

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN CMH PARKS, INC, A TENNESSEE CORPORATION, DBA SUMMIT CUSTOM HOMES AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE STONEY CREEK WEST SUBDIVISION DEVELOPMENT

WHEREAS, on February 23rd, 2016, the Planning Commission concluded a public meeting for Application #PL2015-186, for a preliminary plat, of approximately 54 acres of land generally lying at the northeast corner of SW Pryor Rd and SW County Line Rd, owned by CMH Parks, Inc, A Tennessee Corporation, D.B.A Summit Custom Homes ("Developer"), which will be developed as Stoney Creek West subdivision ("Development"); and,

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

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

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

SECTION 1. That the development agreement between CMH Parks, Inc, A Tennessee Corporation, DBA Summit Custom Homes and the City of Lee's Summit, Missouri, attached hereto and incorporated herein by reference, is hereby approved by the City Council and the City Manager is 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 adoption, passage and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this 21st day of September, 2017.




Mayor Randall L. Rhoads

ATTEST:



Deputy City Clerk Trisha Fowler Arcuri

APPROVED by the Mayor of said city this 25th day of September 2017.



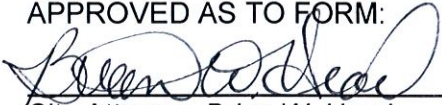
Mayor Randall L. Rhoads

ATTEST:



Deputy City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:



City Attorney *Brian W. Head*

DEVELOPMENT AGREEMENT BETWEEN
CMH PARKS, INC, A TENNESSEE CORPORATION, D.B.A SUMMIT CUSTOM
HOMES AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE STONEY CREEK
WEST SUBDIVISION DEVELOPMENT

THIS AGREEMENT (“**Agreement**”) is made this 5 day of October, 2017, by and between CMH Parks, Inc., a Tennessee Corporation, d.b.a. Summit Custom Homes, a Missouri Limited Liability Company (the “**Developer**”), and the City of Lee’s Summit, Missouri, a municipal corporation (“**City**”).

WHEREAS, on February 23rd, 2016, the Planning Commission concluded a public meeting for Application #PL2015-186, for a preliminary plat, of approximately 54 acres of land generally lying at the northeast corner of SW Pryor Rd and SW County Line Rd, on property legally described in Exhibit A (“**Property**”), owned by the Developer, which will be developed as the Stoney Creek West Subdivision (“**Development**”) as shown in Exhibit B, a map of the preliminary plat;

WHEREAS, following the public meeting for the Development, the Planning Commission voted to recommend approval for the application for the Development subject to the Developer entering into a development agreement with the City to provide for the certain Improvements, as defined below, necessary for the Development;

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

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

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

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

1. Definitions. Words or terms not defined elsewhere in this Agreement shall have the following definitions:
 - A. “**Certificate of Occupancy**” as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
 - B. “**City Engineer**” shall mean the City Engineer or their designated representative.

- C. **"Developer"** shall mean CMH Parks, Inc., a Tennessee Corporation, d.ba. Summit Custom Homes, a Missouri Limited Liability Company or its successors and assigns in the Property.
- D. **"Improvements"** shall mean the following improvements, and the timing of such improvements described herein, that are to be financed, designed, engineered, and constructed by the Developer in the manner set forth in this Agreement:
1. Pryor Road shall be improved to meet or exceed the interim road conditions from the existing interim road section near Napa Valley Drive to County Line Road. Interim road standards require at least two 12' paved travel lanes and 6' shoulders. Shoulders may be turf or the City may participate to provide 6' paved shoulders in lieu thereof. This improvement shall be substantially completed prior to the issuance of any building permits in the Phase 6 area depicted on the preliminary plat (and prior to or concurrent with Improvement D.2).
 2. A 200-foot, plus taper, southbound left-turn lane along Pryor Road at Georgetown Drive shall be constructed. This improvement shall be substantially completed with the Georgetown Drive connection to Pryor Road (and prior to the issuance of any building permits in the Phase 6 area depicted on the preliminary plat).
 3. A 100-foot, plus taper, eastbound left-turn lane along County Line Road at Emerald Drive shall be constructed. This improvement shall be substantially completed with the Emerald Drive connection to County Line Road (and prior to the issuance of any building permits associated with the Phase 1 area depicted on the preliminary plat in which the subject intersection is proposed).
 4. Pryor Road shall be reconstructed north of the proposed Georgetown Drive intersection to mitigate the sight obstruction caused by the roadway vertical crest. This improvement, which shall provide a minimum intersection sight distance for a 35 mph road along Pryor Road and at the intersection of Georgetown Drive, shall be substantially completed prior to or concurrent with the issuance of substantial completion for Georgetown Drive and its connection with Pryor Road (and Improvement D.1).
- E. **"Letter of Final Acceptance"** as defined in the Design and Construction manual as adopted by the City of Lee's Summit.
- F. **"Letter of Substantial Completion"** as defined in the Design and Construction manual as adopted by the City of Lee's Summit
- G. **"Staff"** shall mean employees of the City of Lee's Summit.

