

**DEVELOPMENT AGREEMENT FOR THE
BLACKWELL MIXED-USE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT FOR THE BLACKWELL MIXED-USE DEVELOPMENT (the “**Agreement**”) is made this ___ day of _____, 2023, by and between BLACKWELL 55, LLC, a Missouri limited liability company; RESERVE AT BLACKWELL LLC, a Missouri limited liability company; RESIDENCES AT BLACKWELL LLC, a Missouri limited liability company, and ONE TWENTY, LLC, a Missouri limited liability company (collectively the “**Developer**”), and the CITY OF LEE’S SUMMIT, MISSOURI, a municipal corporation (“**City**”) (each is a “**Party**” and collectively the “**Parties**”).

WHEREAS, on November 9, 2021, the City Council concluded a public hearing for Application #PL2021-282 for a rezoning from AG to RP-1, RP-4 and CP-2 and a Preliminary Development Plan on land located at 2840 SE Blue Pkwy for the proposed Streets of Blue Parkway Mixed-Density Residential development, on approximately 62.40 acres, on the properties now legally described in Exhibit A (“**Property**”) which will be developed as the Blackwell Mixed-Use Development as generally shown in Exhibit B, a map of the preliminary development plan, which is expected to consist of 77 single family homes, 122 townhomes units, 268 multi-family units, and 1 commercial lot, along with related infrastructure (the “**Project**”);

WHEREAS, on November 16, 2021, the City Council approved Ordinance No. 9292 which approved the rezoning and preliminary development plan for the Project, and said Ordinance in Section 2.13 required that the developer shall execute a mutually satisfactory development agreement with the City, which addresses, at a minimum, the traffic-related improvements included in the Transportation Impact Analysis (TIA) and the off-site sanitary sewer improvements;

WHEREAS, in satisfaction of the City Council's conditions of approval for Ordinance No. 9292, the Developer and the City now desire to enter into this Agreement;

WHEREAS, the Parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Project on the transportation network of the City and other public infrastructure in the City; and

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

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

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

“**Applicable Laws**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, code, policy, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement or decision of or

agreement with or by any governmental authorities that may apply to the Improvements or the other matters in this Agreement.

“Certificate of Final Acceptance” shall have the meaning assigned in the Design and Construction Manual as adopted by the City of Lee’s Summit.

“Certificate of Substantial Completion” as defined in the Design and Construction Manual as adopted by the City of Lee’s Summit.

“City Engineer” shall mean the City Engineer or his/her designated representative.

“Developer” shall have the meaning as set forth on page 1.

“Development” means all of the site work and public and private development that is part of the Project.

“Improvements” shall have the meaning set forth in Exhibit C.

“Northern Sewer Improvement” shall have the meaning set forth in Exhibit C.

“Property” shall have the meaning set forth in Exhibit A.

“Sewer Condemnation Action” shall have the meaning set forth in Section 2.H.

“Sewer Upsizing” shall have the meaning set forth in Exhibit C.

“Sewer Upsizing Payment” shall have the meaning set forth in Exhibit C.

“Southern Sewer Improvement” shall have the meaning set forth in Exhibit C.

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

2. **Requirements for Improvements.** Unless otherwise specified herein, the provisions set forth in this Section shall be applicable to the financing, design, engineering and construction of the Improvements to be constructed by the Developer as required by this Agreement.

A. **Requirement to design, engineer and construct.** Except as otherwise expressly provided in this Agreement, the Developer, at its sole cost and expense, shall design, engineer and construct the Improvements.

B. **Construction Costs.** Except as otherwise expressly provided in this Agreement, all costs associated with Developer’s obligation to design, engineer and construct the Improvements shall be paid by the Developer. The parties agree that no payment shall be due from the City pursuant to the terms of this Agreement for the Improvements or the Project, except as otherwise expressly provided in this Agreement. The City shall be responsible for paying the additional construction costs of upsizing the Northern Sewer Improvement from a 12” sewer line (as

needed for the Project) to a 24" sewer line to serve the City's future needs according to the terms and conditions set forth in Exhibit C.

- C. Applicable Standards and Approvals. The Improvements shall be designed, engineered, constructed, placed into service and dedicated to the City in accordance with (i) the ordinances of the City, including, but not limited to, the City's Unified Development Ordinance and the Design and Construction Manual then in effect at the time the Plans for the Improvements are submitted, (ii) any other applicable rules, requirements and standards established by the City, and (iii), subject to weather and other delays beyond the Developer's reasonable control, substantially in accordance with the Project Schedule. All such work shall be done in good and workmanlike manner. The Developer shall be responsible for obtaining approval for any portion of the Improvements that require approval of another jurisdiction. The City agrees to cooperate in good faith with the Developer in obtaining said required approvals from other jurisdictions for the Improvements.
- D. Fire Department Access. The Developer shall comply with applicable Fire Code requirements to ensure that the Fire Department has access to the Property at all times while construction is underway by means of a hard surface for fire truck access.
- E. Schedule. Prior to the construction of the Improvements the Developer shall submit to the City Engineer a proposed project schedule for the Improvements to be constructed by the Developer. No permits will be issued for the Development until the schedule has been reviewed by the City Engineer and Staff of departments directly impacted by the timing of the Improvements. If conflicts with the schedule are determined, Staff shall return the proposed schedule with comments within fifteen (15) days after the proposed schedule is submitted by Developer to the Staff, in order for the Developer to respond and for a revised proposed schedule to be resubmitted by the Developer. The Developer shall be notified once the Staff determines that no conflicts exist with the schedule. The approved project schedule (the "**Project Schedule**") shall be incorporated into this Agreement by addendum, and no action of the City Council will be required to incorporate the schedule.
- F. Design Phase. The Developer shall submit all preliminary design documents to the City for approval before proceeding with the construction of the applicable Improvements. On the basis of such approved preliminary design documents, the Developer shall:
- (1) Prepare detailed drawings, plans, design data, and estimates to show the character and scope of the work to be performed by contractors for all Improvements ("**Plans**").
 - (2) Furnish to the City Engineer copies of such Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the Improvements.

- (3) Furnish the number of approval copies of the final Plans for the Improvements as the City may require.
- (4) Ensure that the Plans conform to all Applicable Laws.
- (5) All final Plans shall be presented to the City Engineer for approval, and no action of the City Council will be required to incorporate the final Plans into this Agreement.

