zoning allowed both single-family and multi-family homes including duplexes and triplexes; and it allowed higher density as well. The applicants had originally wanted to use the remaining R-1 property; however, that would require more modifications than RP-3 so the latter was a better fit. Mr. McGuire emphasized that this was not a standard development that would not necessarily fit into any one of Lee's Summit's zoning districts. Mr. Gustafson asked what uses would be allowed in RP-3 and not in R-1, but Mr. McGuire could not think of any.

Mr. Gustafson observed that the Comprehensive Plan showed a higher use at the Pryor/M-150 intersection. Mr. McGuire answered that the Comprehensive Plan identified it as an Activity Center, defined as "a mixed-use center intended to promote compatibility with adjacent uses and to concentrate higher intensity uses such as retail, office, and multi-family residential". In this case, it was all four corners. Mr. Gustafson asked if staff expected a need for retail and commercial at this intersection, and Mr. McGuire answered that it might in the future. Mr. Walker answered that the original plan was for commercial development to make its way west out M-150. The original expectation was that commercial development would extend that far but this looked less likely now. One of the uses of a mixed use designation was multi-family so in theory it could go on that corner. However, the route the applicants had chosen was a single-family product with higher density.

Mr. Lovell asked if the streets would have a standard width. He lived in a New Urbanism development and they'd had to prohibit parking on one side, in order to keep emergency vehicle access. Mr. Roof stated that New Longview had more narrow streets, while these would be standard width.

Chairperson Norbury asked Mr. McGuire for some details about the decision to go with RP-3 zoning, and specifically what was the minimum lot width for residential districts. Mr. McGuire answered that the City required a 50-foot lot frontage for single-family use in RP-3. For R-1 it was 70 feet. Chairperson Norbury asked if the proposed color palette was consistent with the color elevations or if the colors in the elevations were for contrast. Mr. Walker answered that they were for contrast; however, accent colors would be used. As far as he knew this proposed contemporary design had not been used in Lee's Summit.

Mr. Gustafson asked Mr. Walker if any of the designs had the front door pulled closer to the front of the house instead of being set back or next to the garage Mr. Walker replied that many townhome communities had recessed front doors, so this was not new. He displayed a detailed rendering of the approach to a garage, pointing out that given the design, moving the door forward would add costs for something that was not necessarily an architectural benefit. Part of the design was to de-emphasize the garage. Pulling the door out would create long foyers or porches.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:45 p.m. and asked for discussion among the Commission members.

Ms. Dial noted that at the Commission's last meeting with the City Council, the Council had requested fewer modifications and revisions as much as possible. She liked the price range and knew the designs would be popular, and asked if staff could create a niche for that since it did not fit into the conventional zoning standards.

Mr. Lovell agreed on the need for more developments of this kind. He was concerned about this specific area not attracting the target market. This kind of approach might work better in an urban core area; and he was also concerned about people buying these units and turning them into rental properties; which would not be consistent with the idea of developing work force housing and attracting younger buyers.

Chairperson Norbury recalled another joint Planning Commission training session in Blue Springs that included a speaker from Summit Homes. At that time, the average home sale price in the metro area was \$175,000 for an existing older home. The average sale price for a new home was \$350,000, with a 100 percent markup to get a new house. Lot size was a major issue that had been raised; specifically the need to be more flexible in codes to allow for more narrow lots to provide more options. New homes had become much more expensive because both land and material prices had risen. He commended both staff and the applicant on working together to make this a reality, although codes did need to be changed to be less restrictive.

Mr. Gustafson asked about the concerns of the neighbors to the south. Chairperson Norbury replied that this would have to be resolved but it was not the Commission's purview.

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

Mr. Lovell made a motion to recommend approval of Application PL2018-184, Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan: Allera, approximately 32 acres located at the southwest corner of SW Pryor Rd and SW M-150 Hwy; Olsson Associates, applicant; subject to staff's letter of December 7, 2018, specifically Recommendation Items 1 through 5. Mr. Sims seconded.

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

A motion was made by Board Member Lovell, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 1/8/2019. The motion carried unanimously.

6 2018-2490 Appl. #PL2018-185 - PRELIMINARY DEVELOPMENT PLAN - Reece Nichols Phase 2, 207 SW Market St; Engineering Solutions, LLC, applicant

Chairperson Norbury opened the hearing at 5:53 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Matt Schlicht of Engineering Solutions gave his business address as 50 SE 30th Street in Lee's Summit. This project was actually the second phase of what he had brought in earlier this year. On a displayed plan of phase 2, he pointed out the location of Main Street, the Amtrak station, and the former post office and the Bank of Lee's Summit on Market Street. The proposal was for a two-story, 10,000 square foot building occupied by Reece Nichols and a parking lot. The parking lot and the utilities were part of Phase 1. He had been working with staff on improving the existing alley. The subject of tonight's application was the building on the west side of the subject property on Market Street. It was a two-story, 5,250 square foot building, with office/retail space on the first floor. He had worked with staff on elevation views to make the building more consistent with Downtown architectural style. Apartments would occupy the second floor.

In phase 1, the alley was obstructed by an 'island' in the middle and an AT&T hub. It had now been realigned and straightened and had some separation from the existing buildings to improve the rear yards. The Market Street building would have a streetscape typical of Downtown, with brick between the street curb and sidewalk.

Staff's report included two Recommendation Items. The first was the same modification to the landscaping. Mr. Schlicht commented that the City's code had not caught up to Downtown development, with the result that meeting landscaping requirements Downtown was almost impossible. The second pertained to materials. The elevations had shown EIFS on the back of the building. This was not an improved material Downtown, and stucco or other compatible material would be substituted.

Following Mr. Schlicht's presentation, Chairperson Norbury asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-15 into the record. He confirmed that the applicant proposed a two-story building on the former City Hall site at 207 SW Market Street. It was the second phase of the previously approved Reece Nichols office project. The commercial building would be 5,250 square feet, with 2,625 square feet of retail space on the first floor. The second floor would be two apartment units. The architectural design was consistent with Downtown's character and style. Building materials would be brick, glass and stucco. The EIFS that would have been included was listed as a prohibited material in the Downtown design standards. This had been an oversight, and a condition of approval had been added requiring that "all building materials shall comply with the design standards as outlined in Article 8 of the UDO." This was not a modification request.

Regarding landscaping requirements, Mr. McGuire acknowledged that these were established to suit suburban style development. They did not suit dense urban development, with little or no setbacks or open space. This same modification, allowing for omitting landscaping, was granted for the first phase of the project. Staff recommended approval of the preliminary development plan, subject to granting a modification to the landscaping requirements and the requirement for building materials comply with the design standards.

Following these comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Ms. Sarah Degandia stated that she was the owner of Midwest Vacuums at the building they owned at 8 SW Third Street. She had heard that the alley was going to be turned into a one-way access for Reece Nichols. The building had a tenant who lived upstairs and two doors faced the alley. If real estate agents made trips to and from the office all day via the alley, she had some safety concerns. The City had already taken away the two parking spots that the owners and tenant had in the alley. She wanted to know what they could use for parking. There were previous mentions of changing the parking in front to a loading zone. In general, she wanted some clarification about what would happen with the alley, which might be a concern for her customers as well.

Mr. Donnie Rogers gave his address as 416 SE Corder Street. He said that the use of brick on the building's front facade helped continue the characteristic look of Downtown. He commented that the design standards were rather vague on windows. The curved windows on the proposed building were probably used to break up mass of the building and suggest multiple buildings. Arched windows could be seen Downtown was at the corner of Douglas and Second Street, and probably were done in the 1970s. The double-hung windows on the side were attractive and the building might benefit if they were used on the facade.

Regarding the streetscape, he had heard concerns about safety and parking from business owners in the area. Lighting was a concern on Market Street in particular, with no street lighting on Market at all; and addressing this would make the area, including the subject property, a more safe and inviting place.

Mr. Shane Veritossi stated that he owned a few businesses and five properties Downtown. He agreed with the advice about the windows. At present, the alley was a dead-end alley that came off Third Street. It had been platted that way, and there had not been a discussion about

where the trash from adjoining businesses would go. The Downtown standards required that track pickup location be enclosed. That enclosed area on the plan was 15x20 feet, while the businesses used more than that with the three dumpsters at the bars, restaurants and offices. Mr. Veritossi also noted that the newly platted alley was not shown as being in the same spot as the existing one. Finally, he wanted it on the record that the businesses on the alley would be able to use the parking after 5:00 p.m. As it stood, they were losing their parking easement.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Chairperson Norbury asked for information about the status of the alley. Mr. Schlicht noted that much of the discussion about the alley pertained to phase 1. The City Council had approved the building, parking lot and alley redesign in September. He pointed out on a displayed map where a strip behind the buildings was paved with a median island in one part. The paved strip that had been used as a thoroughfare and through traffic way for the past 15 years was actually on the subject property. The public alley was being the first three buildings and intersected with the planned alley.

Further, some coordination needed to be done concerning the AT&T about a pedestal that was currently in the middle of the drive aisle. The developer would build a new alley that was 24 feet wide, enough to allow 2-way travel. The original strip could remain. The platted alley was 20 feet wide, with power poles and other obstructions that made it actually about 14 feet. It needed to be designated one-way. Most of the traffic from the parking lot would come out to Market. The trash dumpsters had also been discussed for Phase 1. There were as many as 5 or 6, and staff wanted to work with the tenants in creating a community dumpster enclosure. Mr. Schlicht remarked that some of the tenants were not interested; but at any rate this would be further along in the project. Parking and loading areas had also been discussed, with the City potentially removing some of the Third Street parking and making that space a loading zone. This was not part of the project and would have to be a separate application.

Chairperson Norbury stated that he agreed with Mr. Rogers' comments about the building's windows. He noted that this was a large, square building, and the brick was uniform in appearance. He asked if making these windows double-hung was feasible. Mr. Schlicht remarked that originally the building, and the roof line in particular, had a more uniform look all the way across, and the Commission had asked for something to break up the expanse. Chairperson Norbury wanted some kind of horizontal element, and noted that some of the Downtown buildings either had a brick skirt or had different materials on the first and second levels. Mr. Schlicht said he would work with staff to give the facade a more varied appearance.

Ms. Dial had some concerns about not doing any landscaping at all, especially considering the building's size. Mr. Schlicht answered that they would put in street trees and other spot landscaping for both spaces. Ms. Dial remarked that if there was no landscaping requirement at all for building designs, some kind of landscaping standard should be added.

Mr. Lovell asked if the retail and office element was speculative or if the applicant had a user in mind. Mr. Schlicht answered that it was speculative at this point; however, Mr. Dusty Dahmer, the developer, had received a number of calls. Chairperson Norbury asked for some clarification about when the parking would be available, and Mr. Schlicht answered it would be Reece Nichols parking from 7:30 a.m. to 5:30 p.m. Monday through Friday. After 5:30 and on weekends the lot could be used by the public.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:05 p.m. and asked for discussion among the Commission members.

Chairperson Norbury commended the applicant on addressing the concerns about the

architecture. However, during the Commission's joint meeting with the Council, the Commission had been requested to send forward projects with more developed details.

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

Mr. Lovell made a motion to recommend approval of Application PL2018-185, Preliminary Development Plan: Reece Nichols Phase 2: 207 SW Market St; Engineering Solutions, LLC, applicant; subject to staff's letter of December 7, 2018.

Chairperson Norbury asked Mr. Bushek if the motion needed to include the added condition. Mr. Bushek asked if the Commission had been provided with the statement in writing, and Chairperson Norbury stated that they did not. Mr. Bushek advised amending the motion.

Mr. Lovell amended his motion to add the statement "all building materials shall comply with the design standards as outlined in Article 8 of the Unified Development Ordinance." Mr. Gustafson seconded.

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

A motion was made by Board Member Lovell, seconded by Board Member Gustafson, that this application be recommended for approval to include amended conditions to the City Council - Regular Session, due back on 1/8/2019. The motion carried unanimously.

Other Agenda Items

There were no other agenda items at the meeting.

Roundtable

Concerning the discussion of higher densities and smaller lot sizes, Mr. Gustafson asked if there had been any discussion of design guidelines for this approach. Chairperson Norbury answered that if anything needed to be adjusted it would be in the ordinance. Mr. Gustafson suggested a work session with staff. Mr. McKay stated that staff had started working on an amendment that would allow for 4,000 square foot lots. They might develop a small-lot zoning district.

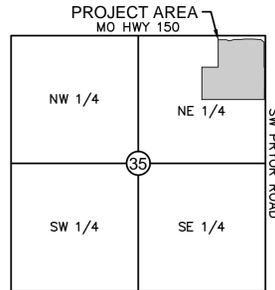
Adjournment

There being no further business, Chairperson Norbury adjourned the meeting @ 6:16 P.M.

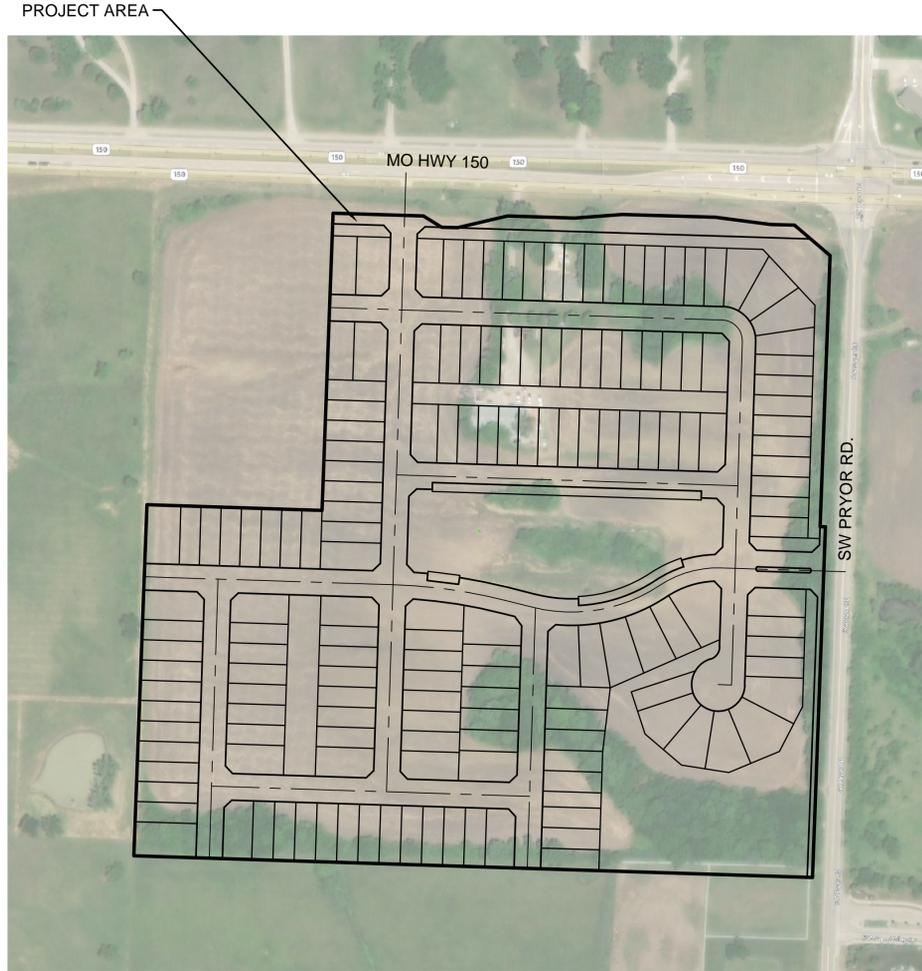
For your convenience, Planning Commission agendas, as well as videos of Planning Commission meetings, may be viewed on the City's Legislative Information Center website at "lsmo.legistar.com"

ALLERA REZONING & PRELIMINARY DEVELOPMENT PLAN

SECTION 35, TOWNSHIP 47N, RANGE 32W
IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI



VICINITY MAP
S35, T47N, R32W
SCALE 1"=2000'



Sheet Title	Sheet Number
TITLE SHEET	01
REZONING PLAN	02
EXISTING CONDITIONS	03
SITE PLAN	04
GRADING PLAN	05
UTILITY PLAN	06
UTILITY PLAN (CONT'D)	07
OVERALL PLAN (LANDSCAPE)	L1
ENTRY MONUMENTS	L2
ENTRY MONUMENTS	L3



PROJECT TEAM CONTACT LIST
OWNER / DEVELOPER CLAYTON PROPERTIES GROUP, INC. DBA SUMMIT HOMES 120 SE 30TH ST. LEE'S SUMMIT, MO 64082 CONTACT: DAVID W. PRICE PHONE: 816.246.6700 EMAIL: DAVID@SUMMITHOMESKC.COM
ENGINEER OLSSON 1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 CONTACT: JOHN ERPELDING PHONE: 816.361.1177 EMAIL: JERPELDING@OLSSON.COM

PROPERTY DESCRIPTION:

A tract of land in the Northeast Quarter of the Northeast Quarter of Section 35, Township 47 North, Range 32 West of the 5th Principal Meridian, including part of Lots 1, 2 and 3, SALVAGGIO'S RANCH, a subdivision of land, all in Lee's Summit, Jackson County, Missouri being bounded and described as follows: Commencing at the Northeast corner of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along the East line of said Northeast Quarter, 658.78 feet to the Southeast corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°08'29" West, along the South line of said North Half, 50.00 feet to the Southeast Corner of said Lot 3, said point also being on the Westerly right of way line of SW Pryor Road as now established and the Point of Beginning of the tract of land to be herein described; thence South 88°08'29" East, along said North Line and along said Westerly right of way line, 10.00 feet; to the Westerly right of way line of said SW Pryor Road as established by Document 19631814460, in Book 1634, at page 487, being on a line that 40.00 West of and parallel with the East line of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along last said Westerly right of way line and said parallel line, 658.80 feet to a point on the South line of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°09'45" West, along said South line, 1280.31 feet to the Southwest corner of the Northeast Quarter of said Section 35; thence North 02°10'22" East, along the West line of the Northeast Quarter of the Northeast Quarter of said Section 35, 659.27 feet to the Southwest corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence South 88°08'29" East, along the South line of said North Half of the Northeast Quarter of the Northeast Quarter of said Section 35, 329.96 feet to the Southwest corner of the East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°09'46" East, along the West line of East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35, 558.45 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0064160, being 80.00 feet right of centerline Station 316+29.79 (Station 316+29.51 Deed); thence South 88°11'07" East, along said Southerly right of way line 170.21 feet to a point that is 80.00 feet right of centerline Station 318+00.00; thence South 88°26'25" East, along said Southerly right of way line, 40.31 feet to a point that is 100.00 feet right of centerline Station 318+35.00; thence South 88°11'07" East, along said Southerly right of way line, 30.00 feet to a point that is 100.00 feet right of centerline Station 318+65.00; thence North 76°55'17" East, along said Southerly right of way line, 97.27 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E006361, being 75.00 feet right of centerline Station 319+59.00; thence South 88°11'07" East, along said Southerly right of way line, 126.00 feet to a point that is 75.00 feet right of centerline Station 320+85.00; thence North 85°28'29" East, along said Southerly right of way line, 90.55 feet to a point that is 65.00 feet right of centerline Station 321+75.00; thence South 88°11'07" East, along said Southerly right of way line and along the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E006351, 175.00 feet to a point that is 65.00 feet right of centerline Station 323+50.00; thence South 82°44'41" East, along said Southerly right of way line, 105.48 feet to a point that is 75.00 feet right of centerline Station 324+55.00; thence South 88°11'07" East, along said Southerly right of way line, 45.00 feet to a point that is 75.00 feet right of centerline Station 325+00.00; thence South 49°40'27" East, along said Southerly right of way line, 88.33 feet to a point that is 130.00 feet right of centerline Station 325+69.12 (Station 325+69.30 Deed), said point also being on the East line of said Lot 2, SALVAGGIO'S RANCH and on the West right of way of said SW Pryor Road as now established; thence South 02°08'00" West, along said East lot line and said West right of way line, 509.17 feet to the Point of Beginning. Containing 1,370,951 square feet or 31.473 acres, more or less.