H. **“Temporary Certificate of Occupancy”** as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.

5. **City Reimbursement of Paved Shoulders.** Unless otherwise specified herein this Section 2, the provisions set forth throughout the agreement shall be applicable to the financing, design, engineering and construction of Improvements including the optional paved shoulders. This section pertains only to the City option for paved shoulders and the reimbursement of construction costs for such paved shoulders in association with Improvement D (1).

D. **Paved Shoulder Alternate.** The City may, at its option, require the construction of paved shoulders in lieu of turf shoulders in association with Improvement D (1). The Developer shall design, engineer and bid an alternate with paved shoulders for Improvement D (1) per City standards referenced in Section 3. Upon receipt of at least two bids for Improvement D (1) with alternate for paved shoulders, the Developer shall submit to the City copies of the received bids and a bid recommendation. The City shall determine and send notice in writing to Developer whether to award or not award the alternate within 10 business days of receiving the bids from Developer. The notice shall include an award recommendation and the understood amount applicable to reimbursement addressed in Section 2.B.

E. **City to Reimburse Paved Shoulder Alternate.** If the City elects to award the alternate for paved shoulders per Section 2.A, the City shall reimburse the Developer the construction cost difference in awarded bid between the turf shoulder and paved shoulder alternate as written in City’s response to Developer for award referenced in Section 2.A. Payment to Developer by the City shall be made within 60 days of final acceptance of Improvement D(1). No reimbursement for designing, engineering or managing the construction of paved shoulders shall be provided by the City.

6. **Requirements for Improvements.** Unless otherwise specified herein, the provisions set forth in this Section 3, **“Requirements for Improvements”** shall be applicable to the financing, design, engineering and construction of the Improvements to be constructed by the Developer as required by this Agreement.

A. **Requirement to design, engineer and construct.** The Developer, at its sole cost and expense, shall design, engineer and construct the Improvements. The City shall issue building permits for structures in the Development pursuant to the schedule set forth in Section 4, **“Timing of Building permits”** below.

B. **Construction Costs.** All costs associated with designing, engineering and constructing the Improvements shall be paid by the Developer. No cost shall be paid by the City for designing, engineering, constructing or managing the construction of any of the Improvements.

- C. Applicable Standards and Approvals. The Improvements shall be designed, engineered, constructed, placed into service and dedicated to the City in accordance with the ordinances of the City, including, but not limited to, the City's Design and Construction Manual then in effect at the time the Improvements are constructed, and any other applicable rules, requirements and standards established by the City. All such work shall be done in good and workmanlike manner. The Developer shall be responsible for obtaining approval for any portion of the Improvements that require approval of another jurisdiction. The City agrees to cooperate in good faith with the Developer in obtaining said required approvals from other jurisdictions for the Improvements.
- D. Project Schedule. Prior to the construction of the Improvements the Developer shall submit to the City Engineer a proposed Project Schedule for the Improvements to be constructed by the Developer. 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 schedule with comments, to be resubmitted by the Developer. The Developer shall be notified once it is determined that no conflicts exist with the schedule. The Project schedule shall be incorporated into this Agreement by addendum, and no action of the City Council will be required to incorporate the schedule.
- E. Design Phase. The Developer shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Improvements. On the basis of such approved preliminary design documents, the Developer shall:
- (1) Prepare detailed drawings, plans, 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 federal and state laws and City ordinances and regulations.
8. All final Plans shall be presented to the City Engineer for approval, and no action of the City Council will be required to incorporate the final Plans into this Agreement.