G. Construction. The Developer will construct all the Improvements set forth in Exhibit C according to the approved Plans. The Developer shall maintain, at its sole cost and expense, the Improvements until such time as said Improvements are accepted by the City Engineer pursuant to Section 2.K, "Dedication" of this Agreement or another applicable governmental entity. The Developer shall not do or permit others, by contract or otherwise, to do any on-site work related to the construction of the Improvements until the Developer has paid for all applicable required City and other governmental required permits and authorizations.

H. Right of Way and Easements Acquisition.

- (1) Except for the Northern Sewer Improvement discussed in subsection (2) immediately below or as may be contemplated in subsection (3) or (4) below, Developer shall be responsible for acquiring or negotiating for the donation of all right-of-way or easements that are needed to construct the Improvements, including all necessary temporary construction easements.
- (2) The City agrees that City staff shall present to the City Council a request to file and prosecute a condemnation action in Jackson County Circuit Court (the "**Sewer Condemnation Action**") to obtain (A) the necessary easement for (i) the construction of the Northern Sewer Improvement between manholes 65-226 and 65-092, and for (ii) placing the existing 24" sewer line running between manholes 65-092 and 65-103 which is owned by the City, both in a City easement and (B) the necessary easements for the Southern Sewer Improvement. Developer shall present sufficient information and documentation as needed for the City Council to make an informed decision regarding inclusion of the Southern Sewer Improvement in the requested Sewer Condemnation action. The City Council may, in its sole legislative discretion, elect to approve a condemnation ordinance for the requested Sewer Condemnation Action. The following apply to the Sewer Condemnation Action:
 - (a) The purposes of the Sewer Condemnation Action are (i) to ensure that the Northern Sewer Improvement and the existing 24" sewer line described above are properly located within a valid City-held easement and (ii) to obtain valid City-held easements for the Southern Sewer Improvement. The existing sewer line and the Northern Sewer Improvement will benefit the residents of the

Summit Mill residential subdivision and the Southern Sewer Improvement will benefit the owners of those applicable lands. Given such benefit, the Parties anticipate that the Sewer Condemnation Action will not be opposed or appealed by the Summit Mill Home Owners Association, which is presently the fee simple owner of the property where the Northern Sewer Improvement and adjacent 24" sewer line is located.

- (b) The parties agree that this paragraph applies only to the inclusion of the Northern Sewer Improvement in the Sewer Condemnation Action. Developer will deposit \$2000 with the City (the “**Condemnation Deposit**”) prior to the court action being filed by the City. The Condemnation Deposit will be expended by the City solely to cover the City’s third-party out-of-pocket costs and expenses which are incurred in the condemnation action for the Northern Sewer Improvement, not including any attorneys’ fees incurred by the City in connection with the Northern Sewer Improvement in the Sewer Condemnation Action (which attorneys’ fees will be borne by the City). In the event that the City incurs additional third-party out-of-pocket costs and expenses associated with the prosecution of the Sewer Condemnation Action for the Northern Sewer Improvement, except for attorneys’ fees, Developer agrees to pay such additional costs and expenses promptly upon the delivery by the City of written proof of such costs and expenses. In the event that the City’s third-party out-of-pocket costs and expenses are less than the Condemnation Deposit, such remaining amount will be refunded to Developer.
- (c) Developer agrees to pay the damages award that is issued by the commissioners and approved by the circuit court in the Sewer Condemnation Action for the Northern Sewer Improvement. Payment of the damages award in the Sewer Condemnation Action is a precondition to the issuance of building permits for the Project as a whole as set forth in Exhibit C.
- (3) If the City Council authorizes that the Southern Sewer Improvements shall be included in the Sewer Condemnation Action, the parties will execute the Acquisition Funding Agreement which is attached hereto as Exhibit D. The Acquisition Funding Agreement shall govern the terms and conditions under which Developer funds all costs and expenses associated with acquisition of the Southern Sewer Improvements in the Sewer Condemnation Action, if authorized by the City Council.
- (4) The Developer shall dedicate or convey, as applicable, or cause to be dedicated or conveyed, to the City, at no cost to the City, all property interests owned by the Developer which are necessary for the Improvements.

(5) For the Southern Sewer Improvements, Developer shall make good faith attempts which are documented in writing to obtain the necessary easements from any third parties. If Developer is unable to acquire the easements required for the Southern Sewer Improvements, then the provisions set forth in Sections 2.H(2) and (3) above shall be followed by the Parties.

I. Utility Relocation. The Parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Improvements, shall be paid by the Developer, or applicable utility, and are not the responsibility of the City. The Parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Improvements, which are not paid by a utility company, shall be paid by the Developer and are not the responsibility of the City.

J. Inspections and Revisions. The Developer agrees to permit City employees, agents and contractors to inspect, observe, and oversee the construction of all Improvements in order to ascertain and determine that the standards of the City have been met. The Developer shall obtain the City Engineer's approval of all revisions materially altering the design or specifications of the Improvements.

K. Dedication. Upon completion, inspection and approval of the Improvements that are within the jurisdiction of the City, the Developer will dedicate the applicable Improvements to the City, for its use, operation and maintenance. The City shall be under no obligation to accept the dedication or conveyance of any Improvements constructed pursuant to this Agreement until it has been inspected and approved to the satisfaction of the City Engineer. Upon written notice of the inspection and approval of the City Engineer, the Developer agrees to convey all the Improvements to the City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be by appropriate document, and shall be sufficient, in the opinion of the City Attorney, to convey marketable title of record, as set forth in Title Standard 4 of the Missouri Bar. The City acknowledges that the right of the Developer in the Improvements is subject to any liens and encumbrances on the Property entered into by the Developer, and any such lienholder shall possess all rights to enjoy the Improvements as may be possessed by the Developer and intended for the Property, but the Developer shall not specifically enter into any lien or encumbrance that gives any entity rights to the Improvements dedicated to the City other than the right to use said Improvements as intended for the Property.