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REVISIONS

NO. REV.	DATE	REVISIONS DESCRIPTION	BY
1	2018.11.20	Revised per Staff comments	CJH

TITLE SHEET

ALLERA
REZONING & PRELIMINARY DEVELOPMENT PLAN

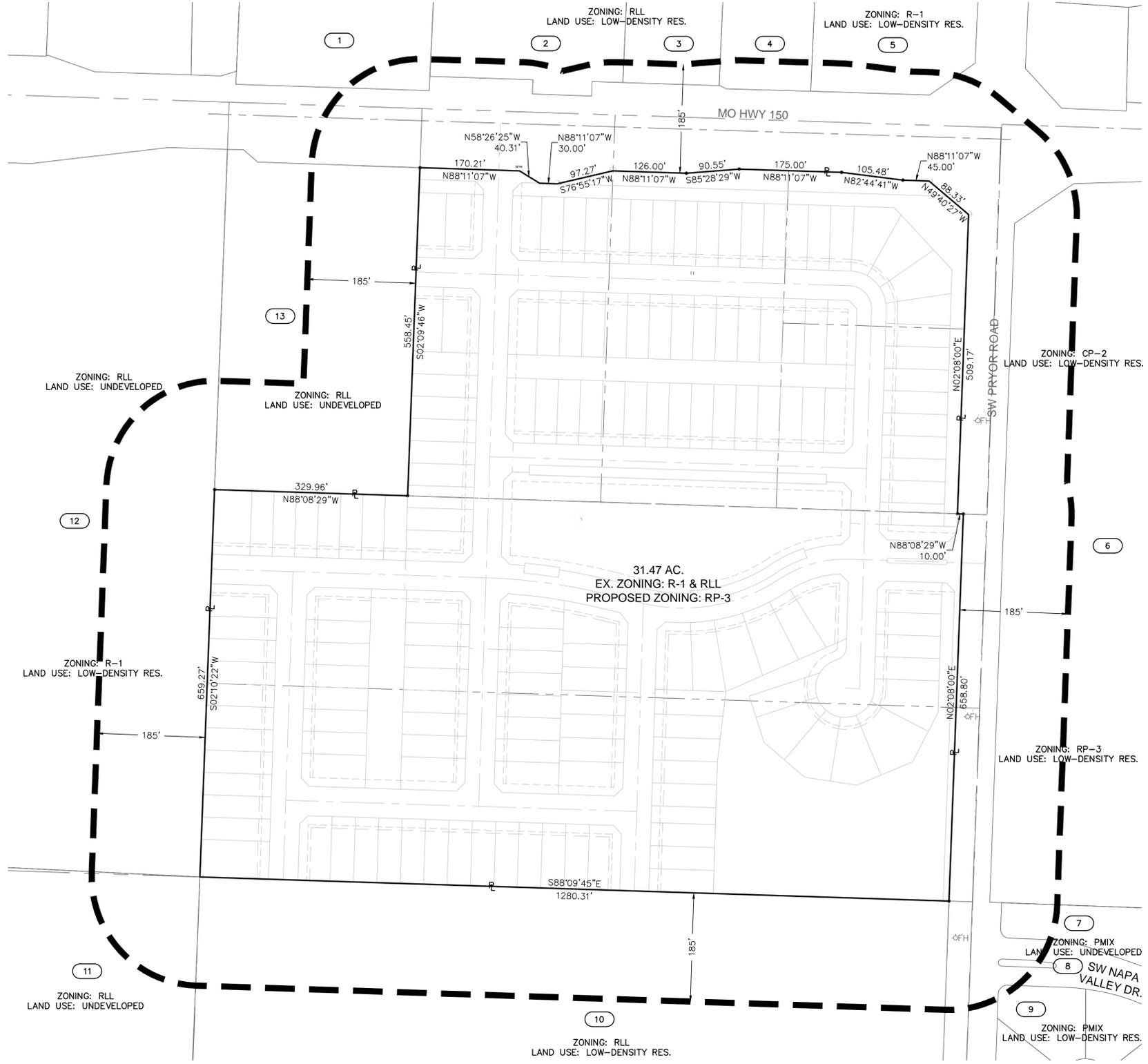
2018

LEE'S SUMMIT, MISSOURI

drawn by: _____ G.S.
checked by: _____ C.J.H.
designed by: _____ S.M.S.
QA/QC by: _____ J.F.F.
project no.: 018-2503
date: 2018.10.18

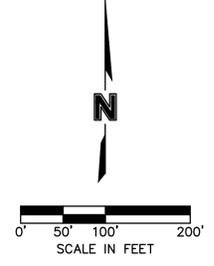
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 USER: chalmquist
 DATE: Nov 20, 2018 10:17 am

PROPERTY OWNERS WITHIN 185'		
KEY	ADDRESS	OWNER(S) & MAILING ADDRESS
1	2124 SW MO 150 HWY LEE'S SUMMIT, MO 64082	DANIELS NANCY SUE & G MARK-TR 13320 S PRATT RD LEE'S SUMMIT, MO 64086
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1	2018.11.20	Revised per Staff comments	CJH

REZONING PLAN

ALLERA
 REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MISSOURI

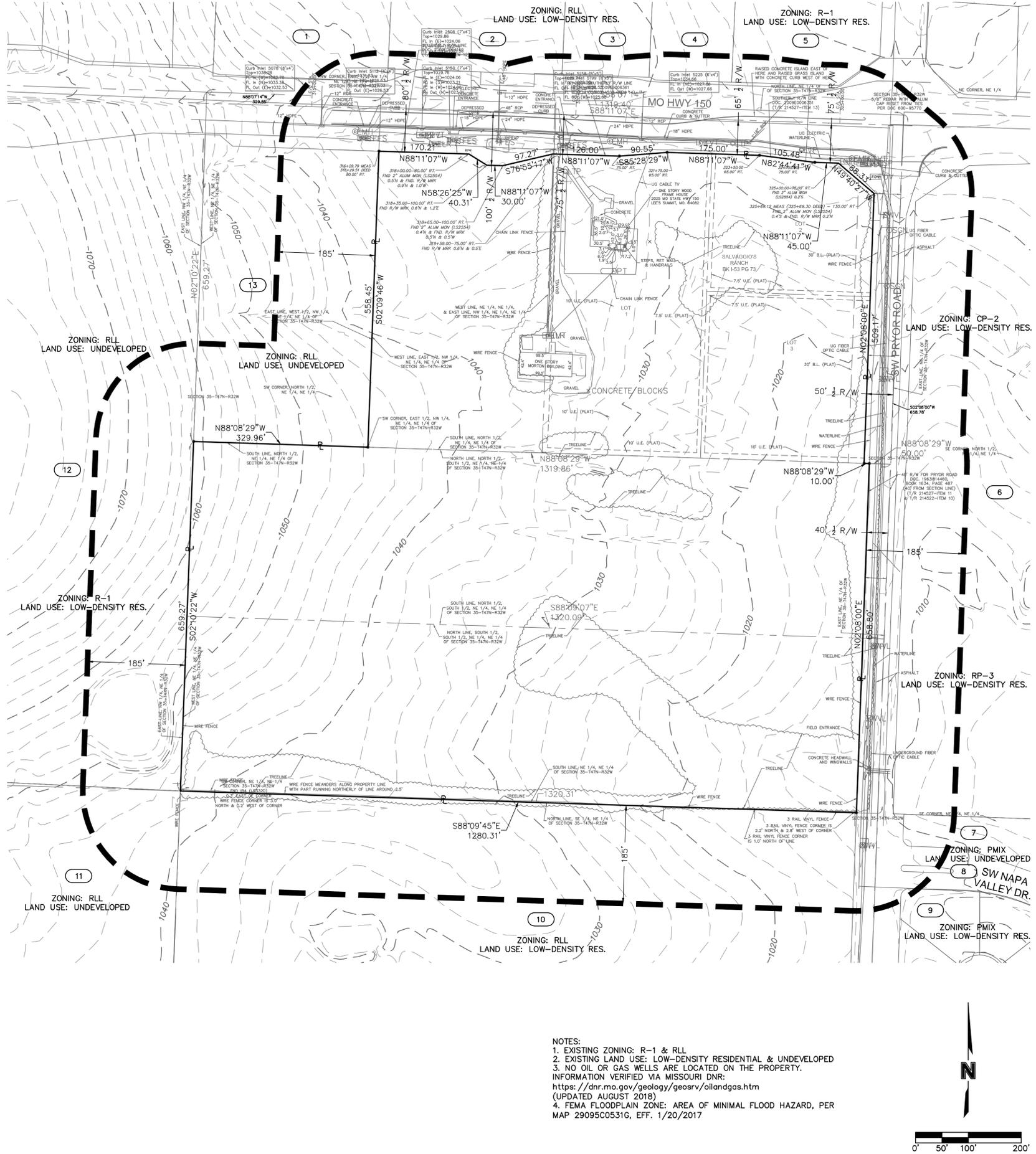
drawn by: G.S.
 checked by: C.J.H.
 designed by: S.M.S.
 QA/QC by: J.F.E.
 project no.: 018-2503
 date: 2018.10.18

2018

SHEET
02

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GENERAL		LEGEND	
ACU	AIR CONDITIONING UNIT	BMK	BENCHMARK
BLB	BILLBOARD	CPT	CONTROL POINT
BOV	BLOW OFF VALVE	FND	FOUND MONUMENT
BSH	BUSH	ROW	ROW MARKER
COL	COLUMN	SCR	SECTION CORNER
CTR	CONIFEROUS TREE	SET	SET MONUMENT
DRN	DRAIN GRATE	BOUNDARIES	
DTR	DECIDUOUS TREE	SECTION LINE	SECTION LINE
FLP	FLAG POLE	PROPERTY BOUNDARY	PROPERTY BOUNDARY
GDP	GUARD POST	EXISTING LOT LINE	EXISTING LOT LINE
GPL	GUY POLE	UTILITIES	
GTP	GREASE TRAP	CAB	CABLE BOX
GUY	GUY WIRE	CAV	CABLE VAULT
HCP	ACCESSIBLE PARKING MARKER	TVP	TELEVISION PEDESTAL
LST	LIFT STATION	TVR	TELEVISION RISER
MLB	MAILBOX	ECV	EXISTING CABLE TV, OVERHEAD
MP	MILE POST MARKER	ECU	EXISTING CABLE TV, UNDERGROUND
MWL	MONITORING WELL	FOB	FIBER OPTIC BOX
PIV	POST INDICATOR VALVE	FOM	FIBER OPTIC MANHOLE
PPT	PROPANE TANK	FOP	FIBER OPTIC PEDESTAL
RAT	RADIO TOWER	FOV	FIBER OPTIC VAULT
SAD	SATELLITE	EFV	EXISTING FIBER OPTIC, OVERHEAD
SCV	SPRINKLER CONTROL VALVE	EFU	EXISTING FIBER OPTIC, UNDERGROUND
SGN	SIGN	EG	EXISTING NATURAL GAS LINE
SLB	STREET LIGHT BOX	TEC	TELEPHONE CABINET
SLC	STREET LIGHT CABINET	TTP	TELEPHONE PEDESTAL
SPB	SPRINKLER BOX	TER	TELEPHONE RISER
SPH	SPRINKLER HEAD	TEV	TELEPHONE VAULT
STP	STUMP	TMH	TELEPHONE MANHOLE
SVL	SEWER VALVE	ETEL	EXISTING TELEPHONE LINE, OVERHEAD
TCB	TRAFFIC CONTROL BOX	ETEL	EXISTING TELEPHONE LINE, UNDERGROUND
TSA	TRAFFIC SIGNAL WITH MAST ARM	GLT	GROUND LIGHT
TSC	TRAFFIC SIGNAL CABINET	LTP	LIGHT POLE
TSMH	TRAFFIC SIGNAL MANHOLE	PWP	POWER POLE
TSP	TRAFFIC SIGNAL POLE	TRF	ELECTRIC TRANSFORMER
EXISTING TREELINE	EXISTING TREELINE	EBX	ELECTRIC BOX
EXISTING SIDEWALK	EXISTING SIDEWALK	ELC	ELECTRIC CABINET
EXISTING BUILDINGS	EXISTING BUILDINGS	ELR	ELECTRIC RISER
EXISTING EDGE OF PAVEMENT	EXISTING EDGE OF PAVEMENT	EMH	ELECTRIC MANHOLE
EXISTING ROADWAY CENTER LINE	EXISTING ROADWAY CENTER LINE	EMT	ELECTRIC METER
EXISTING CURB & GUTTER	EXISTING CURB & GUTTER	ESC	ELECTRIC SECTIONALIZER
EASEMENTS & SETBACKS		EVT	ELECTRIC VAULT
A.E.	ACCESS EASEMENT	YDL	YARD LIGHT
B.M.P.	BEST MANAGEMENT PRACTICE EASEMENT	EE	EXISTING POWER/ELECTRIC LINE, OVERHEAD
B.L.	BUILDING SETBACK	EE	EXISTING POWER/ELECTRIC LINE, UNDERGROUND
C.T.V.E.	CABLE TV EASEMENT	SCO	SEWER CLEANOUT
C.E.	CONSERVATION EASEMENT	SSMH	SANITARY MANHOLE
C.G.E.	CONSTRUCTION GRADING EASEMENT	ESS	EXISTING SANITARY SEWER
F.P.E.	FLOOD PLAIN EASEMENT	ESL	EXISTING STEAM LINE
F.O.E.	FIBER OPTIC EASEMENT	SDMH	STORM SEWER MANHOLE
G.E.	NATURAL GAS EASEMENT	FES	FLARED END SECTION
T.E.	TELEPHONE EASEMENT	RDN	ROOF DRAIN
E.E.	POWER/ELECTRIC EASEMENT	ESS	EXISTING STORM SEWER
P.S.	PARKING SETBACK	FH	FIRE HYDRANT
S.B.	STREAM BUFFER	WMH	WATER MANHOLE
S.D.E.	SURFACE DRAINAGE EASEMENT	WMK	WATER MARKER
SIGHT DIST. ESMIT	SIGHT DISTANCE EASEMENT	WMT	WATER METER
S.E.	SANITARY SEWER EASEMENT	WVL	WATER VALVE
S.L.E.	STEAM LINE EASEMENT	EW	EXISTING WATER LINE
D.E.	STORM DRAINAGE EASEMENT	CONTOURS	
S.W.M.E.	STORM WATER MANAGEMENT EASEMENT	-100-	EXISTING INDEX CONTOURS
U.E.	UTILITY EASEMENT	-100-	EXISTING INTERMEDIATE CONTOURS
W.E.	WATER EASEMENT		



NOTES:
 1. EXISTING ZONING: R-1 & RLL
 2. EXISTING LAND USE: LOW-DENSITY RESIDENTIAL & UNDEVELOPED
 3. NO OIL OR GAS WELLS ARE LOCATED ON THE PROPERTY.
 INFORMATION VERIFIED VIA MISSOURI DNR:
<https://dnr.mo.gov/geology/geosrv/oilandgas.htm>
 (UPDATED AUGUST 2018)
 4. FEMA FLOODPLAIN ZONE: AREA OF MINIMAL FLOOD HAZARD, PER
 MAP 29095C0531G, EFF. 1/20/2017



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NO. REV.	DATE	REVISIONS DESCRIPTION	BY	
			CHK	APP
1	2018.11.20	Revised per Staff comments		

EXISTING CONDITIONS

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REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MISSOURI

2018

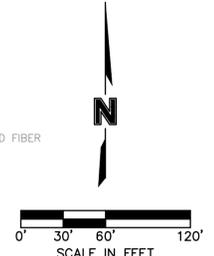
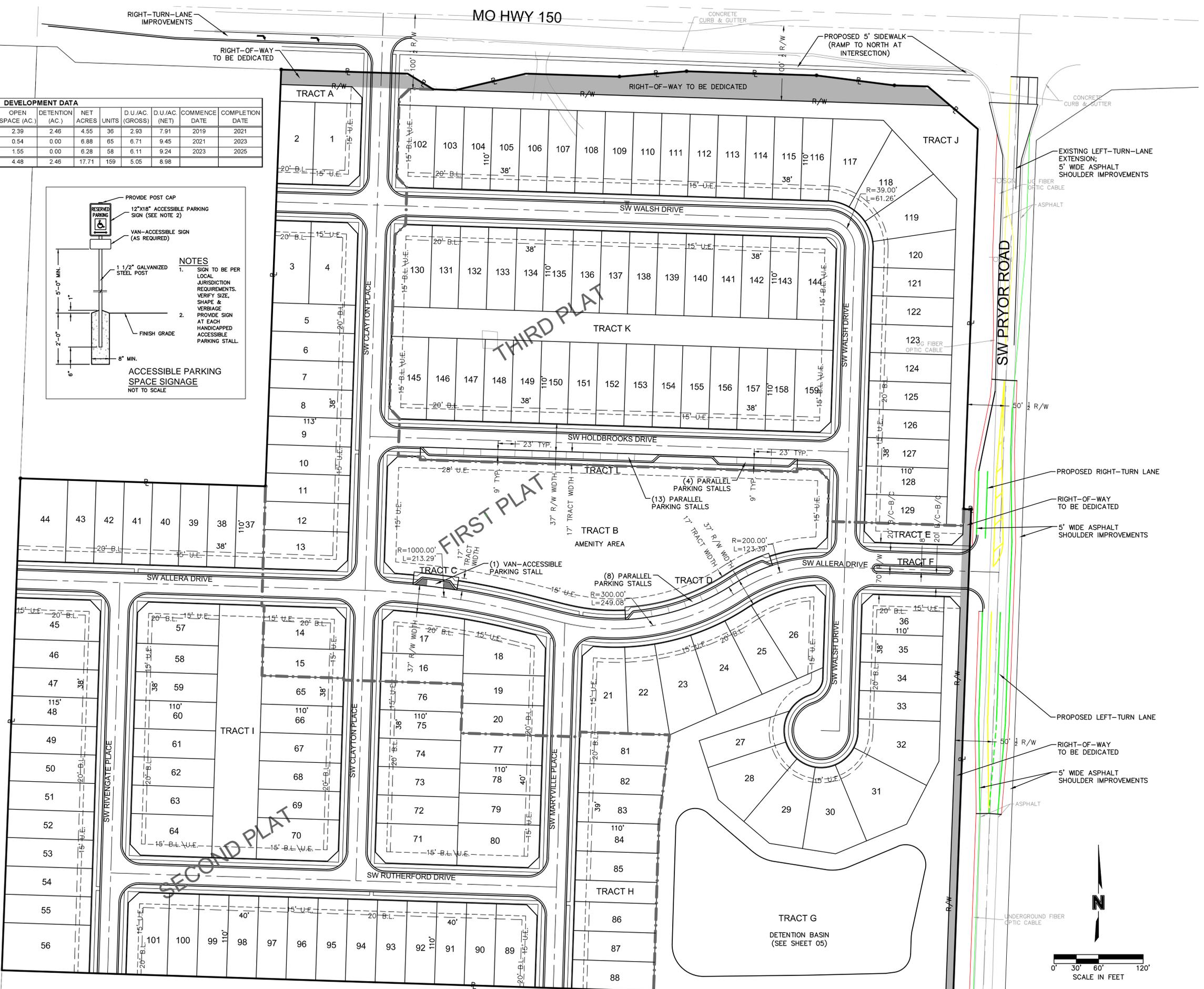
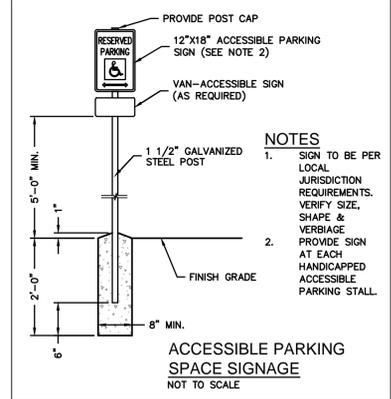
drawn by: _____ G.S.
 checked by: _____ C.J.H.
 designed by: _____ S.M.S.
 QA/QC by: _____ J.F.F.
 project no.: 018-2503
 date: 2018.10.18