- F. Construction. The Developer will construct all the Improvements 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 3.J, "Dedication" of this Agreement. The Developer shall not do or permit others under it to do any work related to the construction of the Improvements until the Developer has paid for all required City and other governmental required permits and authorizations.
- G. Right of Way Acquisition.
- (1) The Developer shall be responsible for acquiring or negotiating for the donation of all right-of-way or easements that are needed to construct the Improvements, including all necessary temporary construction easements.
 - (2) In the event that the Developer is unable, after good faith negotiations, to acquire some or all of the right-of-way or easements necessary for those Improvements over which the City exercises jurisdiction, the Developer may submit a request to the City in the manner prescribed by Section 27, "Notice" below requesting that the City use its authority to acquire the property interests necessary for the Improvements. The City will respond to such a request within thirty (30) days of receipt of same, and in such response the City will indicate whether it agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction. The City is not obligated to use its authority to assist in the acquisition of property interests necessary for the Improvements.
 - (3) In the event the City agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction, prior to beginning any work to acquire said right-of-way or easements, the Developer shall first execute an Acquisition Funding Agreement with the City which provides for the terms and conditions under which the Developer will place all estimated Acquisition Costs in escrow with the City prior to commencement of condemnation for right-of-way or easements. The Acquisitions Costs shall include, but shall not be limited to: the actual price paid for all right-of-way or easements, whether determined by negotiation or eminent domain; expenses related to the establishment of acquisition values of right-of-way or easements, including appraisals; legal fees, other expenses paid to third parties, and expenses incurred by the City related to acquisition of right-of-way or easements, whether through negotiation or eminent domain; and any other reasonable and necessary costs or expenses related to acquisition of the right-of-way or easements. The Acquisition Funding Agreement shall obligate the Developer to reimburse the City in full for all Acquisition Costs that result from the City's use of its authority to acquire any portion of the Improvements.

- (4) The Developer shall dedicate or convey, as applicable, to the City, at no cost to the City, all property interests owned by the Developer which are necessary for the Improvements. Ten feet of property along the west plat boundary shall be dedicated right-of-way for Pryor Road. This will provide 50 feet of right-of-way east of the Pryor Road centerline, a future 100-foot right-of-way in total, a minimum necessary right-of-way for future improvements to Pryor Road (a major arterial).

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

4. **Timing of Building Permits.**

- A. Building permits will not be issued within the development for each Improvement until either a Letter of Substantial Completion or a Letter of Final Acceptance has been issued for the Improvements as outlined in Section 1. Definitions.
- B. A Certificate of Occupancy will not be issued until a Letter of Final Acceptance has been issued for the Improvements as outlined in Section 1. Definitions.

5. **Indemnification.**

- A. General Indemnity. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected

officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of this Agreement; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out of or to the extent caused by the sole negligence of the City, its employees or agents. 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, "Notice" of the Agreement.
- D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

6. Insurance.

- A. General Provisions. Prior to commencing construction of the Improvements, the Developer shall file with the City evidence of liability insurance that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below.
- B. Limits and Coverage. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:

- (1) Commercial General Liability: Minimum \$2,000,000 each occurrence limit for bodily injury and property damage; \$2,000,000 policy aggregate; \$2,000,000 products and completed operations aggregate.
- (2) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

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

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the Improvements, and issuance of a Certificate of Substantial Completion by the City or MoDOT, as appropriate.

D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences during construction of the Improvements. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City as a result of the failure of either the Developer or any contractor or subcontractor of the Developer to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. The Developer shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.

7. Bonds. The Developer shall, or shall ensure that its contractors shall, provide for the following bonds for the Improvements and all other public infrastructure improvements that are 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, or shall ensure that its contractors shall, maintain a Performance Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Performance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

B. Payment Bonds. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Payment Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful payment of the provisions, terms and conditions of the construction contract. The Payment Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

C. Maintenance Bonds. Prior to acceptance and dedication of the Improvements, 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 Final Acceptance for such Improvements covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction

contract. The Maintenance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

D. **Indemnity for Failure to Provide Bonds.** The Developer shall indemnify the City and its officers and employees for any damage or loss incurred or sustained by the City, its officers or employees, as a result of the failure of the Developer or its contractors to provide the bonds set forth in this Section.