3. **Timing of Issuance of Building Permits and Certificates of Occupancy.**

A. Building Permits for any structures on the Property shall not be issued until the following conditions have been satisfied:

(1) Security for completion of the Improvements has been provided in one of the following forms:

- (a) Security for completion of all Improvements has been provided to the City in compliance with Section 7.340 of the UDO, as may be amended from time to time, regardless of whether a final plat has been approved or recorded for the Property or any portion thereof; or
 - (b) A letter of credit has been delivered to the City pursuant to an executed Lease Agreement between the City and Griffin Riley Property Group, LLC, to implement the “City of Lee’s Summit, Missouri Plan for an Industrial Development Project and Cost-Benefit Analysis for the Blackwell Residential Rental Project” dated March 23, 2022 (the “**Chapter 100 Plan**”), and the amount of the letter of credit includes sufficient funds to cover all costs associated with the Improvements as confirmed in writing by bond counsel for the City.
- (2) Each of the entities the comprise the Developer under this Agreement either owns their respective portions of the Property, or has transferred title for their respective portions of the Property to the City to implement the Chapter 100 Plan, and remains the lessee under the applicable Lease Agreement for each such transferred portion of the Property.
- B. Final Certificates of Occupancy for the Project will not be issued until a Certificate of Final Acceptance has been issued for all Improvements described in Exhibit C.

4. **Indemnification**.

- A. General Indemnity. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney’s fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property to the extent arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of this Agreement by Developer; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out or to the extent caused by (i) the sole negligence, or willful misconduct of the City, its employees or agents, or (ii) claims arising after the expiration of the three year maintenance bond referenced in Section 6.C. below. This indemnification obligation shall survive the termination or expiration of this Agreement.
- B. No Limitations or Waiver. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this

Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the Parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

- C. Notification of Claims. With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same. Such notice shall be given in the manner prescribed by **Section 27** of this Agreement.
 - D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.
5. **Insurance.** Developer shall comply with the Construction Insurance requirements of the City's Standard Insurance and Indemnifications Requirements (the "**Insurance Requirements**") as approved by the City Attorney pursuant to Section 26-221 of the City Code.
6. **Bonds.** The Developer shall, or shall ensure that its contractors shall, provide for the following bonds for the Improvements constructed by the Developer and dedicated to the City.
- A. Performance Bond. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall maintain a Performance Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. Any such Performance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City. Developer may provide an alternate form of completion security for completion of the Improvements as allowed by Section 7.340 of the UDO.
 - B. Payment Bonds. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall maintain a Payment Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful payment of the provisions, terms and

conditions of the construction contract. Any such Payment Bond shall name the City as an additional obligee and copies of certificates of such bond shall be delivered to the City.

- C. **Maintenance Bonds.** Prior to acceptance and dedication of the Improvements, the Developer shall, or shall ensure that its contractors shall, provide a Maintenance Bond in a form approved by the City Attorney, in an amount equal to fifty percent (50%) of the cost of the Improvements as approved by the City Engineer, which shall be in effect for a term of three (3) years from the date that the City issues a Certificate of Substantial Completion for such Improvements covered by the bond. The Maintenance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
 - D. **Indemnity for Failure to Provide Bonds.** The Developer shall indemnify the City and its officers and employees for any damage or loss incurred or sustained by the City, its officers or employees, as a result of the failure of the Developer or its contractors to provide the bonds set forth in this Section.
7. **Prevailing Wage.** To the extent required by law, the Developer, and all contractors and subcontractors performing work for or on behalf of the Developer with respect to the Improvements, shall pay wages in accordance with, and in all respects comply with, Missouri's Prevailing Wage Law (Sections 290.210 to 290.340, RSMo.) and all other laws relating to the payment of wages. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. The Developer shall submit sufficient information to the City's Director of Finance to allow Staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations (if such laws and regulations apply to the Improvements in the judgment of Developer).
8. **Remedies.** Each Party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting Parties hereto, the non-defaulting Party shall have the right to enforce specific performance of this Agreement against the defaulting Party, and such non-defaulting Party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.
9. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any Party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
10. **Non-Waiver.** No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

11. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
12. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the Parties expressly waive any rights to venue inconsistent therewith.
13. **City Requirements and Prior Approval.** The Developer agrees to comply with all Applicable Laws, including, but not limited to, the City's [Unified Development Ordinance](#), the [Design and Construction Manual](#), and all planning or infrastructure requirements applicable to the development of the Property. The Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for damages, losses or injuries that may be sustained as a result of the City's review and approval of any Plans or Plats of or relating to the Development, the Property or the Improvements, or as a result of the issuance of any approvals, permits, certificates or acceptances for the development or use of any portion of the Development, the Property or the Improvements. The Developer further acknowledges and agrees that the City's review and approval of any such Plans or Plats and the issuance of any such approvals, permits, certificates or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, licensees or any third Party, against damage or injury of any kind at any time. The Parties agree that execution of this Agreement in no way constitutes a waiver of any requirements or applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development.
14. **Recording and Binding Effect.** No building permits shall be issued for any structure in the Project until this Agreement has been fully executed. The City shall file a copy of this Agreement or a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("**Office**"). This Agreement shall run with the land and be binding on and inure to the benefit of the Parties and their respective legal representatives, successors in interest, successors and assigns. Upon the City's issuance of a Certificate of Final Acceptance, at the request of Developer or its successors or assigns, the City Manager shall execute, on behalf of the City, a document suitable for recording in the Office, in such form as is approved by the City Attorney that acknowledges the completion of the Developer's obligations under the Agreement.

The City acknowledges that the Developer may enter into one or more lending relationships to develop the Property and as such, agrees to provide any such lender a security interest in this Agreement, in form and substance as reasonably requested by the lender, so long as such security agreement does not interfere with or encumber the dedication of the Improvements to the City.

15. **Time of Essence.** Time is of the essence with respect to the duties and obligations set forth herein.
16. **Estoppel Letter.** Upon request by Developer, the City shall prepare and deliver to Developer an estoppel letter confirming for the benefit of any purchaser or lender whether

the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.

17. **Representations**. Each Developer represents that it owns the portion of the Property described for such Developer in Exhibit A on the date that this Agreement is executed. Each Party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other Party that is the subject of this Agreement. The Parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions.
18. **No Waiver of Breach**. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
19. **Rules of Construction**. Each Party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each Party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting Party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.
20. **Assignment**. The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other Party, which consent shall not be unreasonably withheld. The Developer shall request the assignment of the Agreement, with the consent of the City, to any person, firm, corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement.
21. **Entire Agreement**. This Agreement and the acts provided for herein is the entire agreement between the Parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all Parties.
22. **Exhibits**. All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
23. **Headings**. The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
24. **Severability**. Any provision of this Agreement which is not enforceable according to law will be severed from this Agreement, and the remaining provisions shall be enforced to the fullest extent permitted by law.

25. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
26. **Joint and Several Liability of Developer Entities** – Developer agrees that each separate entity that comprises Developer shall be jointly and severally liable for each duty and obligation imposed upon Developer pursuant to this Agreement. Developer entities are jointly bound to fulfill the duties and obligations of this Agreement as imposed upon Developer, and each Developer entity is also severally and independently bound to fulfill the duties and obligations of Developer in the event that any or all of the other Developer entities fails to fulfill the duties and obligations of Developer under this Agreement. All rights and remedies that the City may exercise under this Agreement may be pursued jointly and severally against Developer or each separate Developer entity.
27. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

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

With a copy to:

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

Director of Development Services
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

Notices to Developer shall be addressed to:

Jake Loveless
Griffin Riley Property Group
21 SE 29th Terrace
Lee's Summit, MO 64082

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

[Remainder of this page intentionally left blank]

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

CITY OF LEE’S SUMMIT, MISSOURI

Mark Dunning, *City Manager*

Attest:

Trisha Fowler Arcuri, *City Clerk*

Approved as to form:

David Bushek, *Chief Counsel of
Economic Development & Planning*

NOTARY FOR CITY OF LEE’S SUMMIT

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this _____, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **Mark Dunning**, the City Manager of the City of Lee’s Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

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

My Commission Expires: _____

Signature of Notary Public in and for said
County and State

Print Name: _____

[SEAL]

BLACKWELL 55 LLC

RESIDENCES AT BLACKWELL LLC

By: _____
Frederick J. Delibero, President

By: _____
Frederick J. Delibero, Manager

RESERVE AT BLACKWELL LLC

ONE TWENTY, LLC

By: _____
Frederick J. Delibero, President

By: _____
Frederick J. Delibero, President

NOTARIES FOR DEVELOPER

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 2023, before me, _____, a Notary Public in and for said State, personally appeared **Frederick J. Delibero**, to me personally known, who being by me duly sworn (or affirmed), did say that such individual is the President of RESERVE AT BLACKWELL LLC, a Missouri limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company by authority of its members and said person acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal at my office in said county and state on the day and year last above written.

My Commission Expires:

Signature of Notary Public in and for said
County and State

[SEAL]

Print Name: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 2023, before me, _____, a Notary Public in and for said State, personally appeared **Frederick J. Delibero**, to me personally known, who being by me duly sworn (or affirmed), did say that such individual is the President of BLACKWELL 55 LLC, a Missouri limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company by authority of its members and said person acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal at my office in said county and state on the day and year last above written.

My Commission Expires:

Signature of Notary Public in and for said
County and State

[SEAL]

Print Name: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 2023, before me, _____, a Notary Public in and for said State, personally appeared **Frederick J. Delibero**, to me personally known, who being by me duly sworn (or affirmed), did say that such individual is the Manager of RESIDENCES AT BLACKWELL LLC, a Missouri limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company by authority of its members and said person acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal at my office in said county and state on the day and year last above written.

My Commission Expires:

Signature of Notary Public in and for said
County and State

[SEAL]

Print Name: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 2023, before me, _____, a Notary Public in and for said State, personally appeared **Frederick J. Delibero**, to me personally known, who being by me duly sworn (or affirmed), did say that such individual is the President of ONE TWENTY LLC, a Missouri limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company by authority of its members and said person acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal at my office in said county and state on the day and year last above written.

My Commission Expires:

Signature of Notary Public in and for said
County and State

[SEAL]

Print Name:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Tract Owned By Blackwell 55, LLC

[Legal descriptions will be added as property is platted]

Tract Owned By Reserve at Blackwell, LLC

Tract Owned By Residences at Blackwell LLC

Tract Owned by One Twenty, LLC

EXHIBIT B

MAP OF THE PRELIMINARY DEVELOPMENT PLAN

[Attached]



ZONED: AG
OWNER: AQUILA INC.

ZONED: R-1
CANTERBURY AREA
PARK AND SUBSTATION
OWNER: AQUILA INC.

<p>SITE DATA EXISTING ZONING PROPOSED ZONING GROSS SITE AREA ROW AREA NET SITE AREA</p>	<p>AG - AGRICULTURAL RP-1 PLANNED MIXED USE DISTRICT 12.46 ACRES (542,792.39 S.F.) 2.29 ACRES (99,637.82 S.F.) 10.17 ACRES (443,005.2 S.F.) (EXCL. PUBLIC ROW)</p>
<p>PROJECT DATA(Sec. 6.030, Table 6-2) PROPOSED NUMBER LOTS DENSITY ALLOWED PER CODE DENSITY PROPOSED INCL. PUBLIC ROW DENSITY PROPOSED EXCL. PUBLIC ROW MINIMUM LOT SIZE PER CODE MINIMUM LOT SIZE PROPOSED MINIMUM LOT WIDTH PER CODE MINIMUM LOT WIDTH PROPOSED</p>	<p>78 UNITS 4 DU/AC (8 DU/AC WITH BONUS) 6.26 DU/AC 7.67 DU/AC 6,800 S.F. 4,000 S.F. MODIFICATION REQUESTED 60 FT. 40 FT. MODIFICATION REQUESTED</p>
<p>COVERAGE AND OPEN SPACE DATA CODE REQUIREMENT (Sec. 8.050) OPEN SPACE REQUIRED BY CODE (10% GROSS AREA 542,792.39 X 1) OPEN SPACE PROVIDED</p>	<p>10% OF TOTAL LAND AREA 54,279.24 S.F. 54,279.24 S.F. (IN OTHER PROJECT AREAS)</p>
<p>PARKING DATA CODE REQUIREMENT(Sec. 8.530 - Vehicle parking Table 8-1) TOTAL PARKING REQUIRED PER CODE(78X2) GARAGE PARKING PROVIDED DRIVEWAY SPACES PROVIDED PUBLIC STREET PARKING PROVIDED ON ONE SIDE TOTAL PARKING SPACES PROVIDED</p>	<p>2 PER UNIT (FULLY ENCLOSED) 156 FULLY ENCLOSED SPACES 156 GARAGES 156 SPACES 31 SPACES 343 SPACES</p>
<p>BUILDING SETBACKS(Sec. 6.040 Table 6-3) REQUIRED FRONT YARD MAJOR STREET PROVIDED FRONT YARD MAJOR STREET REQUIRED FRONT YARD FROM OTHER STREETS PROVIDED FRONT YARD FROM OTHER STREETS REQUIRED SIDE YARD SETBACK FROM LOT LINE PROVIDED SIDE YARD SETBACK FROM LOT LINE REQUIRED REAR YARD SETBACK PROVIDED REAR YARD SETBACK</p>	<p>50 FT. N/A 20 FT. 25 FT GARAGE 20 FT. 25 FT. GARAGE 5 FT. 5 FT. 20 FT. 20 FT.</p>
<p>PARKING SETBACKS(Sec. 8.620) REQUIRED FROM PUBLIC RIGHT OF WAY PROVIDED FROM PUBLIC RIGHT OF WAY REQUIRED FROM RESIDENTIAL USE PROVIDED FROM RESIDENTIAL USE REQUIRED FROM SIDE AND REAR PROPERTY PROVIDED FROM SIDE AND REAR PROPERTY</p>	<p>20 FT. 20 FT. 20 FT. 20 FT. (IN MOST AREAS MORE) 20 FT. 20 FT. (IN MOST AREAS MORE)</p>