SHEET
03

DEVELOPMENT DATA													
PHASE	EX ZONING	PR ZONING	LAND USE	GROSS ACRES	STREET R/W (AC.)	OPEN SPACE (AC.)	DETENTION (AC.)	NET ACRES	UNITS	D.U./AC. (GROSS)	D.U./AC. (NET)	COMMENCE DATE	COMPLETION DATE
1	R-1 & RLL	RP-3	S.F. RES.	12.29	2.89	2.39	2.46	4.55	36	2.93	7.91	2019	2021
2	R-1 & RLL	RP-3	S.F. RES.	9.69	2.27	0.54	0.00	6.88	65	6.71	9.45	2021	2023
3	R-1 & RLL	RP-3	S.F. RES.	9.49	1.66	1.55	0.00	6.28	58	6.11	9.24	2023	2025
TOTAL				31.47	6.82	4.48	2.46	17.71	159	5.05	8.98		

TRACTS		
TRACT	AREA (AC.)	USE
A	0.05	OPEN SPACE
B	2.15	OPEN SPACE (AMENITY)
C	0.02	OPEN SPACE (PARKING)
D	0.08	OPEN SPACE (PARKING)
E	0.07	OPEN SPACE
F	0.02	OPEN SPACE (MEDIAN)
G	2.48	DETENTION
H	0.07	OPEN SPACE
I	0.47	OPEN SPACE
J	0.80	OPEN SPACE
K	0.55	OPEN SPACE
L	0.20	OPEN SPACE (PARKING)

- NOTES:
- RIGHT-OF-WAY WIDTH SHALL BE 50', EXCEPT WHERE OTHERWISE NOTED. CUL-DE-SAC R/W SHALL BE A 50' RADIUS AS MEASURED FROM THE CENTER OF THE CUL-DE-SAC.
 - STREET WIDTHS AS MEASURED BETWEEN BACKS OF CURBS SHALL BE 28', EXCEPT WHERE OTHERWISE NOTED. CUL-DE-SAC PAVEMENT SHALL BE A 39' RADIUS AS MEASURED FROM THE CENTER OF THE CUL-DE-SAC TO BACK OF CURB.
 - 5' SIDEWALKS SHALL BE INSTALLED ALONG BOTH SIDES OF ALL PROPOSED STREETS.
 - TRACTS A, G, & J SHALL BE A MINIMUM OF 20' WIDE WHERE SEPARATING REAR LOT LINES AND RIGHT-OF-WAY.
 - PARALLEL PARKING STALLS SHALL BE 9' WIDE AND 23' LONG.
 - LOT DIMENSIONS AND SETBACKS:
 - MINIMUM DEPTH: 110'
 - MINIMUM WIDTH: 38'
 - MINIMUM AREA: 4180 SF
 - FRONT SETBACK: 20'
 - SIDE YARD SETBACK: 5' MIN.
 - REAR YARD SETBACK: 15' MIN.
 - CORNER LOTS: 15' MIN.



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BY: C.H.

NO. REV. DATE DESCRIPTION

1 2018.11.20 Revised per Staff comments

REVISIONS

SITE PLAN

ALLERA
 REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MISSOURI

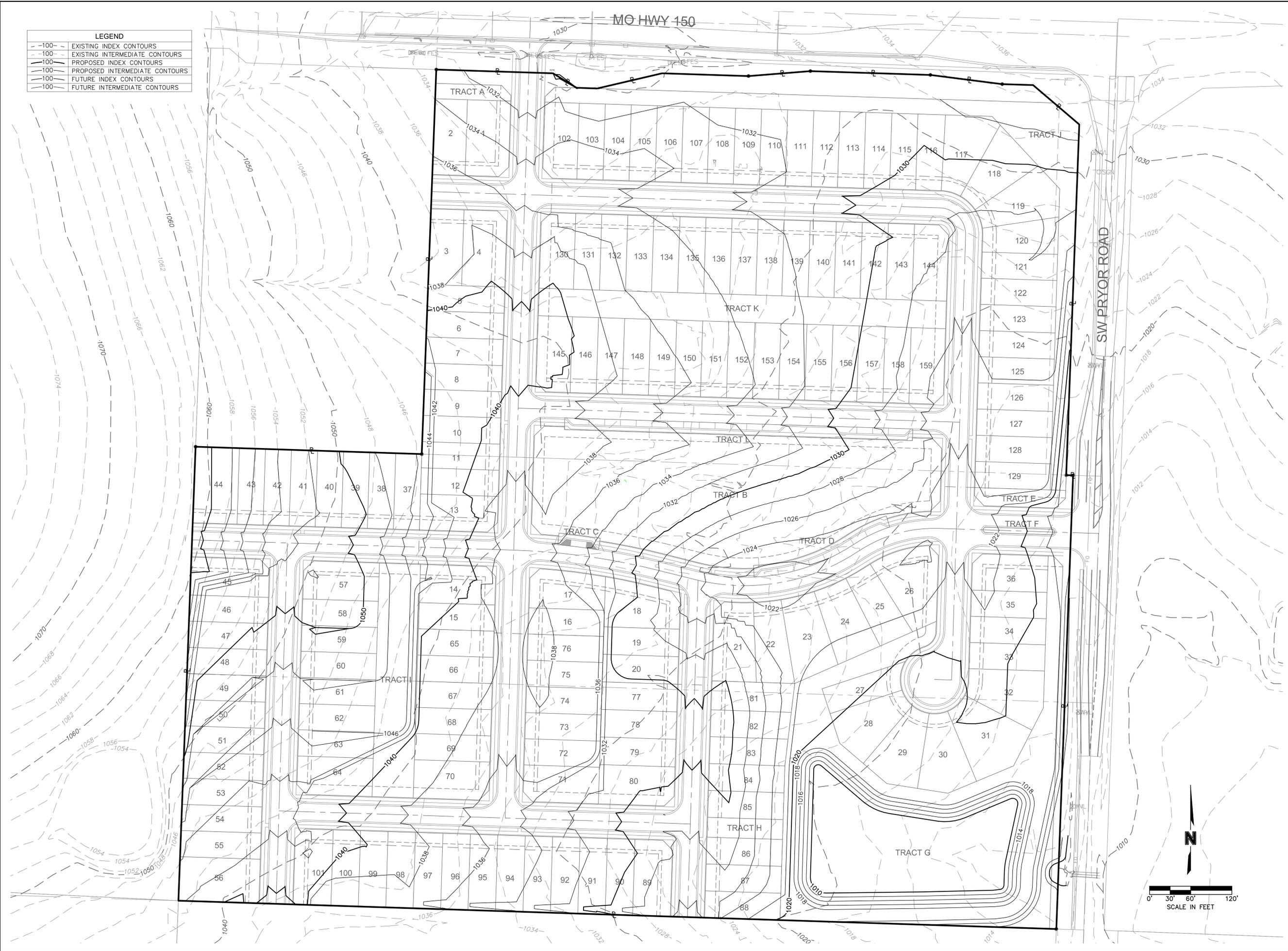
2018

drawn by: G.S.
 checked by: C.H.
 designed by: S.M.S.
 QA/QC by: J.F.F.
 project no.: 018-2503
 date: 2018.10.18

SHEET 04

DWG: F:\2018\2601-3000\018-2603\40-Design\AutoCAD\Preliminary Plans\Sheets\GNV\C_GRD01_Grading_0182503.dwg
 DATE: Nov 20, 2018 10:20am USER: chaimquist

LEGEND	
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-100-	EXISTING INTERMEDIATE CONTOURS
-100-	PROPOSED INDEX CONTOURS
-100-	PROPOSED INTERMEDIATE CONTOURS
-100-	FUTURE INDEX CONTOURS
-100-	FUTURE INTERMEDIATE CONTOURS

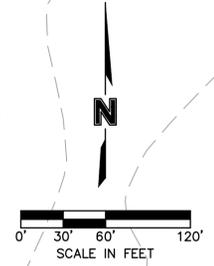
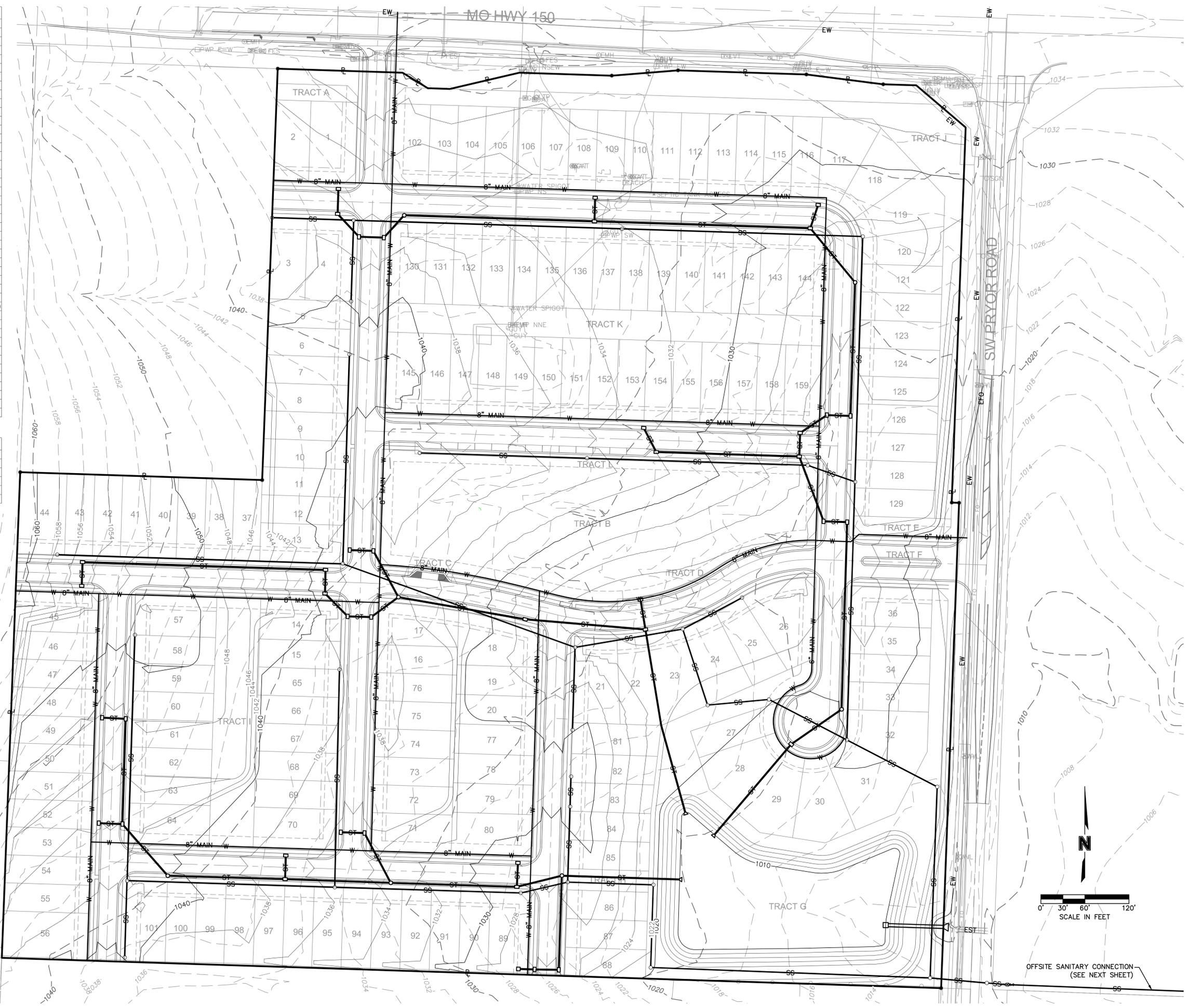


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		REVISIONS	
NO. REV.	DATE	REVISIONS DESCRIPTION	BY
1	2018.11.20	Revised per Staff comments	CJH
GRADING PLAN		ALLERA REZONING & PRELIMINARY DEVELOPMENT PLAN LEE'S SUMMIT, MISSOURI	
drawn by: _____ G.S. checked by: _____ C.J.H. designed by: _____ S.M.S. QA/QC by: _____ J.F.F. project no.: 018-2503 date: 2018.10.18		2018	
SHEET 05			

DWG: F:\2018\2601-3000\018-2603\40-Design\AutoCAD\Preliminary Plans\Sheets\GNVC\C_UTL01_Utility_0182603.dwg
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 USER: chalmquist

LEGEND	
ECTVOH	EXISTING CABLE TV, OVERHEAD
ECTV	EXISTING CABLE TV, UNDERGROUND
CTVOH	PROPOSED CABLE TV, OVERHEAD
CTV	PROPOSED CABLE TV, UNDERGROUND
FCTVOH	FUTURE CABLE TV, OVERHEAD
FCTV	FUTURE CABLE TV, UNDERGROUND
EFOOH	EXISTING FIBER OPTIC, OVERHEAD
EFO	EXISTING FIBER OPTIC, UNDERGROUND
FOOH	PROPOSED FIBER OPTIC, OVERHEAD
FO	PROPOSED FIBER OPTIC, UNDERGROUND
FFOOH	FUTURE FIBER OPTIC, OVERHEAD
FFO	FUTURE FIBER OPTIC, UNDERGROUND
EFP	EXISTING FIRE PROTECTION SYSTEM LINE
FP	PROPOSED FIRE PROTECTION SYSTEM LINE
FFP	FUTURE FIRE PROTECTION SYSTEM LINE
EFL	EXISTING FUEL LINE
FL	PROPOSED FUEL LINE
FFL	FUTURE FUEL LINE
EG	EXISTING NATURAL GAS LINE
G	PROPOSED NATURAL GAS LINE
FG	FUTURE NATURAL GAS LINE
ETELOH	EXISTING TELEPHONE LINE, OVERHEAD
ETEL	EXISTING TELEPHONE LINE, UNDERGROUND
TELOH	PROPOSED TELEPHONE LINE, OVERHEAD
TEL	PROPOSED TELEPHONE LINE, UNDERGROUND
FTELOH	FUTURE TELEPHONE LINE, OVERHEAD
FTEL	FUTURE TELEPHONE LINE, UNDERGROUND
EEOH	EXISTING POWER/ELECTRIC LINE, OVERHEAD
EE	EXISTING POWER/ELECTRIC LINE, UNDERGROUND
EOH	PROPOSED POWER/ELECTRIC LINE, OVERHEAD
E	PROPOSED POWER/ELECTRIC LINE, UNDERGROUND
FEOH	FUTURE POWER/ELECTRIC LINE, OVERHEAD
FE	FUTURE POWER/ELECTRIC LINE, UNDERGROUND
ESS	EXISTING SANITARY SEWER
SS	PROPOSED SANITARY SEWER
FSS	FUTURE SANITARY SEWER
ESL	EXISTING STEAM LINE
SL	PROPOSED STEAM LINE
FSL	FUTURE STEAM LINE
EST	EXISTING STORM SEWER
ST	PROPOSED STORM SEWER
FST	FUTURE STORM SEWER
EW	EXISTING WATER LINE
W	PROPOSED WATER LINE
FW	FUTURE WATER LINE

LEGEND	
-100-	EXISTING INDEX CONTOURS
-100-	EXISTING INTERMEDIATE CONTOURS
-100-	PROPOSED INDEX CONTOURS
-100-	PROPOSED INTERMEDIATE CONTOURS
-100-	FUTURE INDEX CONTOURS
-100-	FUTURE INTERMEDIATE CONTOURS



OFFSITE SANITARY CONNECTION
(SEE NEXT SHEET)

NO. REV.	DATE	REVISIONS DESCRIPTION	BY	CHK
1	2018.11.20	Revised per Staff comments		

UTILITY PLAN
 ALLERA
 REZONING & PRELIMINARY DEVELOPMENT PLAN
 LEE'S SUMMIT, MISSOURI
 2018

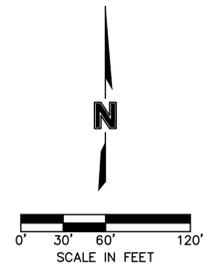
SHEET
06

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drawn by: G.S.
 checked by: C.J.H.
 designed by: S.M.S.
 QA/QC by: J.F.F.
 project no.: 018-2603
 date: ###