8. **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 – 290.340, RSMo.) and all other laws relating to the payment of wages. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. The Developer shall submit sufficient information to the City's Director of Finance to allow City staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations.
9. **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.
10. **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.
11. **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.
12. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
13. **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.
14. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or

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

15. **Recording and Binding Effect.** No building permits shall be issued for any structure in the development until the 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 certification by the City Engineer of the completion of the Developer's obligations under this Agreement, the City Manager, in his sole discretion, may 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.
16. **Time of Essence.** Time is of the essence with respect to the duties and obligations set forth herein.
17. **Estoppel Letter.** Upon request by Developer made from time to time, the City shall prepare and deliver to Developer an estoppel letter confirming for the benefit of any purchaser or lender whether the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.
18. **Representations.** The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement. The parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions.

19. **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.
20. **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.
21. **Assignment.** The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties, which consent shall not be unreasonably withheld. The Developer shall request the assignment of the Agreement, with the consent of the City, to any person, firm, corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement.
22. **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.
23. **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.
24. **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.
25. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
26. **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.
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

Notices to Developer shall be addressed to:

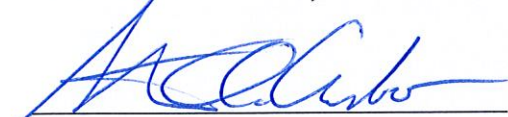
David Price
CMH Parks, Inc., a Tennessee Corporation, d.ba. Summit Custom
Homes 120 SE 30th St
Lee's Summit, MO 64082

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

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

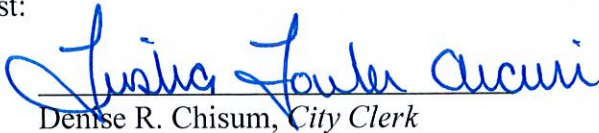
CITY OF LEE'S SUMMIT, MISSOURI

By:



Stephen A. Arbo, *City Manager*

Attest:



Denise R. Chisum, *City Clerk*

Approved as to form:



Brian W Head, *City Attorney*

 (DEVELOPER)

By: David Price

Its: Assistant Secretary

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this 5 day of October, 2017, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

Donna L. Lee
NOTARY PUBLIC

My Commission Expires:

2-9-2021

[SEAL]



DONNA L. LEE
My Commission Expires
February 9, 2021
Jackson County
Commission #1758841

EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

EXHIBIT B

MAP OF THE PRELIMINARY PLAT

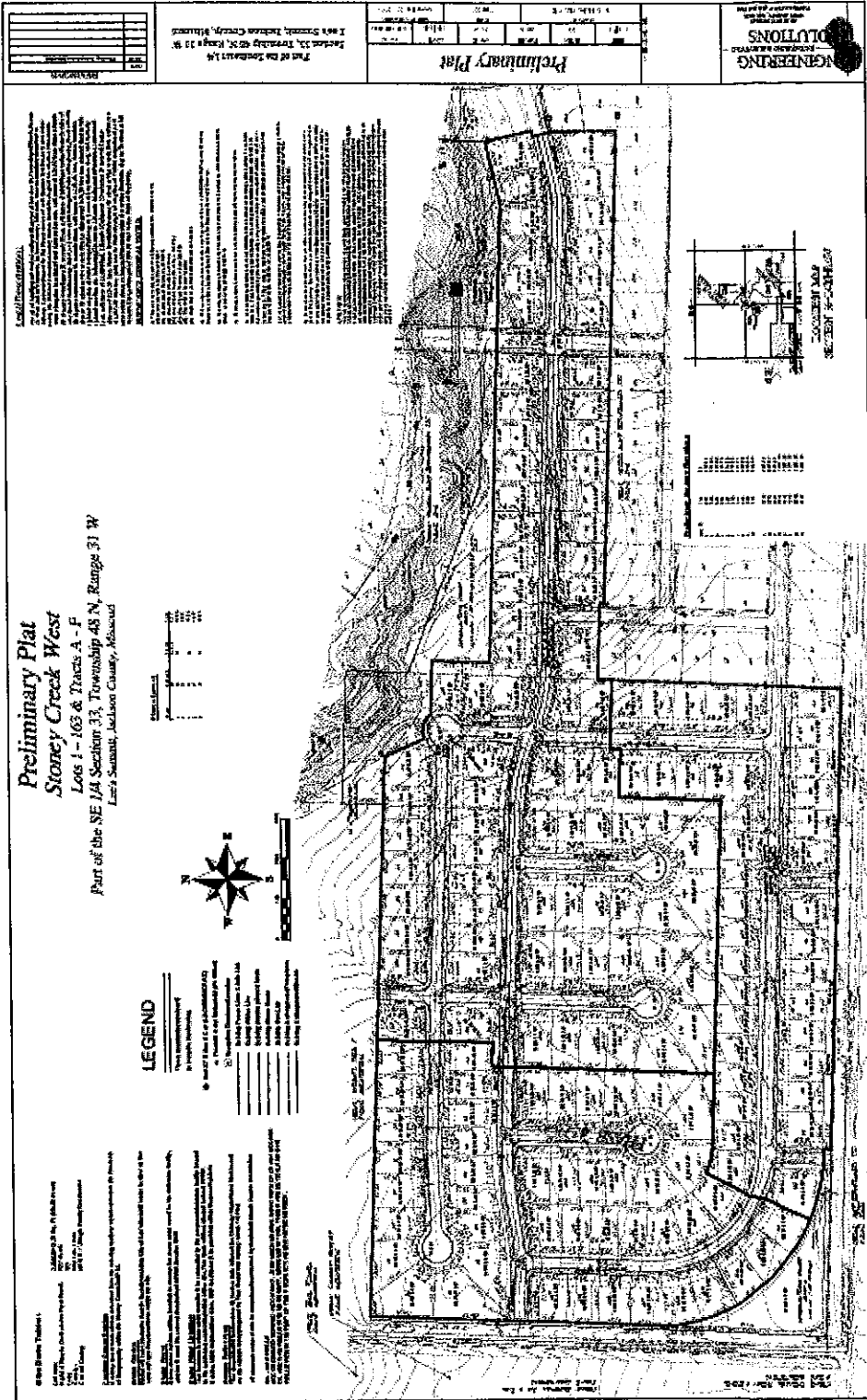
EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

A tract of land located in the Southeast Quarter of Section 33, Township 48 North, Range 31 West, in Lee's Summit, Jackson County, Missouri, more particularly described as follows: Commencing at the Northeast corner of said Quarter Section, as it now exists being the Point of Commencement; thence South 01 degrees 56 minutes 38 seconds West along the East line of said Quarter Section, a distance of 329.97 feet; thence North 88 degrees 44 minutes 02 seconds West, a distance of 30.00 feet to the Westerly right of way line of Todd George Road, as it now exists being the Point of Beginning; thence North 88 degrees 44 minutes 02 seconds West, a distance of 1296.05 feet; thence South 01 degree 39 minutes 46 seconds West, a distance of 674.50 feet to a point of the Easterly right of way line of Todd George Parkway, as it now exists; thence along said Easterly right of way line the following (2) courses: 1) South 35 degrees 09 minutes 10 seconds East, a distance of 118.99 feet, 2) South 35 degrees 13 minutes 19 seconds East, a distance of 273.26 feet; thence South 88 degrees 44 minutes 01 seconds East, a distance of 1055.87 feet to a point on the Westerly right of way line of Todd George Road, as it now exists; thence along said Westerly right of way line North 01 degree 56 minutes 38 seconds East, a distance of 990.00 feet to the Point of Beginning.