SCHLAGEL
ENGINEERS, PLANNERS, SURVEYORS, LANDSCAPE ARCHITECTS
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(913) 492-5158 • Fax: (913) 492-8400
WWW.SCHLAGELASSOCIATES.COM
Missouri State Certificates of Authority
#E2002003690-F #LAC2001005237 #LS200200869-F

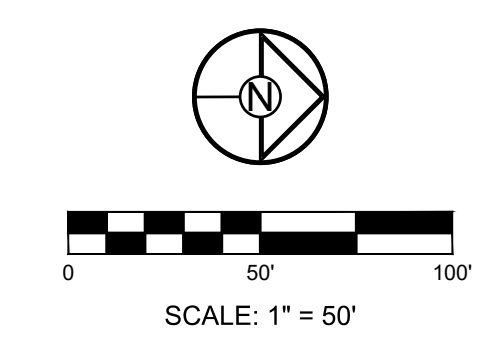
**A NEW GRIFFIN RILEY DEVELOPMENT
PRELIMINARY DEVELOPMENT PLAN
BLUE PARKWAY AND BLACKWELL ROAD
LEE'S SUMMIT, MISSOURI**

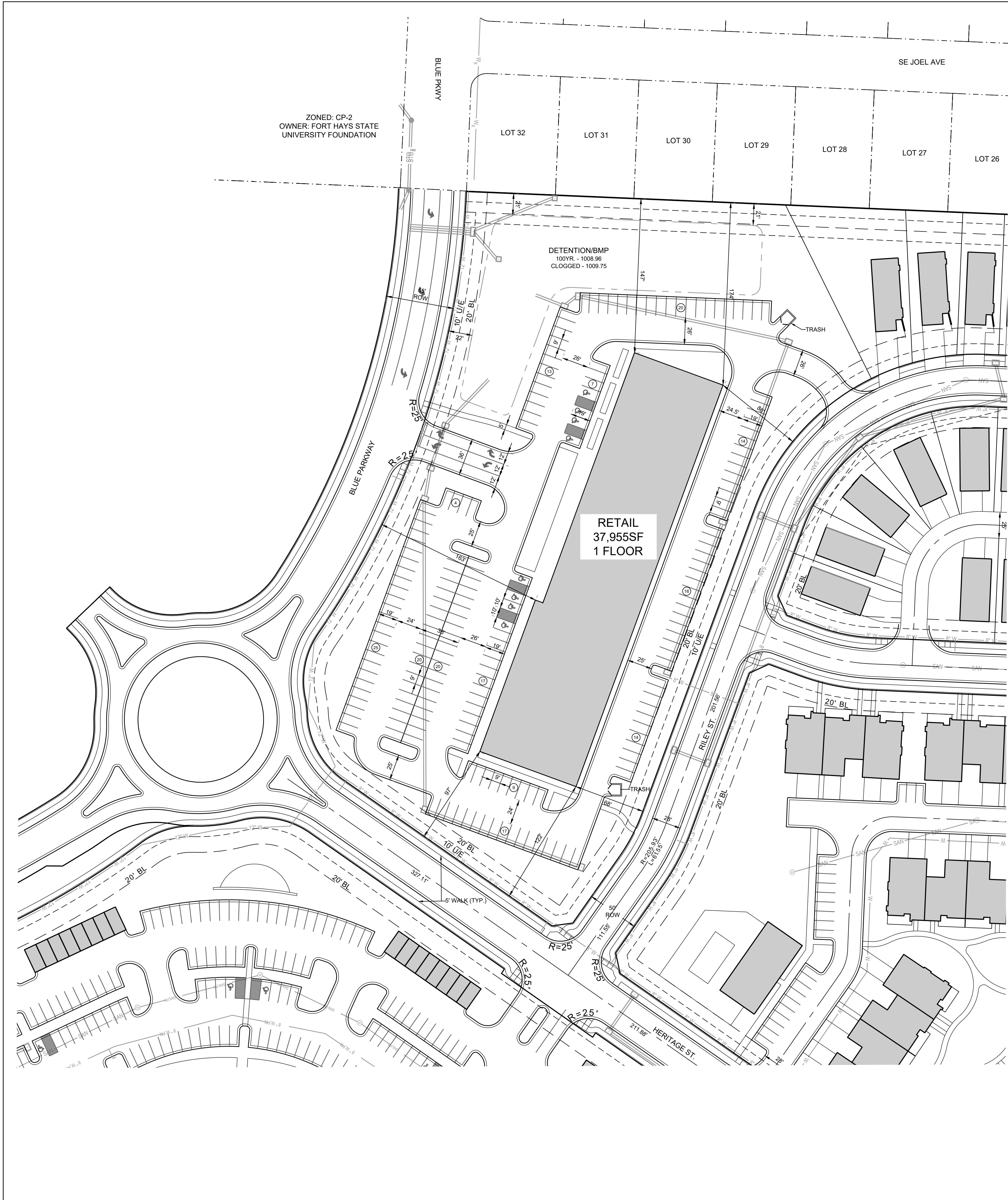
REVISION DATE	DESCRIPTION
2021.08.24	CITY COMMENTS DATED 8/11/2021
2021.09.02	CITY COMMENTS DATED 8/11/2021
2021.09.02	CITY COMMENTS DATED 8/11/2021
2021.09.02	CITY COMMENTS DATED 8/11/2021
2021.09.02	CITY COMMENTS DATED 8/11/2021
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2021.09.02	CITY COMMENTS DATED 8/11/2021
2021.09.02	CITY COMMENTS DATED 8/11/2021
2021.09.02	CITY COMMENTS DATED 8/11/2021