LEGEND	
ECTVOH	EXISTING CABLE TV, OVERHEAD
ECTV	EXISTING CABLE TV, UNDERGROUND
CTVOH	PROPOSED CABLE TV, OVERHEAD
CTV	PROPOSED CABLE TV, UNDERGROUND
ECTVOH	FUTURE CABLE TV, OVERHEAD
ECTV	FUTURE CABLE TV, UNDERGROUND
EFOOH	EXISTING FIBER OPTIC, OVERHEAD
EFO	EXISTING FIBER OPTIC, UNDERGROUND
FOOH	PROPOSED FIBER OPTIC, OVERHEAD
FO	PROPOSED FIBER OPTIC, UNDERGROUND
FFOOH	FUTURE FIBER OPTIC, OVERHEAD
FFO	FUTURE FIBER OPTIC, UNDERGROUND
EFP	EXISTING FIRE PROTECTION SYSTEM LINE
FP	PROPOSED FIRE PROTECTION SYSTEM LINE
FFP	FUTURE FIRE PROTECTION SYSTEM LINE
EFL	EXISTING FUEL LINE
FL	PROPOSED FUEL LINE
FFL	FUTURE FUEL LINE
EG	EXISTING NATURAL GAS LINE
G	PROPOSED NATURAL GAS LINE
FG	FUTURE NATURAL GAS LINE
ETELOH	EXISTING TELEPHONE LINE, OVERHEAD
ETEL	EXISTING TELEPHONE LINE, UNDERGROUND
TELOH	PROPOSED TELEPHONE LINE, OVERHEAD
TEL	PROPOSED TELEPHONE LINE, UNDERGROUND
FTELOH	FUTURE TELEPHONE LINE, OVERHEAD
FTEL	FUTURE TELEPHONE LINE, UNDERGROUND
EEOH	EXISTING POWER/ELECTRIC LINE, OVERHEAD
EE	EXISTING POWER/ELECTRIC LINE, UNDERGROUND
EOH	PROPOSED POWER/ELECTRIC LINE, OVERHEAD
E	PROPOSED POWER/ELECTRIC LINE, UNDERGROUND
FEOH	FUTURE POWER/ELECTRIC LINE, OVERHEAD
FE	FUTURE POWER/ELECTRIC LINE, UNDERGROUND
ESS	EXISTING SANITARY SEWER
SS	PROPOSED SANITARY SEWER
FSS	FUTURE SANITARY SEWER
ESL	EXISTING STEAM LINE
SL	PROPOSED STEAM LINE
FSL	FUTURE STEAM LINE
EST	EXISTING STORM SEWER
ST	PROPOSED STORM SEWER
FST	FUTURE STORM SEWER
EW	EXISTING WATER LINE
W	PROPOSED WATER LINE
FW	FUTURE WATER LINE

LEGEND	
-100-	EXISTING INDEX CONTOURS
-100-	EXISTING INTERMEDIATE CONTOURS
-100-	PROPOSED INDEX CONTOURS
-100-	PROPOSED INTERMEDIATE CONTOURS
-100-	FUTURE INDEX CONTOURS
-100-	FUTURE INTERMEDIATE CONTOURS



REVISIONS	
NO. REV.	DATE
1	2018.11.20
	Revised per Staff comments

REVISIONS DESCRIPTION	
BY	CH

UTILITY PLAN (CONT'D)
 ALLERA
 REZONING & PRELIMINARY DEVELOPMENT PLAN
 LEE'S SUMMIT, MISSOURI
 2018

SHEET 07

drawn by: G.S.
 checked by: C.J.H.
 designed by: S.M.S.
 QA/QC by: J.F.F.
 project no.: 018-2503
 date: 2018.10.18

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Landscape Schedule

Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
	85	Gleditsia triacanthos 'Skyline'	Shademaster Honeylocust	3"	6'	min. clear., ground to canopy	
	98	Platanus x acerifolia	London Plane Tree	3"	6'	min. clear., ground to canopy	
	112	Acer x truncatum 'Warrenred'	Pacific Sunset Maple	3"	6'	min. clear., ground to canopy	
	51	Quercus bicolor	Swamp White Oak	3"	6'	min. clear., ground to canopy	
	71	Acer griseum	Paperbark Maple	3"	6'	min. clear., ground to canopy	
	23	Ulmus parvifolia	Loebark Elm	3"	6'	min. clear., ground to canopy	
EVERGREEN TREES							
	66	Juniperus chinensis 'Keteleeri'	Keteleeri Juniper	8'	ht.	symmetrical pyramidal form	
	44	Picea abies	Norway Spruce	8'	ht.	symmetrical pyramidal form	
	37	Picea pungens	Colorado Blue Spruce	6'	ht.	symmetrical pyramidal form	
ORNAMENTAL TREES							
	16	Cercis canadensis	Eastern Redbud		1.5"		
DECIDUOUS SHRUBS/GRASSES							
	101	Liriope spicata 'Silver Dragon'	Silver Dragon Liriope	1 gal.		Plant @ 18" O.C.	
	80	Festuca ovina glauca	Dwarf Blue Fescue	1 gal.		Plant @ 18" O.C.	
	13	Abelia x grandiflora Kaleidoscope	Kaleidoscope Abelia	3 gal. 16" ht. min.		Plant @ 4' O.C.	
	138	Equisetum hyemale	Horsetail Reed	1 gal.		Plant @ 18" O.C.	
EVERGREEN SHRUBS							
	51	Juniperus chinensis 'Spartan'	Spartan Juniper		5' ht.	Symmetrical pyramidal form	

Landscape Calculations/Requirements

Street Frontage: (For all Districts) One (1) tree shall be planted for each thirty (30) feet of street frontage, within 20' setback. REQUIREMENTS MET

Planting Notes

- Location of all existing utilities needs to be done before commencing work.
- The planting plan graphically illustrates overall plant massings. Each plant species massing shall be placed in the field to utilize the greatest coverage of ground plane. The following applies for individual plantings:
 - Creeping groundcover shall be a minimum of 6" from paving edge.
 - All trees shall be a minimum of 3' from paving edge.
 - All plants of the same species shall be equally spaced apart and placed for best aesthetic viewing.
 - All shrubs shall be a minimum of 2' from paved edge.
- Mulch all planting bed areas to a minimum depth of 3". Mulch individual trees to a minimum depth of 4".
- Note: If plants are not labeled - they are existing and shall remain.
- All landscaped areas in ROW shall be sodded and irrigated unless otherwise specified.

Materials:
 1. Plant material shall be healthy, vigorous, and free of disease and insects as per AAN standards.
 2. Shredded bark mulch installed at trees shall be finely chipped and shredded hardwood chips, consisting of pure wood products and free of all other foreign substances. Pine bark compost mulch installed at planting bed areas shall be free of all other foreign substances.

Installation:
 1. All planting beds shall be amended with 1 cubic yard of peat moss per 1,000 square feet. Till peat moss into soil to a 6" depth. A 10-10-10 fertilizer shall be spread over all planting areas prior to planting, at a rate of 50 pounds per 2,000 square feet.
 2. After plants have been installed, all planting beds shall be treated with Dacthal pre-emergent herbicide prior to mulch application.
 3. Plant pit backfill for trees and shrubs shall be 50% peat or well composted manure and 50% topsoil.
 4. Plant material shall be maintained and guaranteed for a period of one year after Owner's acceptance of finished job. All dead or damaged plant material shall be replaced at Landscape Contractor's expense.
 6. Landscape contractor shall maintain all plant material until final acceptance, at which point the one year guarantee begins.

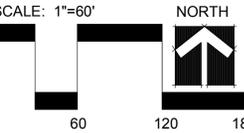


1 OVERALL STREET TREE/BUFFER PLAN
 SCALE: 1"=60'-0"



CLIENT
 Allera- Summit
 Highway 150 and
 Pryor Road
 Lee's Summit, MO

PROJECT
 Allera- Summit
 Highway 150 and
 Pryor Road
 Lee's Summit, MO

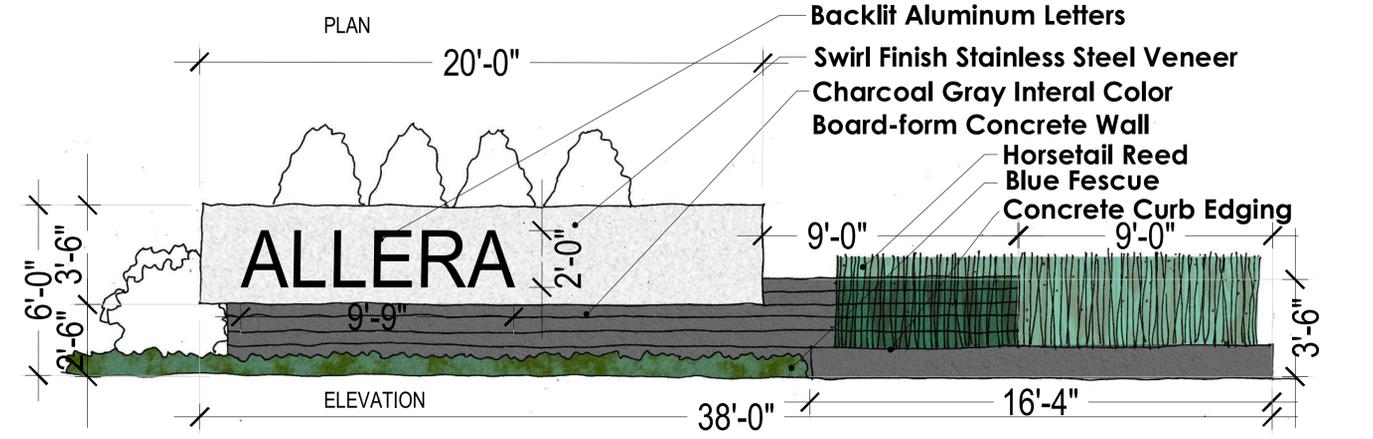
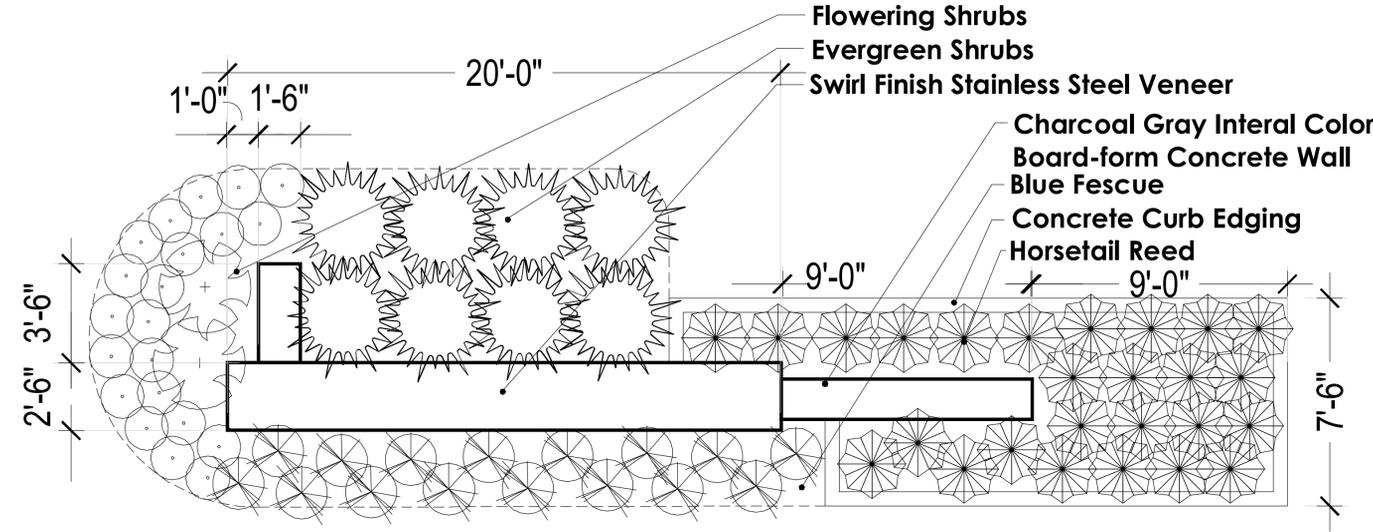
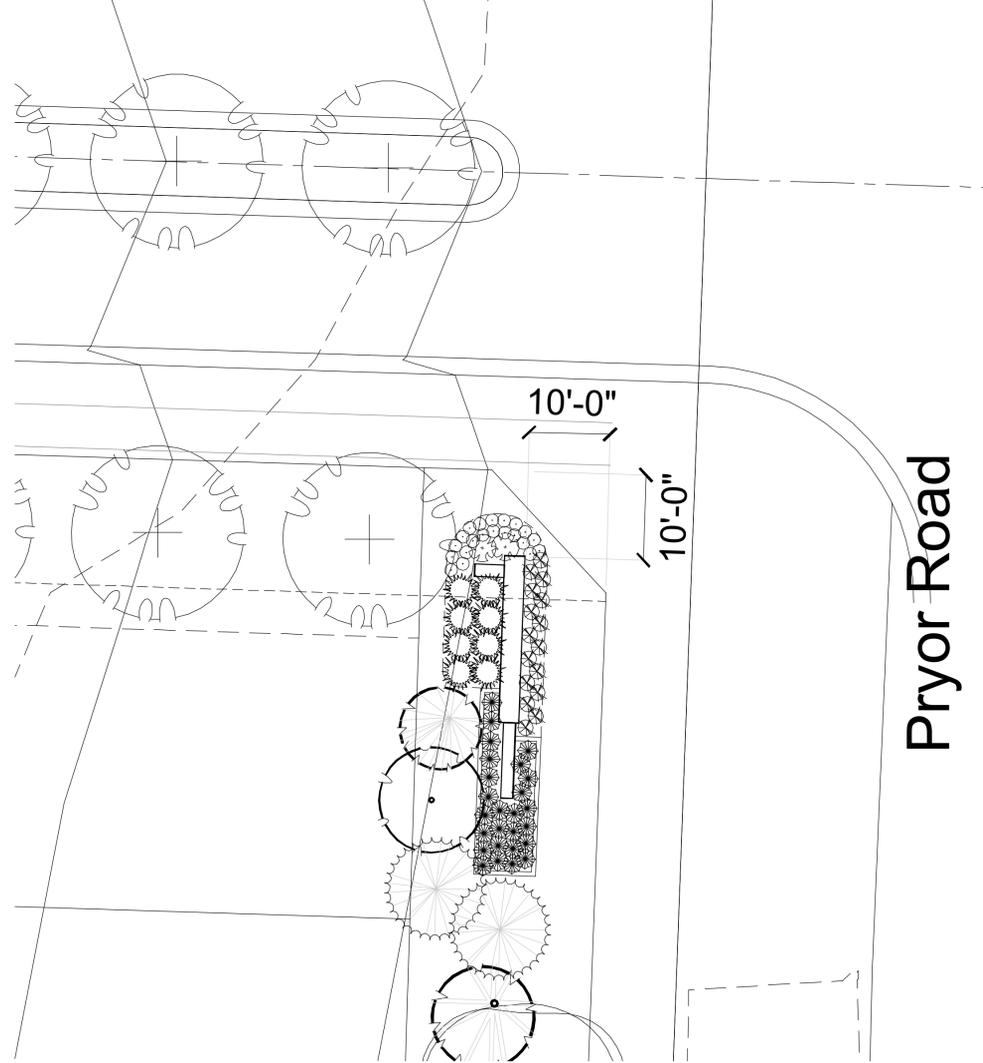
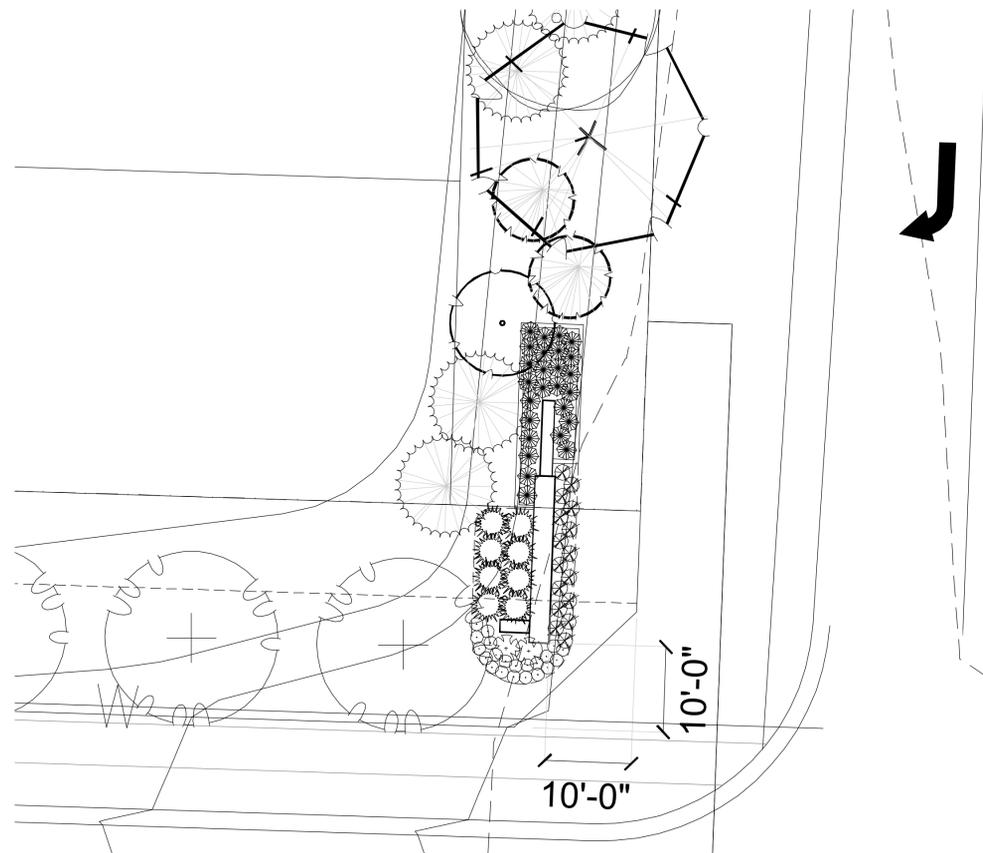


Date: 11.20.18
 Overall Plan

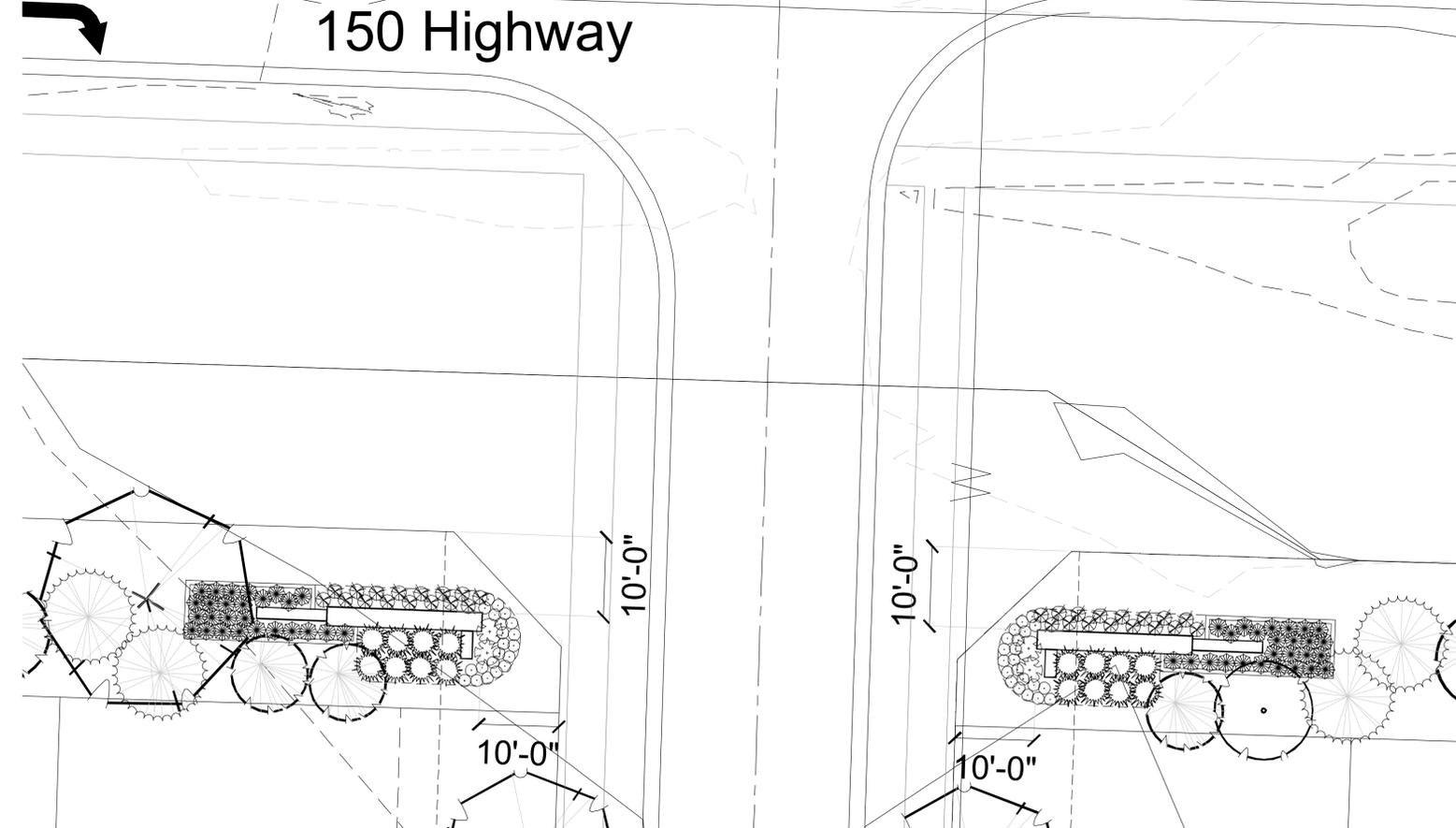


CLIENT
 Allera- Summit
 Highway 150 and
 Pryor Road
 Lee's Summit, MO

PROJECT
 Allera- Summit
 Highway 150 and
 Pryor Road
 Lee's Summit, MO

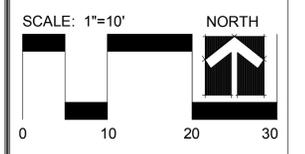


2 COMMUNITY ENTRY MONUMENT PLAN VIEW, AND ELEVATION VIEW
 SCALE: SCALE: 1"=3'



3 150 HIGHWAY ENTRY MONUMENT LANDSCAPE PLAN
 SCALE: 1"=20'-0"

1 PRYOR ROAD ENTRY MONUMENT LANDSCAPE PLAN
 SCALE: 1"=10'-0"

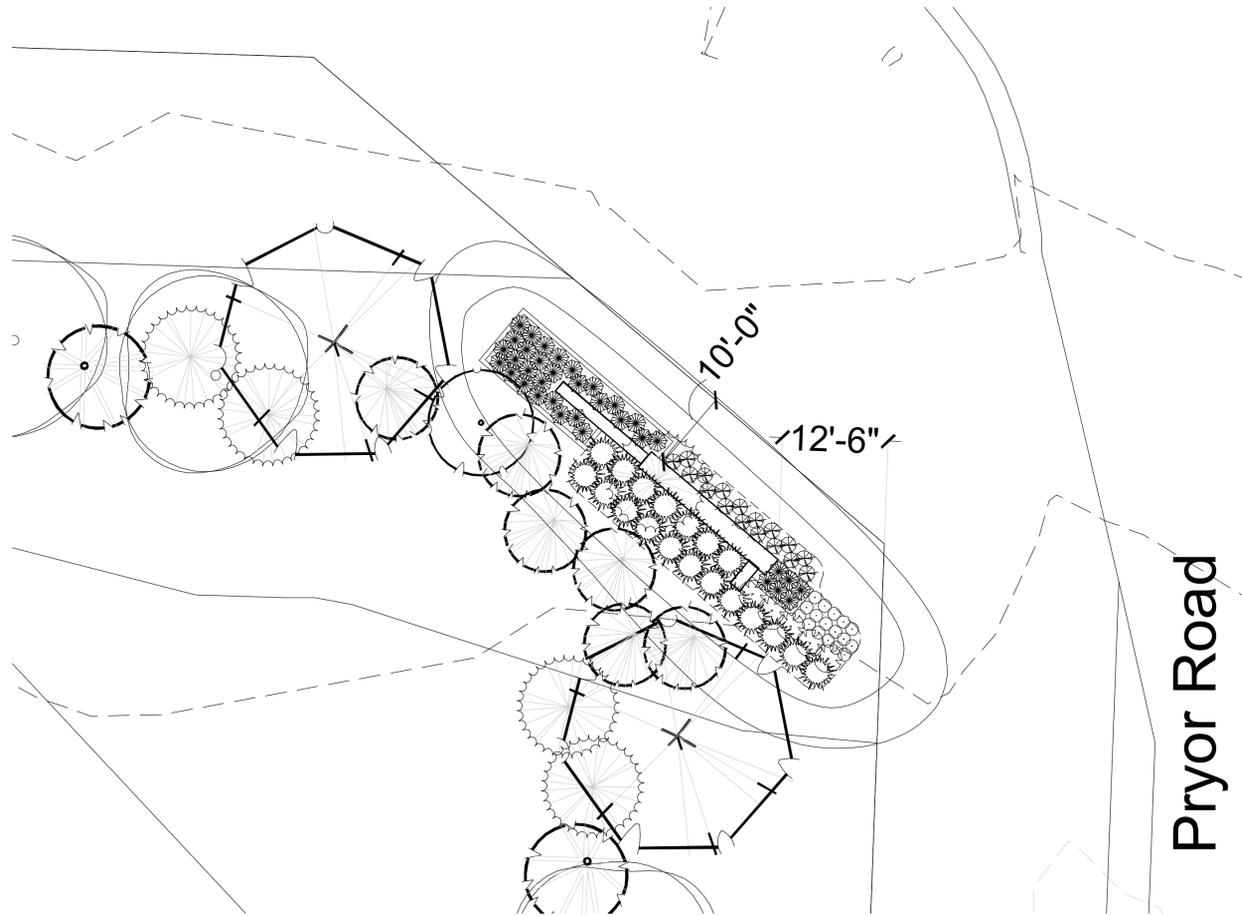


Date: 11.20.18
 Entry Monuments



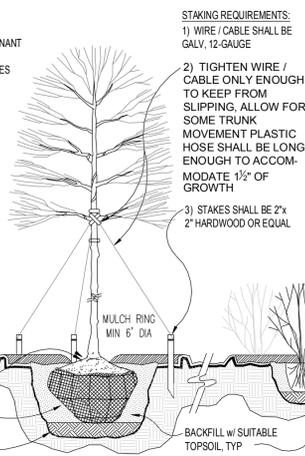
CLIENT
Allera- Summit
Highway 150 and
Pryor Road
Lee's Summit, MO

PROJECT
Allera- Summit
Highway 150 and
Pryor Road
Lee's Summit, MO

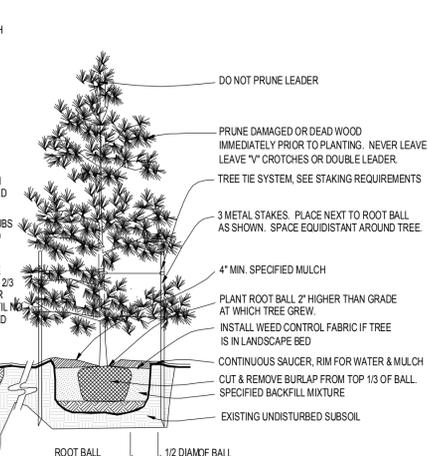


1 CORNER ENTRY MONUMENT LANDSCAPE PLAN
SCALE: 1"=10'-0"

- TREE PLANTING NOTES:**
- DO NOT HEAVILY PRUNE THE TREE. PRUNE ONLY CROSSOVER LIMBS, CO-DOMINANT LEADERS, & BROKEN OR DEAD BRANCHES. SOME INTERIOR TWIGS & LATERAL BRANCHES MAY BE PRUNED. DO NOT REMOVE THE TERMINAL BUDS OF BRANCHES THAT EXTEND TO THE EDGE OF THE CROWN
 - MARK THE NORTH SIDE OF THE TREE IN THE NURSERY, AND ROTATE TREE TO FACE NORTH AT THE SITE WHENEVER POSSIBLE
 - SET TOP OF ROOT BALL 1-2 INCHES HIGHER THAN SURROUNDING GRADE
 - APPLY 4" THK WOOD MULCH. DO NOT PLACE MULCH IN DIRECT CONTACT W/ TREE TRUNK
 - EACH TREE MUST BE PLANTED SUCH THE TRUNK FLARE IS VISIBLE AT THE TOP OF THE ROOT BALL. TREES WHERE THE FLARE IS NOT VISIBLE SHALL BE REJECTED. DO NOT COVER THE TOP OF THE ROOT BALL W/ SOIL
 - REMOVE ALL TWINE, ROPE, WIRE AND BURLAP FROM THE UPPER 1/3 OF ROOT BALL (REMOVE WIRE BASKETS)
 - PLACE ALL ROOT BALLS ON UN-EXCAVATED OR TAMPED SOIL, TYP



- STAKING REQUIREMENTS:**
- WIRE / CABLE SHALL BE GALV, 12-GAUGE
 - TIGHTEN WIRE / CABLE ONLY ENOUGH TO KEEP FROM SLIPPING. ALLOW FOR SOME TRUNK MOVEMENT. PLASTIC HOSES SHALL BE LONG ENOUGH TO ACCOMMODATE 1/2" OF GROWTH
 - STAKES SHALL BE 2"x 2" HARDWOOD OR EQUAL

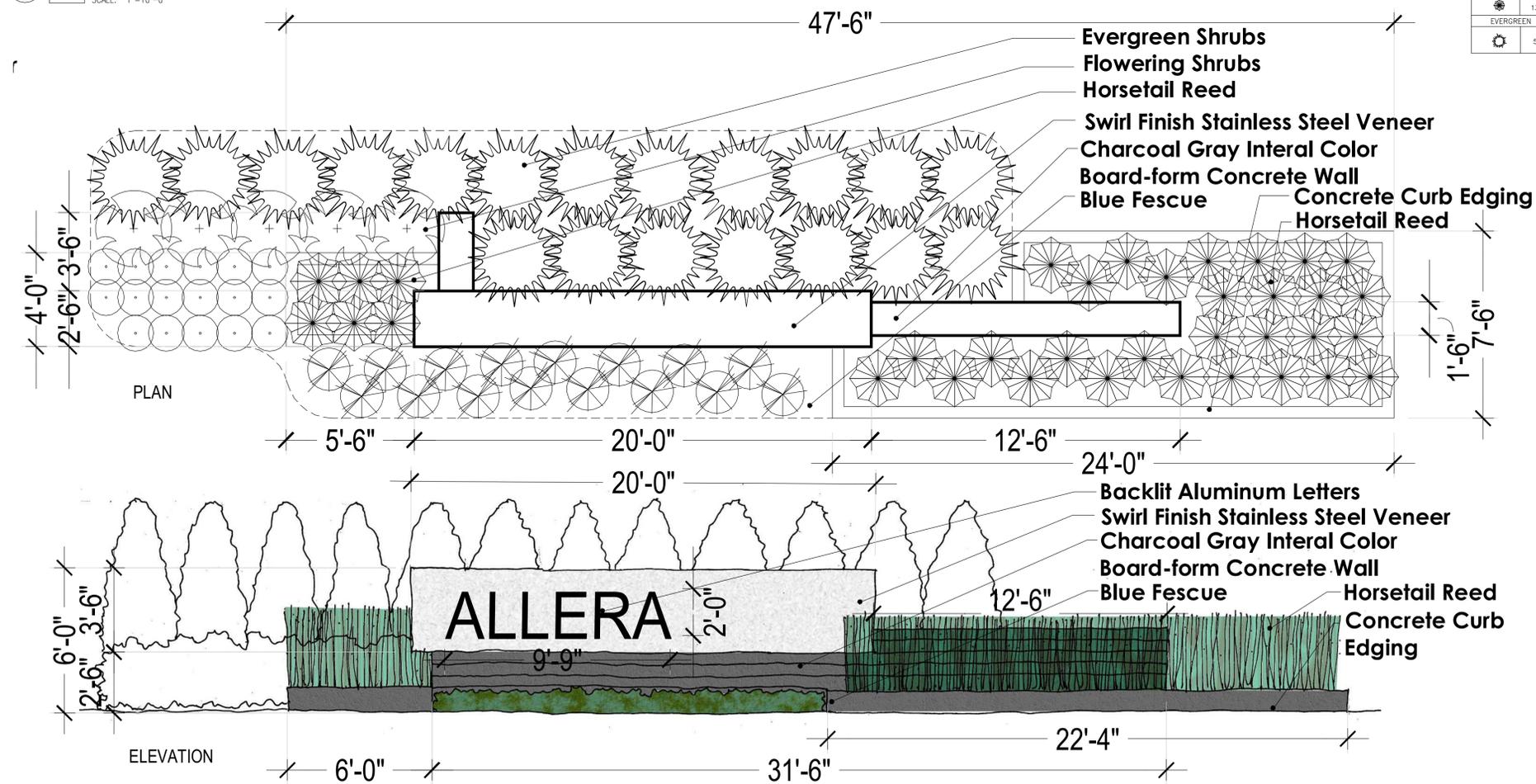


- PERENNIAL PLANTING NOTES:**
- APPLY 2" THK BED OF MULCH ON PERENNIAL PLANT BED. DO NOT COVER PLANTS
 - THOROUGHLY MIX PEAT IN TOP 3-4" OF SOIL
 - BREAK UP EXISTING SOIL TO A DEPTH OF 2"
 - PROVIDE NEW TOPSOIL TO A DEPTH OF 12"
- SHRUB PLANTING NOTES:**
- SET SHRUB AT SAME DEPTH AT WHICH IT GREW IN THE FIELD OR CONTAINER
 - PRUNE, THIN & SHAPE SHRUBS IN ACCORDANCE W/ STANDARD HORTICULTURAL PRACTICE
- INITIAL WATERING:**
- WHEN BACKFILL IS 2/3 COMPLETE, WATER THOROUGHLY UNTIL NO MORE IS ABSORBED

2 PLANTING INSTALLATION DETAILS
SCALE: NTS

Landscape Schedule

Symbol	Qty.	Botanical Name	Common Name	Min. Root	Min. Size	Caliper	Remarks
OVERSTORY TREES							
(Symbol)	85	<i>Cedrela trichanthes</i> "Skyline"	Shademaster Honeylocust	3"	6' min. clear, ground to canopy		
(Symbol)	98	<i>Platanus x acerifolia</i>	London Plane Tree	3"	6' min. clear, ground to canopy		
(Symbol)	112	<i>Acer x truncatum</i> "Warrenred"	Pacific Sunset Maple	3"	6' min. clear, ground to canopy		
(Symbol)	51	<i>Quercus bicolor</i>	Swamp White Oak	3"	6' min. clear, ground to canopy		
(Symbol)	71	<i>Acer griseum</i>	Paperbark Maple	3"	6' min. clear, ground to canopy		
(Symbol)	23	<i>Ulmus parvifolia</i>	Lacebark Elm	3"	6' min. clear, ground to canopy		
EVERGREEN TREES							
(Symbol)	66	<i>Juniperus chinensis</i> "Keteleeri"	Keteleeri Juniper		8' ht.		symmetrical pyramidal form
(Symbol)	44	<i>Picea abies</i>	Norway Spruce		8' ht.		symmetrical pyramidal form
(Symbol)	37	<i>Picea pungens</i>	Colorado Blue Spruce		6' ht.		symmetrical pyramidal form
ORNAMENTAL TREES							
(Symbol)	16	<i>Cercis canadensis</i>	Eastern Redbud			1.5"	
DECIDUOUS SHRUBS/GRASSES							
(Symbol)	101	<i>Liriope spicata</i> "Silver Dragon"	Silver Dragon Liriope	1 gal.			Plant @ 18" O.C.
(Symbol)	80	<i>Festuca ovina glauca</i>	Dwarf Blue Fescue	1 gal.			Plant @ 18" O.C.
(Symbol)	13	<i>Abelia x grandiflora</i> Kaleidoscope	Kaleidoscope Abelia	3 gal.	18" ht. min.		Plant @ 4' O.C.
(Symbol)	138	<i>Equisetum hyemale</i>	Horsetail Reed	1 gal.			Plant @ 18" O.C.
EVERGREEN SHRUBS							
(Symbol)	51	<i>Juniperus chinensis</i> "Spartan"	Spartan Juniper		5' ht.		Symmetrical pyramidal form



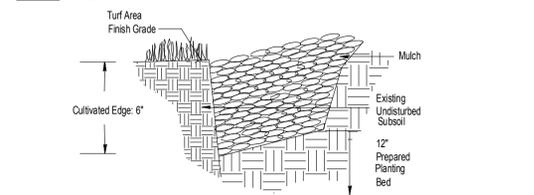
3 NEIGHBORHOOD ENTRY MONUMENT
SCALE: 1"=3'

Inches Between Plants

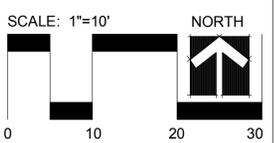
Inches Between Plants	Plant Quantities Per Square Foot
10"	Square Feet x 1.50
12"	Square Feet x 1.00
18"	Square Feet x .44
30"	Square Feet x .16
36"	Square Feet x .11

NOTES: 1. SPACING FOR GROUNDCOVERS, SHRUBS, AND PERENNIALS NOTED ON PLANS.
2. TILL SOIL IN BED TO A 12" MINIMUM DEPTH AND THOROUGHLY MIX IN SOIL AMENITIES AS NOTED ON PLANS.