DRAWN BY:	SCH
CHECKED BY:	SCH
DATE PREPARED:	
PROJ. NUMBER:	20-205

SINGLE FAMILY SITE PLAN

SHEET
C1.1
##





ZONED: CP-2
OWNER: FORT HAYS STATE UNIVERSITY FOUNDATION

DETENTION/BMP
100YR - 1008.96
CLOGGED - 1009.75

RETAIL
37,955SF
1 FLOOR

SITE DATA	
EXISTING ZONING	AG - AGRICULTURAL
PROPOSED ZONING	CP-2
GROSS SITE AREA	6.18 ACRES (269,200 S.F.)
NET SITE AREA	5.04 ACRES (219,650.1 S.F.)
PROJECT DATA (Sec. 6.030, Table 6-2)	
DENSITY PER CODE	MAX. 0.55 FAR
DENSITY PROPOSED	0.17 FAR
MINIMUM LOT SIZE PER UNIT PER CODE	20,000 S.F.
MINIMUM LOT SIZE PER UNIT PROPOSED	219,650.1 S.F.
MINIMUM LOT WIDTH PER CODE	100 FT.
LOT WIDTH PROPOSED	
OPEN SPACE DATA	
PUBLIC GATHERING OPEN SPACE REQUIRED BY CODE(Sec. 8.130)(5%)(219,650.1X.05)	10,985.50 S.F.
PUBLIC GATHERING OPEN SPACE PROVIDED	14,029.46 S.F.
BUILDING AREA	37,955 S.F.
DRIVE AND PARKING AREA	135,944.09 S.F.
TOTAL IMPERVIOUS AREA(BUILDING, DRIVES, AND PARKING AREA)	181,944.83 S.F.
OPEN SPACE AREA	99,328.85 S.F.
PARKING DATA	
CODE REQUIREMENT(Sec. 8.530 - Vehicle parking Table 8-1)	5 PER 1,000SQFT
PARKING REQUIRED PER CODE (37,955 / 1000 X 5)	190 SPACES
PARKING PROVIDED	196 SPACES
ACCESSIBLE PARKING SPACES REQUIRED (2% OF TOTAL OPEN SPACES 190X.02)	4 SPACES
ACCESSIBLE SPACES PROVIDED	8 SPACES
PARKING LOT LANDSCAPE AREA CODE REQUIREMENT(Sec. 8.810)	5% OF PARKING AREA
PARKING LOT LANDSCAPE AREA REQUIRED(81,802.49X0.05)	4,090.12 S.F.
PARKING LOT LANDSCAPE AREA PROVIDED	7,053.59 S.F.
BUILDING SETBACKS	
REQUIRED FRONT YARD MAJOR STREET	Max 15 FT.
PROVIDED FRONT YARD MAJOR STREET	150 FT.
REQUIRED FRONT YARD FROM OTHER STREETS	Max 0-5 FT.
PROVIDED FRONT YARD FROM OTHER STREETS	60 FT.
REQUIRED SIDE YARD SETBACK FROM LOT LINE	10 FT.
SIDE YARD SETBACK PROVIDED	15 FT.
REQUIRED REAR YARD SETBACK	20 FT.
REAR YARD SETBACK PROVIDED	20 FT.
PARKING SETBACKS (Sec. 8.620)	
REQUIRED FROM PUBLIC RIGHT OF WAY	20 FT.
PROVIDED FROM PUBLIC RIGHT OF WAY	18 FT.*
REQUIRED FROM RESIDENTIAL USE	20 FT.
PROVIDED FROM RESIDENTIAL USE	20 FT. (IN MOST AREAS MORE)
REQUIRED FROM SIDE AND REAR PROPERTY	20 FT.
PROVIDED FROM SIDE AND REAR PROPERTY	20 FT. (IN MOST AREAS MORE)
*2' PARKING SIDE YARD DEVIATION REQUESTED.	

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A NEW GRIFFIN RILEY DEVELOPMENT
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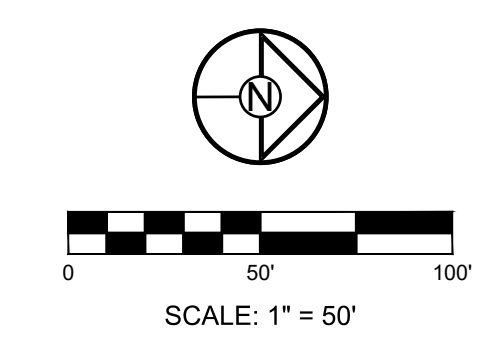
REVISION DATE	DESCRIPTION
2021.08.24	CITY COMMENTS
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021
2021.09.02	CITY COMMENTS DATED 8/1/2021

RETAIL SITE PLAN

SHEET

C1.4

#



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EXHIBIT C

REQUIREMENTS FOR IMPROVEMENTS

The “**Improvements**” consist of the following Traffic Improvements and Sanitary Sewer Improvements, which shall be designed, engineered, and constructed by or at the direction of the Developer in the manner set forth in this Agreement and which shall be subject to the conditions stated in each item below. Developer acknowledges that occupancy of structures in the Project may be delayed, even though such structures may be complete, until certain of the public improvements described below are substantially complete.

Traffic Improvements

1. Construct an eastbound left-turn lane with a minimum storage length of 150 feet, plus an appropriate taper on Blue Parkway at Site Drive A. Turn lane design requirements may be modified by MoDOT, where subject to MoDOT approval, with written notice to City of such change.
2. Construct an eastbound left-turn lane with a minimum storage length of 150 feet, plus an appropriate taper on Blue Parkway at Site Drive B. Turn lane design requirements may be modified by MoDOT, where subject to MoDOT approval, with written notice to City of such change.
3. Construct a single-lane roundabout on Blue Parkway at the proposed collector street.