4 GROUNDCOVER/SHRUB DETAIL
SCALE: NTS



5 CULTIVATED EDGE DETAIL
SCALE: NTS



Date: 11.20.18

Entry Monuments

L3



Landscape Schedule (Amenity area only)

Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
⊙	5	Gleditsia tricanthos "Skyline"	Shademaster Honeylocust		3"	6" min. clear., ground to canopy	
⊙	8	Platanus x acerifolia	London Plane Tree		3"	6" min. clear., ground to canopy	
DECIDUOUS SHRUBS/GRASSES							
⊙	9	Liriodendron muscari "Variegated"	Variegated Liriodendron	1 gal.			Plant @ 18" O.C.
⊙	16	Spiraea x bumalda "Goldflame"	Goldflame spirea	3 gal. 18" ht. min.			Plant @ 3' O.C.
⊙	16	Abelia x grandiflora Kaleidoscope	Kaleidoscope Abelia	3 gal. 18" ht. min.			Plant @ 4' O.C.
EVERGREEN SHRUBS							
⊙	76	Juniperus chinensis "Gold Coast"	Gold Coast Juniper	3 gal. 18" ht. min.			Plant @ 4' O.C.
⊙	00	Juniperus chinensis Spartan	Spartan Juniper	5" ht.			Symmetrical pyramidal form

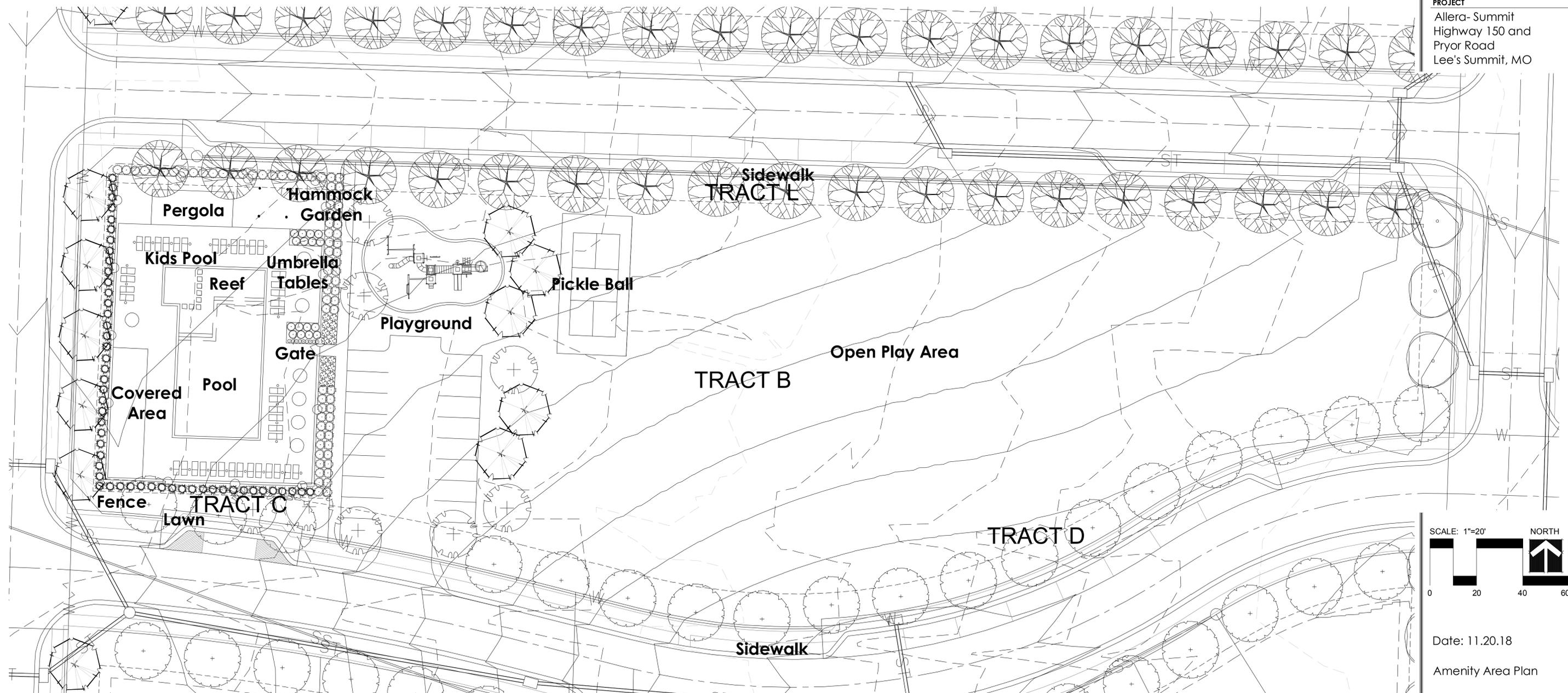
MEIER
 LANDSCAPE
 ARCHITECTURE
 15245 Metcalf Ave.
 Overland Park, KS 66223
 913.787.2817



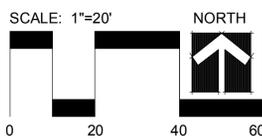
CLIENT
 Allera- Summit
 Highway 150 and
 Pryor Road
 Lee's Summit, MO

PROJECT
 Allera- Summit
 Highway 150 and
 Pryor Road
 Lee's Summit, MO

1 CHARACTER IMAGES
 SCALE: NTS



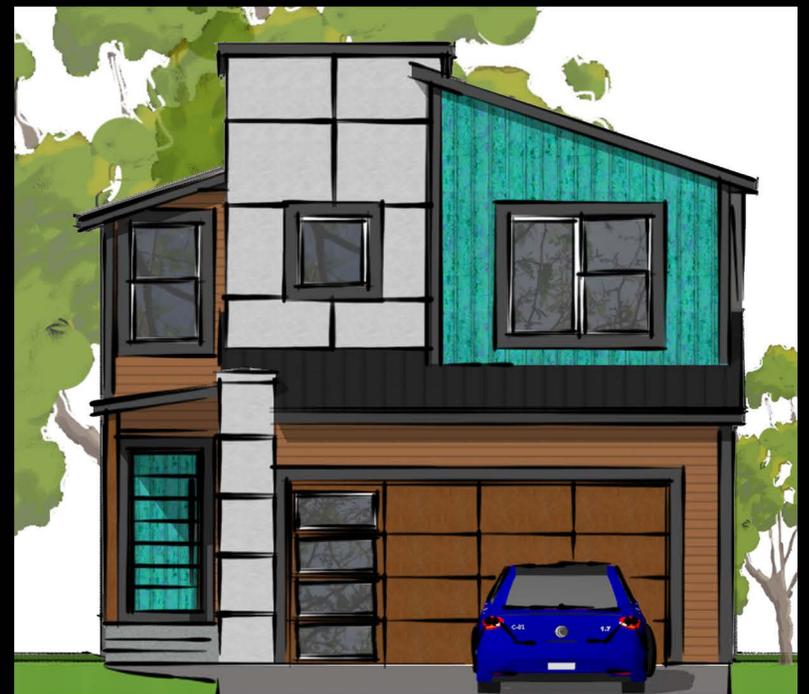
2 AMENITY AREA ENLARGEMENT PLAN
 SCALE: 1"=20'



Date: 11.20.18
 Amenity Area Plan

L4



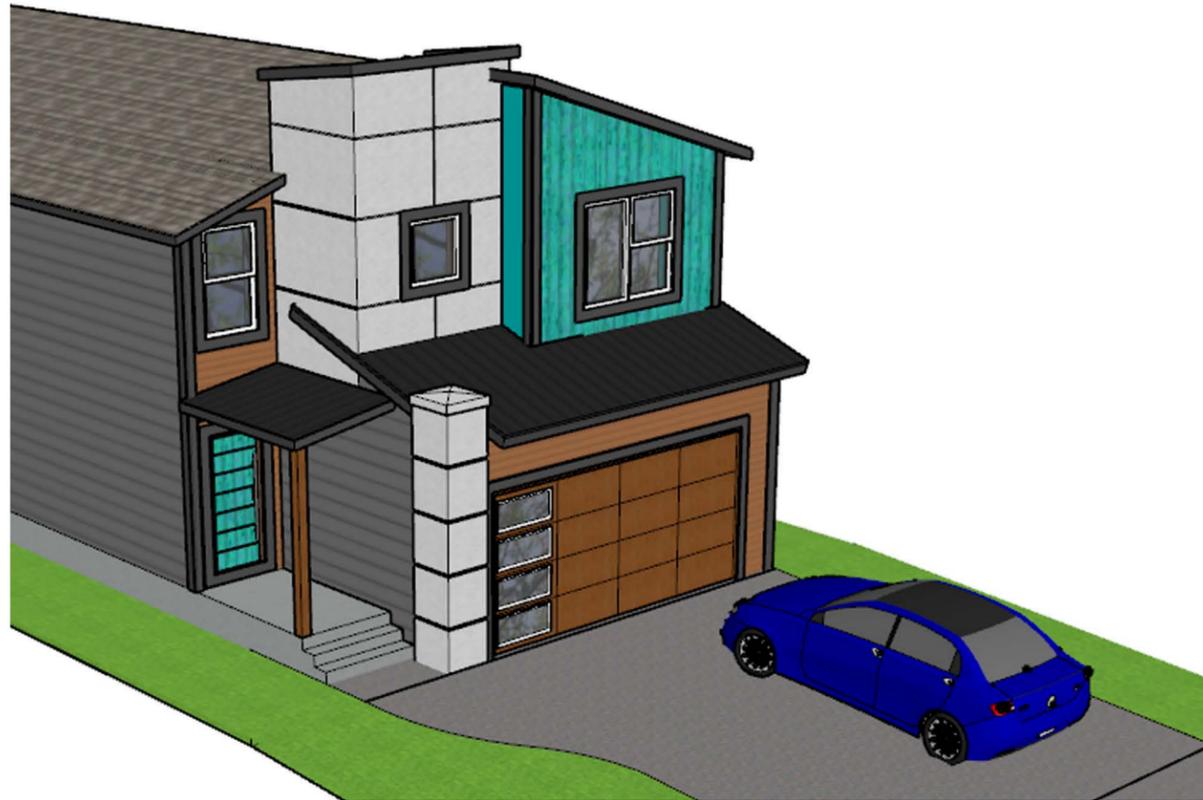


1300-1900 sq ft

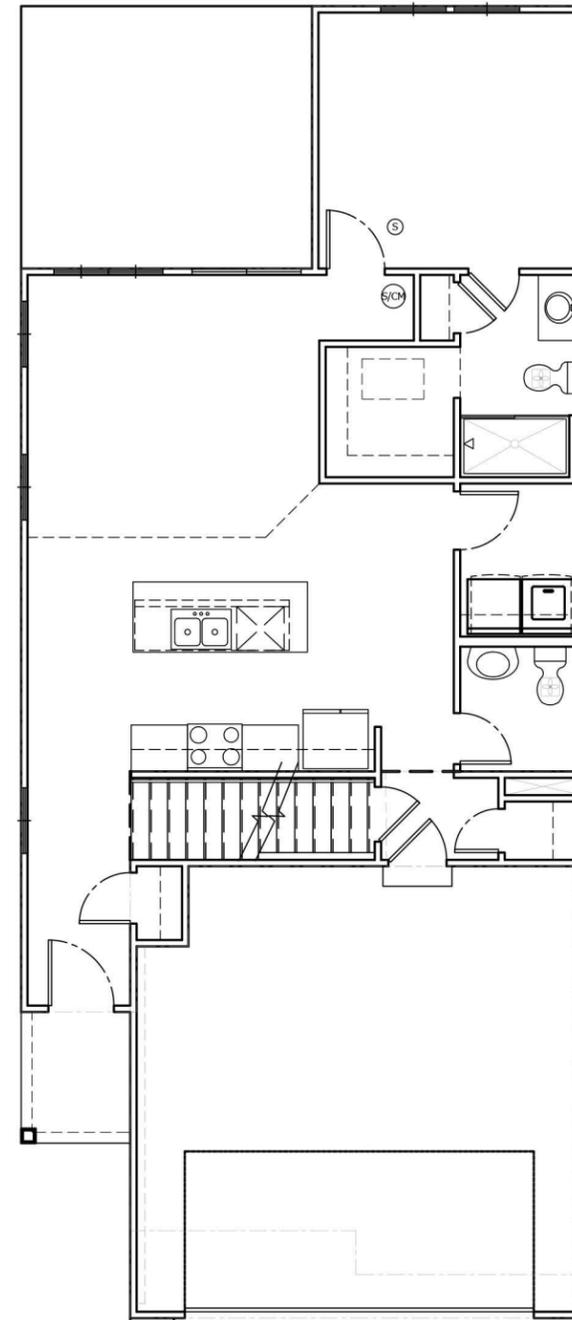




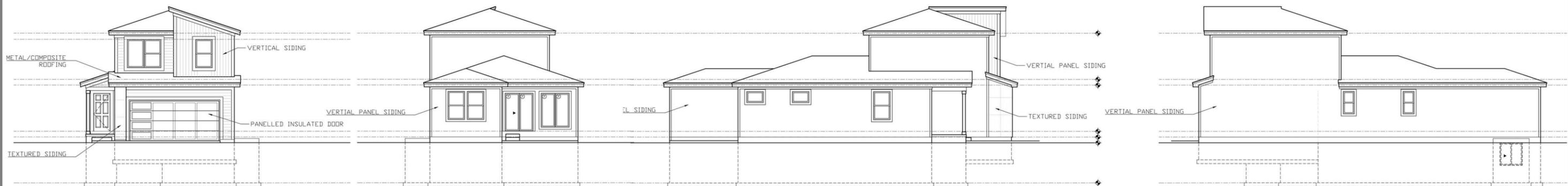
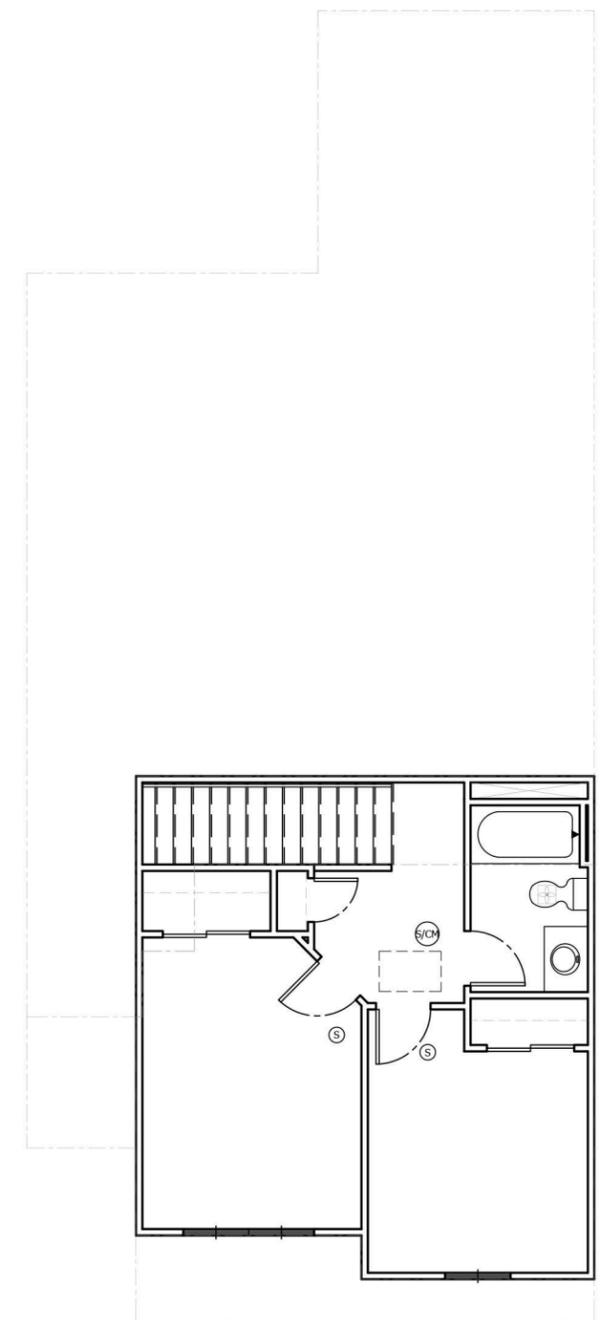
**SUMMIT
HOMES**
Allera - Elevation A



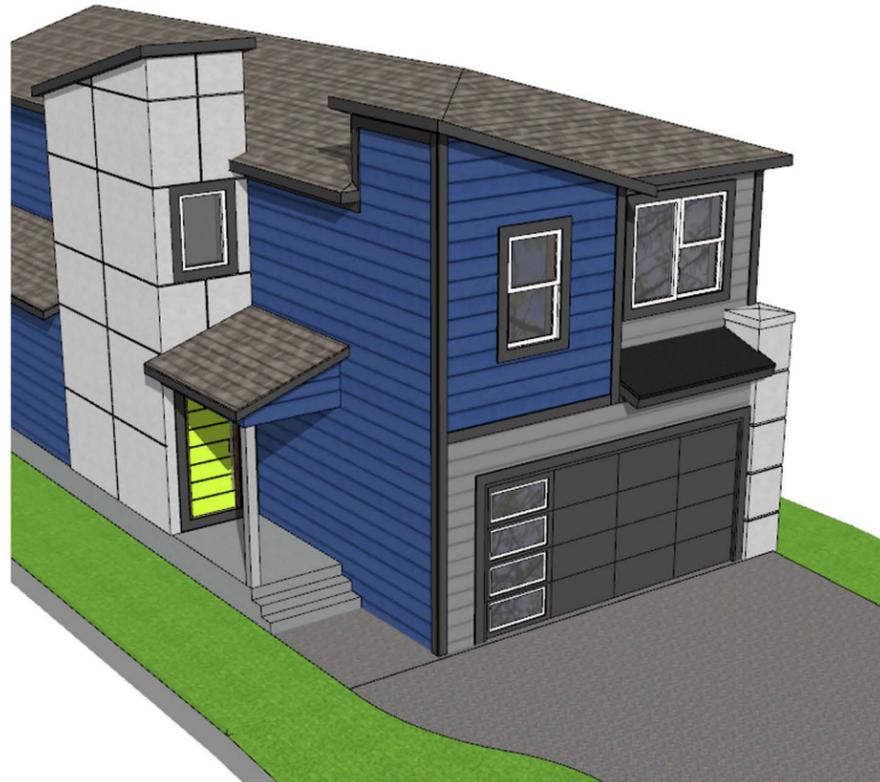
MAIN



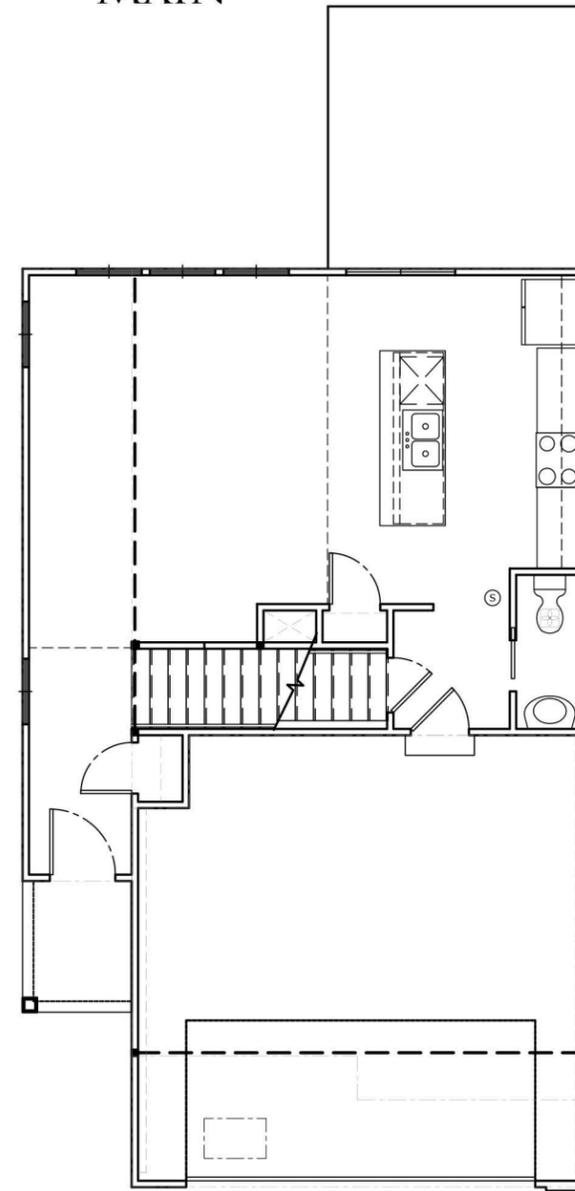
UPPER



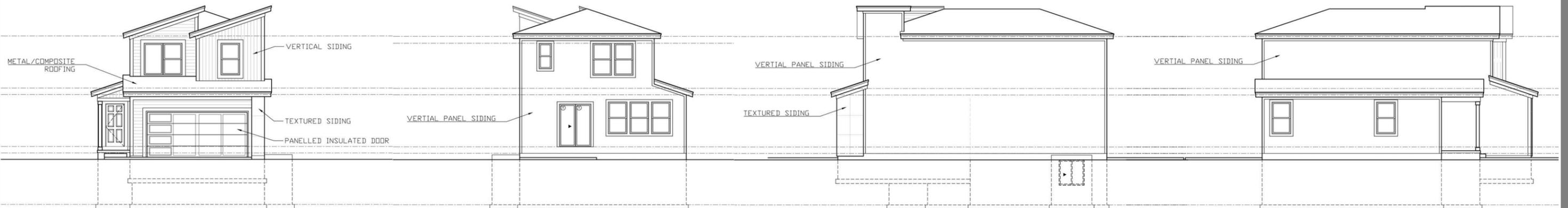
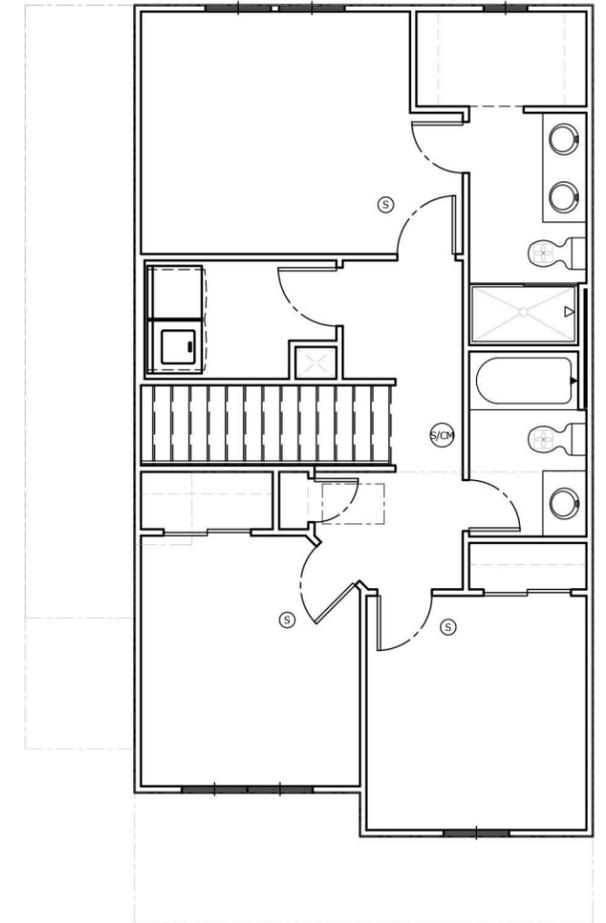
SUMMIT
HOMES
 Allera - Elevation B



MAIN

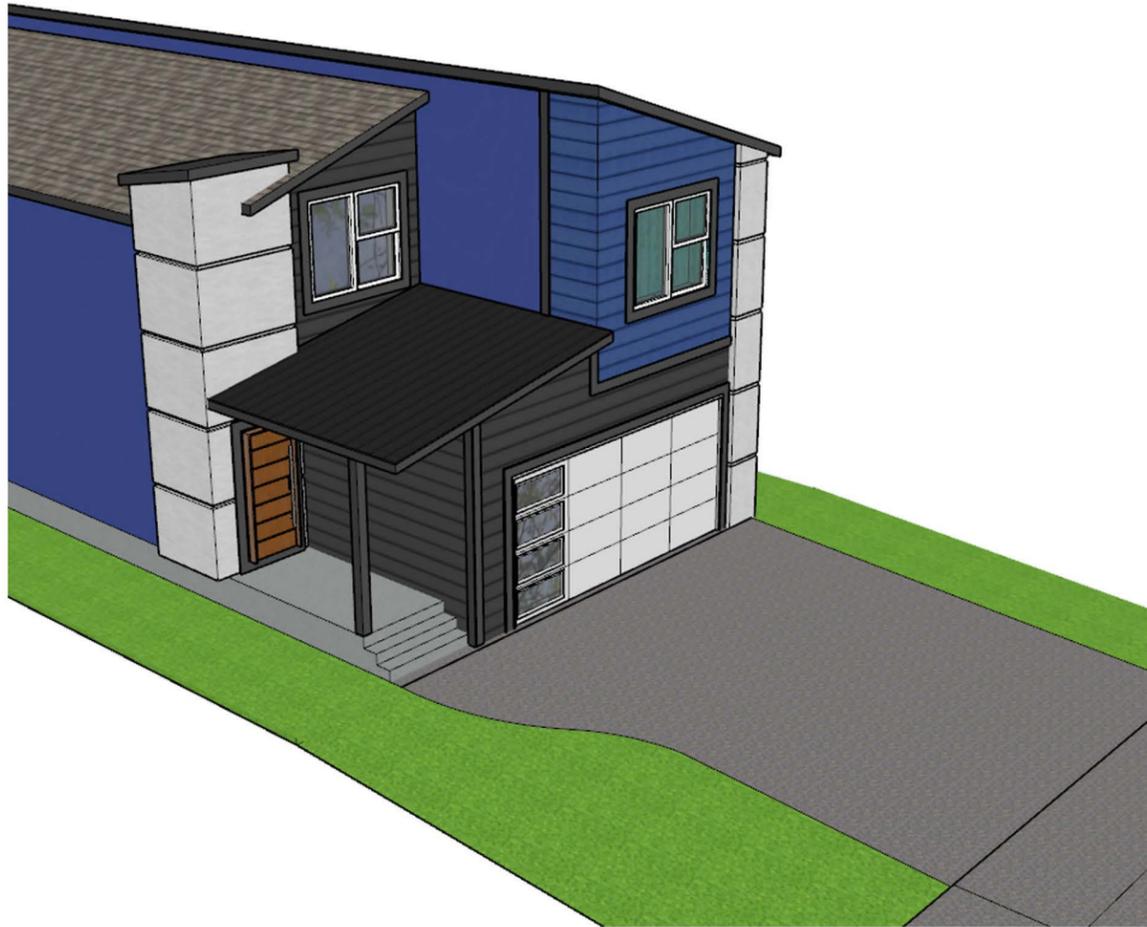


UPPER

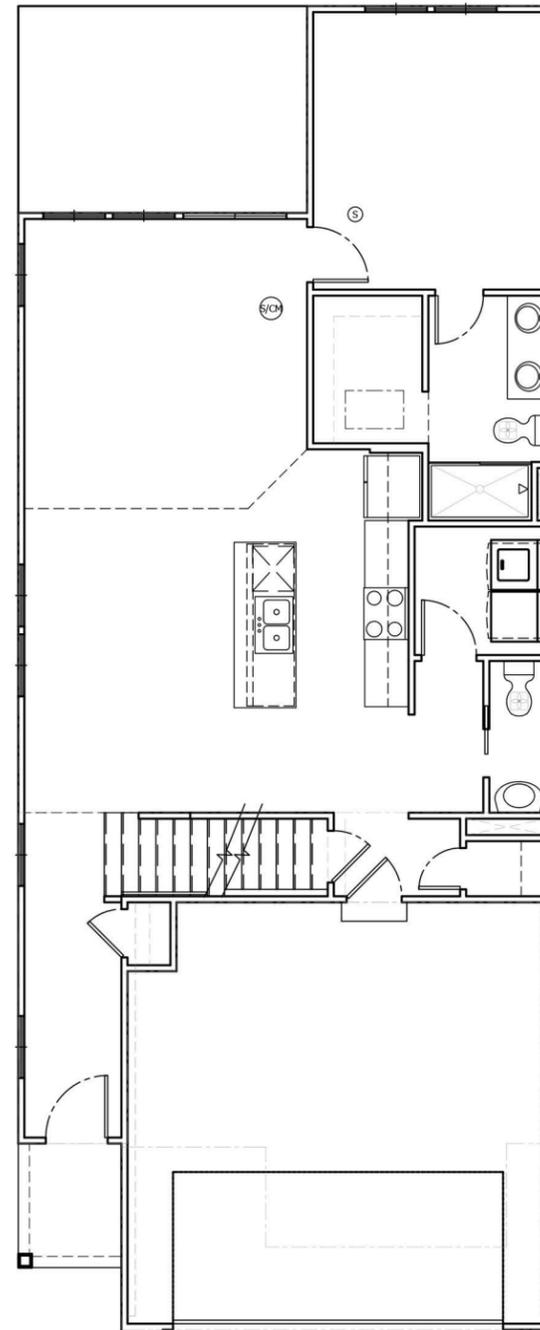




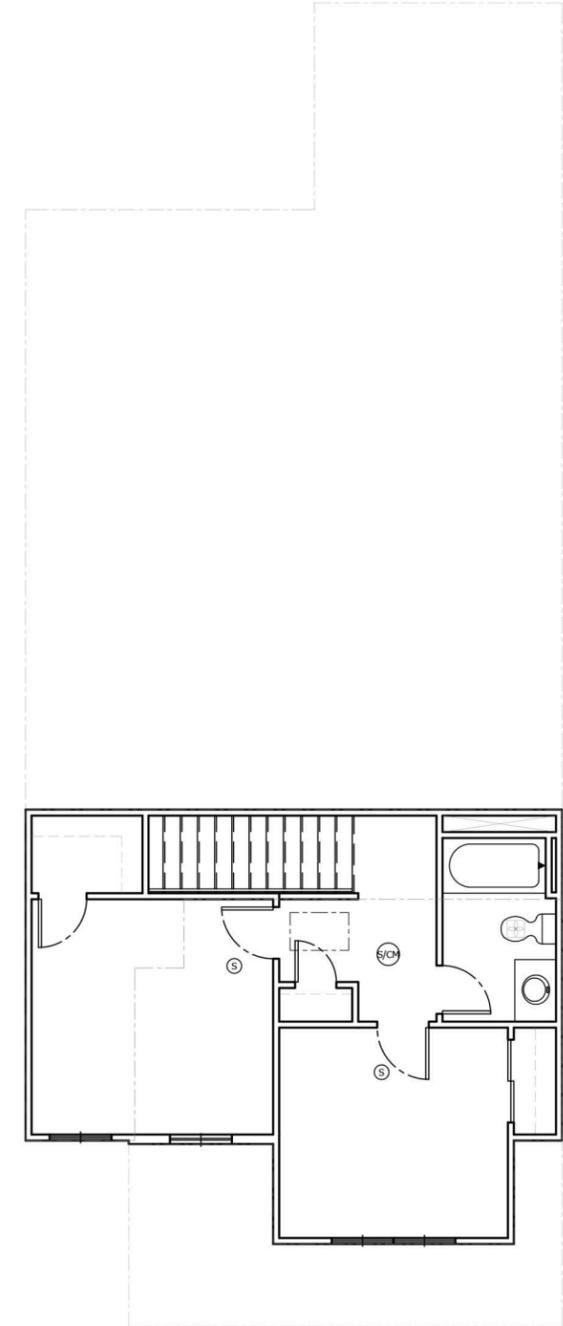
**SUMMIT
HOMES**
Allera - Elevation C



MAIN

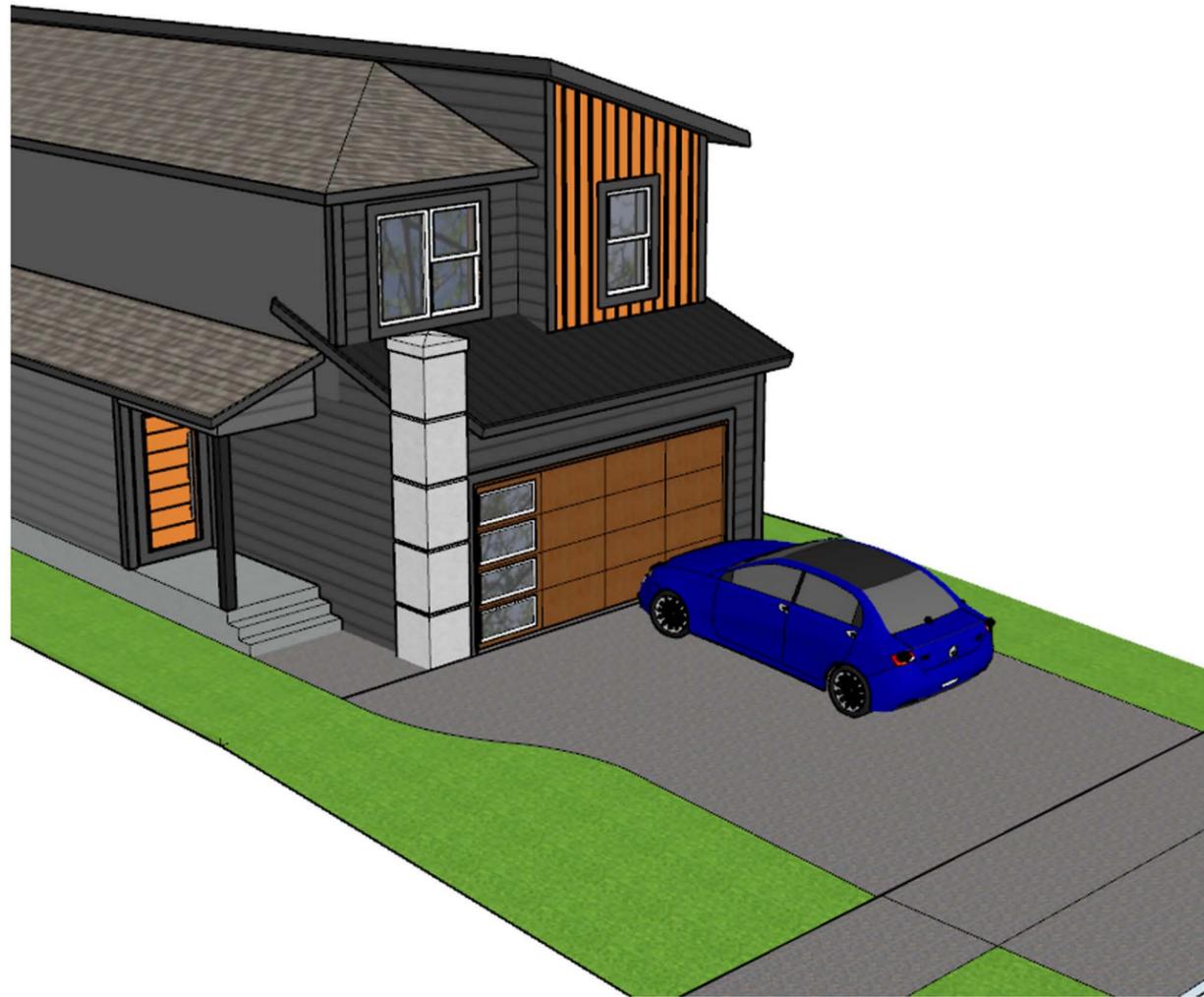


UPPER

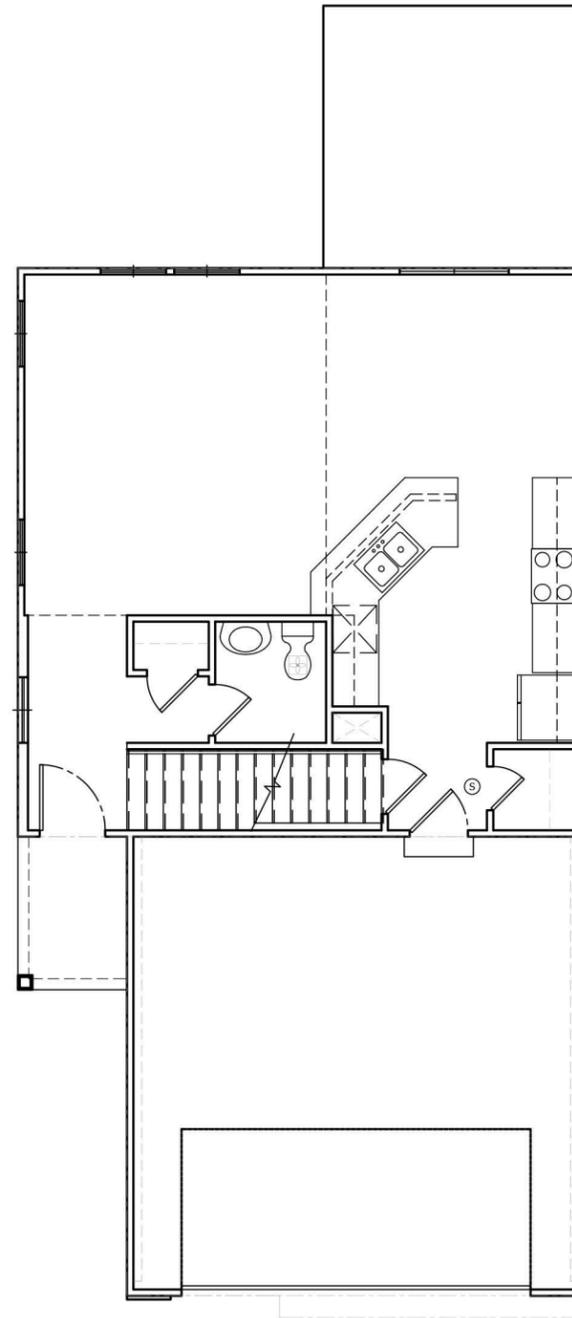




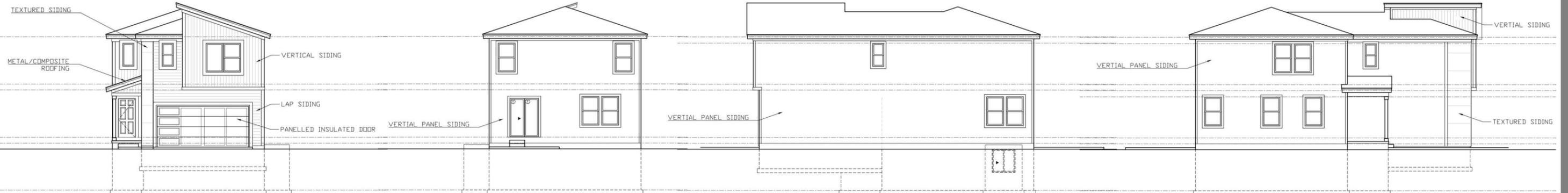
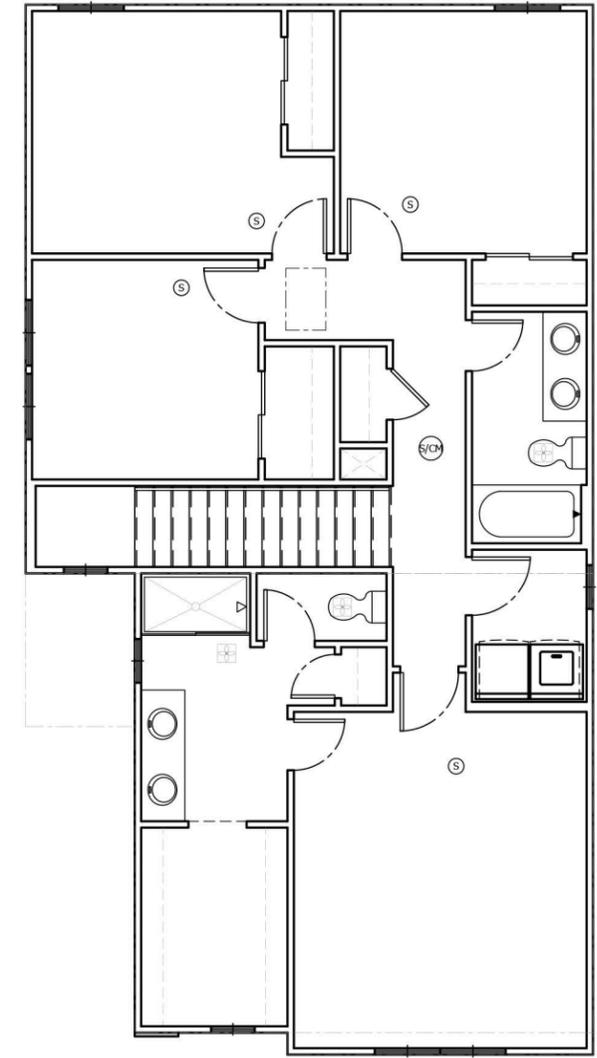
**SUMMIT
HOMES**
Allera - Elevation D