Sanitary Sewer Improvements

1. The “**Northern Sewer Improvement**” which shall consist of increasing the size of the existing 8” sewer line running between manholes 65-226 and 65-092 to a 24” sewer line. The following terms and conditions shall apply to the payment obligations associated with the Northern Sewer Improvement:
 - A. Developer shall be responsible for costs associated with the Northern Sewer Improvement that would bring the size of the line to 12”. All design and engineering costs for the Northern Sewer Improvement shall be paid by Developer. All construction costs besides the costs of the Sewer Upsizing shall be funded by Developer.
 - B. The City shall be responsible for paying for the upsizing of the improvement from a 12” line to a 24” line which shall be the difference in cost for the purchase of a 12” pipe and a 24” pipe (the “**Sewer Upsizing**”). Construction costs for the Sewer Upsizing shall be funded by the City as set forth below, to provide for upsizing of the improvements to address capacity concerns which are not caused by the Project.
 - C. The City will pay to Developer as reimbursement for the Sewer Upsizing the actual out of pocket third party cost to construct the Sewer Upsizing, including overhead

and profit (the “**Sewer Upsizing Payment**”). Developer will provide to the City an engineer’s opinion of probable construction costs for the Sewer Upsizing. The City will evaluate the amount of the proposed Sewer Upsizing Payment, and provide either (i) written confirmation that the proposed amount of the Sewer Upsizing Payment is acceptable or (ii) a response which indicates that the amount is unacceptable and further evaluation of such amount is required before it will be accepted by the City. In the event that the amount is found to be unacceptable by the City, Developer and the City agree to engage in discussions to reach agreement on an amount that is acceptable for the Sewer Upsizing Payment. Prior to receiving a payment from the City, Developer shall provide proof of the actual costs of the Sewer Upsizing in the form of paid invoices and processed and paid checks. After evaluating the actual cost documentation and determining the amount of the Sewer Upsizing Payment, the City shall make the Sewer Upsizing Payment within fifteen days after a Certificate of Substantial Completion has been issued by the City for the Northern Sewer Improvement.

2. The “**Southern Sewer Improvement**” will consist of sewer improvements which will be located south of the pond at Mill Creek, which may be constructed within (i) the alignment of Millstone Avenue or (ii) south of Millstone Avenue through the Furry and Jones properties, at the election of Developer. The scope and location of the Southern Sewer Improvement shall be as approved by the City during approval of the Final Development Plan for the Project pursuant to the requirements of the UDO and the terms and conditions of this Agreement.
3. Payment of the damages award in the Sewer Condemnation Action and payment of any additional costs and expenses incurred by the City in the Sewer Condemnation Action, in excess of the Condemnation Deposit, as set forth in Section 2.H.

EXHIBIT D

ACQUISITION FUNDING AGREEMENT

This Acquisition Funding Funding Agreement (“Funding Funding Agreement”) is made this ____ day of _____, 2023, by and between RESIDENCES AT BLACKWELL LLC (“Developer”) and the CITY OF LEE'S SUMMIT, MISSOURI (“City”), collectively referred to as the “Parties.”

All words and terms not defined herein shall have the meaning set forth in the Development Agreement which is referenced in the recitals below.

WITNESSETH:

WHEREAS, the Parties entered into the Development Agreement for the Blackwell Mixed-Use Development dated ____, 2023 (the “Development Agreement”); and

WHEREAS, Development Agreement calls for the execution of a funding acquisition Funding Agreement in the event that the Southern Sewer Improvements are approved by the Council to be included in the Sewer Condemnation Action; and

WHEREAS, the Parties wish to execute this Funding Agreement to allow the Developer to reimburse the City for acquiring easements for the Southern Sewer Improvements (the “Southern Sewer Easements”).

NOW, THEREFORE, for and in consideration of the mutual covenants and Funding Agreements set forth herein, the Parties hereto agree as follows:

1. Scope of Services.
 - A. City – The City shall take such action as is reasonably necessary including condemnation to acquire the Southern Sewer Easements following the deposit of Acquisition Costs as described in paragraph 2 of this Funding Agreement (Deposit of Acquisition Costs in Escrow Account). The parties acknowledge, in connection with the proceedings for the condemnation action including the offers required prior to filing such action in court, that the City must attempt to negotiate in good faith for the voluntary acquisition of the easements prior to initiating the condemnation action.
 - B. Developer shall provide all funds necessary for the City to pay all out-of-pocket costs and expenses incurred by it in discharging the obligations undertaken by this Funding Agreement (“Acquisition Costs”). Acquisition Costs to be reimbursed shall include, but are not limited to:
 1. One hundred percent (100%) of the appraised value of the Southern Sewer Easements, whether determined by negotiation or eminent domain;

2. Expenses related to the establishment of acquisition values of the Southern Sewer Easements;
3. All costs, fees and expenses incurred in transferring or disposing of the Southern Sewer Easements;
4. Legal fees, other expenses paid to third parties, and expenses incurred by the City related to any of the foregoing described services and relating to negotiation of this Funding Agreement; and
5. Any other reasonable and necessary costs or expenses related to acquisition of the Southern Sewer Easements by negotiation or condemnation.

2. Deposit of Acquisition Costs in Escrow Account

- A. Upon execution of this Funding Agreement, Developer shall deposit the sum of ___ dollars (\$___) with the City for the purpose of paying the Acquisition Costs of acquiring the Southern Sewer Easements. All such amounts held by the City pursuant to this paragraph shall hereafter be referred to as the “Acquisition Costs Account.”
- B. No later than ten (10) days after receiving notice from the City, Developer shall deliver to the City, in cash or its equivalent, the sum of the actual price that the City has agreed to pay by contract or by the report of the Condemnation Commissioners, pursuant to Section 523.040, RSMo, or by any court order relating thereto, less the balance of the Acquisition Costs Account.
- C. All amounts deposited by Developer with the City pursuant to this Funding Agreement shall be deposited and maintained by the City in an insured account with a commercial bank. The City shall retain any interest earned on deposited amounts for project purposes, including Acquisition Costs, unless the Parties specifically agree otherwise. The City shall draw funds from the Acquisition Costs Account to pay Acquisition Costs incurred as a result of this Funding Agreement. If requested by Developer, the City shall provide or make available to Developer copies of invoices or other documentation together with a statement from the bank at which the account is maintained.
- D. Upon termination of this Funding Agreement, all funds, including any interest earned, remaining in the Acquisition Costs Account after all Acquisition Costs have been paid in full shall be returned to Developer.
- E. The City agrees that any proceeds, refunds, awards or other sums which the City receives other than from Developer (including, without limitation, from any eminent domain or other condemnation proceedings) relating to the Southern Sewer Easements shall be thereafter paid to Developer.