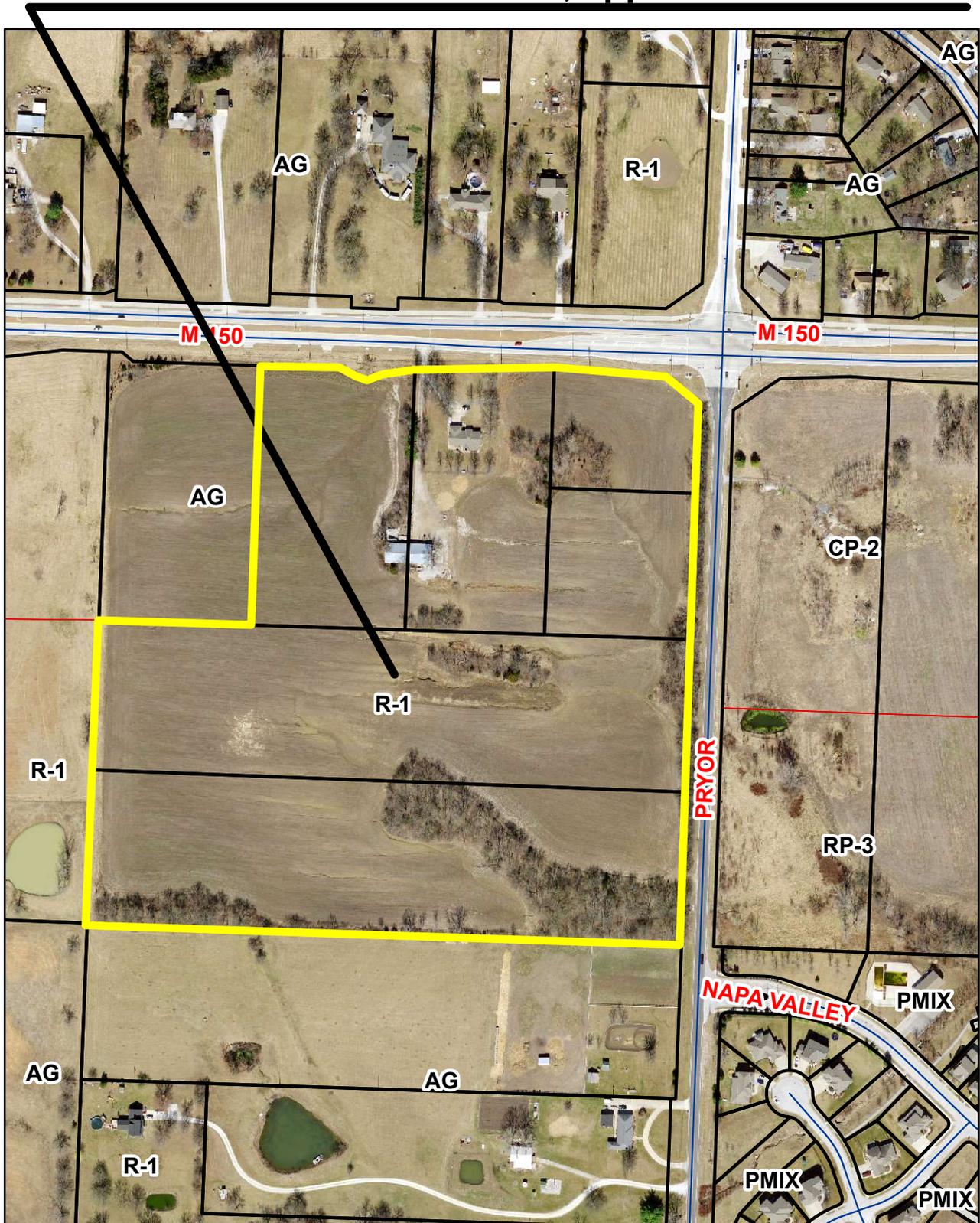
MAIN



UPPER



**REZONING from AG and R-1 to RP-3 and
PRELIMINARY DEVELOPMENT PLAN**
Allera, approximately 32 acres located at the
southwest corner of SW Pryor Rd and SW M-150 Hwy
Olsson Associates, applicant



City of Lee's Summit

Development Services Department

December 7, 2018

TO: Planning Commission
PREPARED BY: C. Shannon McGuire, Planner
CHECKED BY: Hector Soto, Jr., AICP, Current Planning Manager
RE: **PUBLIC HEARING – Appl. #PL2018-184 – REZONING from AG and R-1 to RP-3 and PRELIMINARY DEVELOPMENT PLAN – Allera, approximately 32 acres located at the southwest corner of SW Pryor Rd and SW M-150 Hwy; Olsson Associates, applicant**

Commentary

The applicant proposes to rezone 31.473 acres, located at the southwest corner of SW Pryor Rd and SW M-150 Hwy, from AG (Agricultural) and R-1 (Single-Family Residential) to RP-3 (Planned Residential Mixed Use). The proposed Allera subdivision will be a three-phase development composed of 159 single-family lots, and 12 common area tracts.

The 31.473 acre property is currently a mix of 3 un-platted and 2 platted parcels. The platted parcels are currently zoned R-1 (Single-Family Residential), one of which has an existing single-family home. The remaining three un-platted lots are undeveloped with two being zoned R-1 (Single-Family Residential) and one zoned AG (Agricultural).

The proposed Allera development will provide a housing type not currently available in the Lee's Summit housing market. The new single-family homes will range from 1300-1900 sq. ft. and be priced in the \$200-\$250k price range. The applicant is proposing to construct these homes on lots that will be a minimum of 38' x 110' with a minimum lot area of 4180 sq. ft. The modern two-story homes will be constructed with lap siding, metal/composite roofing and textured siding.

While the RP-3 district allows residential uses ranging from single-family to multi-family, the applicant only proposes to construct single-family homes. All development of this site is tied to the approved plan and any deviation from single-family residential will require a new preliminary development plan approval.

The applicant proposes three modifications. The first modification is to the required minimum lot width of 50', to allow for a minimum lot width of 38'. The second modification request is to the required minimum 20' rear yard setback, to allow for a minimum 15' rear yard setback. The final modification request is the required low impact landscaping screening buffer, to allow for no landscaping screening buffer. Staff supports the modification requests.

- 159 lots
- 12 common area tracts
- 31.473 acres total acres (1,370,963.88 sq. ft.)
- 5.05 units/acre – overall residential density, including common area – 10 units/acre maximum density in the RP-3 district
- 8.98 units/acre – overall residential density, excluding common area

Recommendation

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

1. A modification shall be granted to the required minimum lot width of 50', to allow for a minimum lot width of 38'.
2. A modification shall be granted to the required minimum 20' rear yard setback, to allow for a minimum 15' rear yard setback.
3. A modification shall be granted to the required low impact landscaping screening buffer, to allow for no landscaping screening buffer.
4. Development shall be in accordance with the preliminary development plan, date stamped November 20, 2018.
5. Development shall be subject to the recommended road improvements outlined in the Transportation Impact Analysis prepared by Michael Park, dated December 4, 2018.

Zoning and Land Use Information

Location: Southwest corner of SW Pryor Rd and SW M-150 Hwy

Current Zoning: AG (Agricultural) and R-1 (Single-Family Residential)

Proposed Zoning: RP-3 (Planned Residential Mixed Use)

Surrounding zoning and use:

North (across M-150 Hwy): AG (Agricultural) and R-1 (Single-Family Residential) — large lot single-family

South: AG (Agricultural)—large lot single-family

East: CP-2 (Planned Community Commercial/Retail) and RP-3 (Planned Residential Mixed Use) —vacant ground

West: AG (Agricultural) and R-1 (Single-Family Residential) —vacant ground

Site Characteristics. The 31.473 acre property is currently a mix of 3 un-platted and 2 platted parcels. The platted parcels are currently zoned R-1 (Single-Family Residential), one of which has an existing single-family home. The remaining three un-platted lots are undeveloped with two being zoned R-1 (Single-Family Residential) and one zoned AG (Agricultural).

Description and Character of Surrounding Area. The surrounding area is a mix of large lot single-family and undeveloped vacant properties. The properties to the north are large lot single-family homes. The properties to the east and west are undeveloped, vacant parcels. To the south are large lot single-family homes. The Napa Valley single-family subdivision is located to the southeast of the proposed project. Grand Summit View and Arborwalk single-family subdivisions are located to the northeast.

Project Information

Current Use: Vacant agricultural ground and a single-family home

Proposed Use: Single-family homes

Land Area: 31.473 acres (1,370,951 sq. ft.)

Number of Lots: 159 single-family lots and 12 common area tracts

Density: 5.05 units/acre including common area – 10 units/acre maximum permitted

8.98 units/acre excluding common area

Public Notification

Neighborhood meeting conducted: none

Newspaper notification published: November 24, 2018

Radius notices mailed to properties within 185 feet: November 20, 2018

Process

Procedure: The Planning Commission makes a recommendation to the City Council on the proposed preliminary development plan and rezoning. The City Council takes final action on the preliminary development plan and rezoning.

Duration of Validity: Preliminary development plan approval by the City Council shall not be valid for a period longer than twenty-four months from the date of such approval, unless within such period a final development plan application is submitted. The City Council may grant one extension not exceeding twelve (12) months upon written request.

Unified Development Ordinance

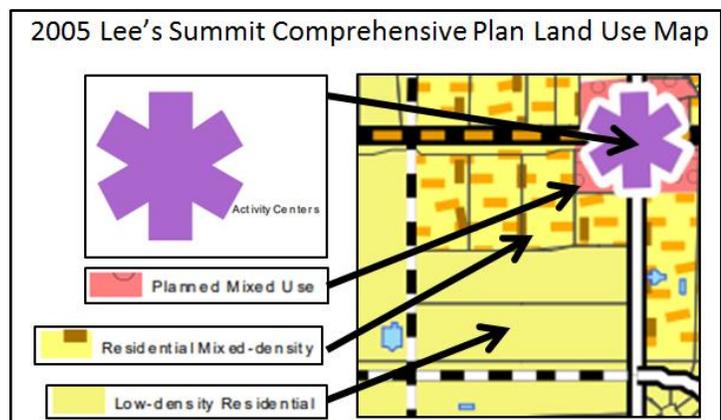
Applicable Section(s)	Description
4.120	RP-3 (Planned Residential Mixed Use)
2.240, 2.250, 2.260	Rezoning, Preliminary Development Plan

Comprehensive Plan

Focus Areas	Goals, Objectives and Policies
Overall Area Land Use	Objective 1.1 Objective 1.2 Objective 1.4
Residential Development	Objective 3.2 Objective 3.3

The 2005 Lee's Summit Comprehensive Plan Land Use Map identifies the area of the proposed project as a mix of Planned Mixed Use, Residential Mixed-density and Low-density Residential. The intersection of SW Pryor Rd and SW M-150 Hwy is identified as an Activity Center.

The M-150 Sustainable Corridor Vision and Framework Plan identifies an Activity Center as a Mixed-use center intended to promote compatibility with adjacent uses and to concentrate higher intensity uses such as retail, office, and multi-family residential in areas where they may be readily accessed and supported by existing and future neighborhoods.



Background

- June 1, 1993—The City Council approved a rezoning (appl. #1993-017) changing the zoning from district A (Agricultural) to R-1 (Single-Family Residential) by Ordinance #3852.
- June 1, 1993—The City Council approved the final plat (Appl. #1993-235) *Salvaggio's Ranch Lots 1-3* by Ord. #3856.

Analysis of Rezoning

The proposal is to rezone 31.473 acres from AG (Agricultural) and R-1 (Single-Family Residential) to RP-3 (Planned Residential Mixed Use). The proposed Allera subdivision will be a three-phase development composed of 159 single-family lots, and 12 common area tracts.

Comprehensive Plan. The 2005 Lee's Summit Comprehensive Plan Land Use Map identifies the area of the proposed project as a mix of Planned Mixed Use, Residential Mixed-density and Low-density Residential. The intersection of SW Pryor Rd and SW M-150 Hwy is identified as an Activity Center. The Allera plan is a slight deviation from the Comprehensive Plan in that the proposed development synthesizes the two residential land use categories into one cohesive housing type. Staff believes the location of the proposed plan is an appropriate use of the land and supports the proposed project.

Surrounding Uses. The surrounding area is a mix of large lot single-family and undeveloped vacant properties. The properties to the north are large lot single-family home. The properties to the east and west are undeveloped, vacant parcels. To the south are large lot single-family homes. The Napa Valley single-family subdivision is located to the southeast of the proposed project. Grand Summit View and Arborwalk single-family subdivisions are located to the northeast.

Recommendation. Staff recommends approval of the proposed rezoning to RP-3. The use is generally consistent with the Comprehensive Plan; is compatible with existing and planned surrounding land uses; and meets Comprehensive Plan objectives of providing a diverse housing type that meets an identified need in the market.

Analysis of Preliminary Development Plan

Landscape Buffer. Modification requested. **Staff supports requested modification.**

- Proposed – The applicant requests to eliminate the requirement for a low impact landscape buffer surrounding the project.
- Required – Buffer/screen between developments of differing land uses adjoining one another or separated from one another by only a street or alley shall comply with Table 8.890 Buffer/Screen Impact of the UDO. A low impact screening buffer is required per Table 8.890 when developing an RP-3 district adjacent to an R-1 district.
- Recommended – Properties zoned RP-3 are required by the UDO to provide a low impact landscaping buffer to all R-1 districts. The applicant has requested a modification to eliminate the required medium impact landscaping buffer as the proposed single-family homes will be abutting existing single-family homes and vacant parcels. The applicant is still proposes to install landscaping buffers along MO Highway 150 & SW Pryor Road. As the proposed use is consistent with the adjoining current and planned future uses, staff believes this request is reasonable and supports the requested modification.

Lot width. Modification requested. **Staff supports requested modification.**

- Proposed – The applicant proposes a minimum lot width of 38 ft.

- Required – Table 6-2 of the UDO establishes a 50 ft. minimum lot width for single-family structures in the RP-3 district.
- Recommended – The applicant has stated that the design of the proposed homes will be narrower thus requiring a lesser width. Additionally, Summit Homes has outlined, via their Narrative Statement and accompanying statistics (attached to this staff letter), that there is a great demand for homes in the price range that is being proposed, but the number and density of these lots required to be financially feasible for development is such that they need to be of a certain size that can only be accomplished with the requested deviation. Staff believes the applicant provides reasonable justification for requesting the modification given the proposed housing product and supports the request.

Rear yard setback. Modification requested. **Staff supports requested modification.**

- Proposed – The applicant proposes a 15 ft. rear yard setback.
- Required – Table 6-3 of the UDO establishes a 20 ft. rear yard minimum principal building setback for single-family structures in the RP-3 district.
- Recommended – The applicant has stated that similar to lot width, rear yard setback is a product of several factors which make the development feasible. The necessary building envelope required by the proposed housing product is a result of required density and the ability to provide the correct products to satisfy market demand. Additionally, 101 of the 159 proposed lots will back up to open space common ground giving the appearance of a larger rear yard. Staff believes the applicant provides reasonable justification for requesting the modification given the proposed housing product and supports the request.

Code and Ordinance Requirements

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

<p><u>Engineering</u></p> <ol style="list-style-type: none"> 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. A Land Disturbance Permit shall be obtained from the City if ground breaking will take place prior to the issuance of an infrastructure permit, building permit, or prior to the approval of the Final Development Plan / Engineering Plans. 4. 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 approval of any engineering plans or approval of the final plat. A certified copy shall be submitted to the City for verification. 5. 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."
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6. 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).
7. 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.
8. 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.
9. Upon approval of the proposed rezoning by City Council, the applicant will become responsible to provide the appropriate level of right-of-way maintenance (mowing) during each growing season with the defined area abutting their property as defined and outlined in the City's Mowing Policy, approved by Council on November 3, 2005.
10. 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.
11. All ADA sidewalk ramps shall be constructed by the developer at the time the street is constructed.
12. All sidewalks adjacent to a common area tract, unplatted land or any land where no structure is intended to be built, and is required, shall be constructed by the developer at the time the street is constructed.
13. A US Army Corps of Engineers permit shall be obtained prior to issuance of any infrastructure or building permits.

Fire

14. 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 of fire fighters and emergency responders during emergency operations, shall be in accordance with the 2012 International Fire Code.

Planning

15. A final plat shall be approved and recorded 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 7.340.
16. 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 4.290 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 the UDO. In addition, the approved Declaration of Covenants, Conditions and Restrictions shall be recorded prior to the recording of the final plat.

17. Ownership and maintenance of all common area tracts shall be dedicated to the homeowners association.

Attachments:

1. Transportation Impact Analysis prepared by Michael Park, dated December 4, 2018—4 pages
2. Traffic Impact Study, prepared by Olsson, dated October 17, 2018 –26 pages
3. Preliminary Development Plan and Rezoning Exhibit, date stamped November 20, 2018—11 pages
4. Architectural Elevations, date stamped November 20, 2018 – 6 pages
5. Single-Family Residential Compatibility Form —3 pages
6. Modification request letter, dated December 5, 2018 – 6 page
7. Applicant Narrative – 6 pages
8. Location Map