3. Acquisition and Condemnation
 - A. The City shall promptly advise Developer of any assessment of damages by commissioners in any condemnation action pursuant to this Funding Agreement.
 - B. In the event that an issue is raised in any condemnation or other action by a party adverse to the City concerning either the power of the City to condemn or the validity of the Plan, the City may continue to prosecute such action to final judgment (including any appeals) at the sole cost of Developer, including, but not limited to, Developer's payment of all awards, costs, fees, and expenses, including attorneys' fees, incurred by the City.
4. The City's obligations to perform hereunder are subject, without limitation, to fulfillment and satisfaction of the following conditions precedent:
 - A. Any material interest of Developer or any of its directors or elected officers in any of the Southern Sewer Easements to be acquired through this Funding Agreement shall have been disclosed to the City prior to execution of this Funding Agreement; and
 - B. Developer shall not be in default of its obligations hereunder, nor under the Development Agreement, and Developer's representation and warranties shall be true and accurate.
5. Indemnification. Developer shall indemnify, hold harmless, and defend the City from all loss, liability, claims, suits, actions, judgments, costs, and expenses (including reasonable attorneys' fees) including, without limitation, inverse condemnation suits, environmental claims, and other claims against the City as a result of the City's activities in discharging its responsibilities herein required except for the City's negligent acts or omissions or its willful or intentional misconduct.
6. Developer representations and warranties. Developer hereby represents and warrants to the City as follows:
 - A. Developer is a limited liability company, in good standing, and duly authorized to transact business within the State of Missouri;
 - B. To the knowledge of Developer, there is no default under the Development Agreement;
 - C. To the knowledge of Developer, there is no action, threatened or pending against Developer which would prevent or impair the City's or Developer's performance hereunder or which would prevent or impair performance under the Development Agreement;
7. Remedies.
 - A. In the event of any default or breach of this Funding Agreement, or any of its

terms or conditions, by Developer, except for provisions requiring the payment of money or deposit of security, Developer shall cure or remedy such default or breach within thirty (30) days after receipt of notice thereof (the "Cure Period"). If the default or breach shall not be cured or remedied within the Cure Period or such other time as the City may specify in its discretion for good cause shown, or in the event of a default or breach by Developer involving the payment of money or deposit of security, the City shall have the right to:

1. Apply all funds on deposit in the Acquisition Costs Account or any other funds in the City's possession to the cure thereof and to retain the balance, if any; and/or
2. Institute such proceedings against Developer as may be necessary or desirable in the City's opinion to pay for all of the City's damages and liability incurred as a result thereof, and to cause the cure and remedy of such default or breach, including, without limitation, specific performance; and/or
3. Terminate this Funding Agreement.

B. A default under the Development Agreement shall be a default of this Funding Agreement. Developer agrees to pay all costs, expenses, and fees of the City, including reasonable attorneys' fees, incurred in enforcing this Funding Agreement. In the event of a default or breach by the City of the terms of this Funding Agreement, the City agrees to pay all costs, expenses and fees of the City, including reasonable attorneys' fees, incurred in enforcing this Funding Agreement.

8. Amendments. The terms, conditions, and provisions of this Funding Agreement cannot be modified, amended or eliminated, except by written Funding Agreement between the City and Developer.

9. Notice.

A. Any notice, approval, demand, or consent required by or asked to be given under this Funding Agreement shall be deemed to be given if it is in writing and if it is mailed by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by hand, and addressed as follows:

to the City: City Attorney
 City of Lee's Summit
 207 S.W. Market
 P.O. Box 1600
 Lee's Summit, MO 64063

to Developer: Jake Loveless
c/o Griffin Riley Property Group
21 SE 29th Terrace
Lee's Summit, MO 64082

- B. Each party shall have the right to specify that the notice be addressed to any other address by giving to the other party ten (10) days prior notice thereof.
- C. All notices shall be effective upon being deposited in the United States mail in the manner prescribed in this Section; however, the time period in which a response to any such notice must be given shall commence to run from the date of receipt by the addressee thereof as shown on the return receipt for the notice. The deadline for performance or cure given in any notice shall be deemed to be 5:00 p.m. on the date designated in such notice, which date shall be consistent with the provisions of this Funding Agreement. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.
10. Parties to this Funding Agreement. The Parties to this Funding Agreement are stated in the first paragraph of page 1 of this Funding Agreement. No other individual or entity is a party to this Funding Agreement, and this is not a Funding Agreement for the benefit of any third party. This Funding Agreement shall be binding upon the successors and assigns of Developer and the City, however, this provision shall not be deemed to permit assignment of this Funding Agreement, except as provided in Section 11 hereof.
11. Assignment. This Funding Agreement may be assigned by either Party with the prior written consent of the other.
12. Survival. All obligations and other terms of this Funding Agreement shall survive the closing of any transaction hereunder as to a portion of the Southern Sewer Easements. Upon completion of its obligations set forth in this Funding Agreement, the City's obligations hereunder shall terminate. All of Developer's warranties, representations, and all of Developer's covenants to indemnify, hold harmless, and defend the City shall survive and be of full force and effect forever after the date of this Funding Agreement, notwithstanding anything herein to the contrary, and notwithstanding termination of this Funding Agreement.
13. Partial Invalidity and Governing Law. If any part of this Funding Agreement is invalid or unenforceable, the remainder of this Funding Agreement shall not be affected thereby and shall remain in full force and effect. This Funding Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Funding Agreement to be executed as of the date first above written.

CITY OF LEE'S SUMMIT

Mark Dunning, City Manager

ATTEST

Trisha Fowler Arcuri, City Clerk

APPROVED AS TO FORM

David Bushek, Chief Counsel of
Economic Development & Planning

RESIDENCES AT BLACKWELL, LLC

By: _____
Frederick J. Delibero, Manager