EXHIBIT B

MAP OF THE PRELIMINARY PLAT





ELECTRONICALLY RECORDED
JACKSON COUNTY, MISSOURI
10/09/2017 03:39:29 PM
MEMO FEE: \$ 39.00 7 Pages

INSTRUMENT NUMBER:
2017E0092377



**City of Lee's Summit, Missouri
Document to be Recorded
With Jackson County, Missouri**

DATE OF DOCUMENT: October 5, 2017

DOCUMENT TITLE: MEMORANDUM OF DEVELOPMENT AGREEMENT
BETWEEN CMH PARKS, INC. A TENNESSEE CORPORATION, D.B.A SUMMIT
CUSTOM HOMES AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE STONEY
CREEK SUBDIVISION DEVELOPMENT

GRANTOR(S) NAME: City of Lee's Summit, Missouri
ADDRESS: 220 SE Green Street
Lee's Summit, Missouri 64063

GRANTEE(S) NAME: CMH Parks, Inc. a Tennessee Corporation,
d.b.a Summit Custom Homes
ADDRESS: 120 SE 30th Street
Lee's Summit, Missouri 64082

LEGAL DESCRIPTION:

Please see Page 6 of the subject document.

[space above this line for Recorder's use]

MEMORANDUM OF DEVELOPMENT AGREEMENT BETWEEN CMH PARKS, INC, A TENNESSEE CORPORATION, D.B.A SUMMIT CUSTOM HOMES AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE STONEY CREEK WEST SUBDIVISION DEVELOPMENT.

This MEMORANDUM OF DEVELOPMENT AGREEMENT BETWEEN CMH PARKS, INC, A TENNESSEE CORPORATION, D.B.A SUMMIT CUSTOM HOMES AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE DEVELOPMENT ("Memorandum"), by and between the City of Lee's Summit, Missouri, a municipal corporation ("City") and CMH Parks, Inc., a Tennessee Corporation, d.ba. Summit Custom Homes, a Missouri Limited Liability Company ("Developer"), evidences that the parties entered into a development agreement dated Oct-5, 2017, and approved by City Ordinance number 8245, regarding approximately 54 acres of land generally lying at the northeast corner of SW Pryor Rd and SW County Line Rd on property legally described in **Exhibit A**, attached hereto and incorporated by reference as if fully set forth herein, onwed by Developer which will be developed as the Stoney Creek West Subdivision (the "Development Agreement").

The Development Agreement sets forth obligations assumed by the Developer which 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.

This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Development Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum and the provisions of the Development Agreement, the provisions of the Development Agreement shall control. The Development Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Development Agreement.

Notice. Any notice required by the Development Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

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

With a copy to:

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

Notices to Developer shall be addressed to:

David Price
CMH Parks, Inc., a Tennessee Corporation, d.b.a. Summit Custom
Homes
120 SE 30th St
Lee's Summit, MO 64082

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year indicated below.

City:

**City of Lee's Summit, Missouri,
a municipal corporation**

By: 

Printed Name: Stephen A. Arbo

Title: City Manager

Developer:

**CMH Parks, Inc., A Tennessee Corporation,
d.b.a. Summit Custom Homes**

By: 

Printed Name: David Price

Title: Assistant Secretary

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was (choose one) attested or acknowledged before me

this 5 day of October, 2017, by Stephen A. Arbo, as City Manager of the **City of Lee's Summit, Missouri, a municipal corporation**, on behalf of the corporation.

In witness whereof I hereunto set my hand and official seal.



DONNA L. LEE
My Commission Expires
February 9, 2021
Jackson County
Commission #17588841

Donna L. Lee
NOTARY PUBLIC

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was (choose one) attested or acknowledged before me

this 4th day of October, 2017, by David Price as Assistant Secretary of **Clayton Properties Group Inc. dba Summit Homes a Tennessee Corporation**, on behalf of the company.

In witness whereof I hereunto set my hand and official seal.



Jennifer Kreisel
NOTARY PUBLIC

EXHIBIT A
TO MEMORANDUM OF DEVELOPMENT AGREEMENT

Legal Description of Property

A tract of land located in the Southeast Quarter of Section 33, Township 48 North, Range 31 West, in Lee's Summit, Jackson County, Missouri, more particularly described as follows: Commencing at the Northeast corner of said Quarter Section, as it now exists being the Point of Commencement; thence South 01 degrees 56 minutes 38 seconds West along the East line of said Quarter Section, a distance of 329.97 feet; thence North 88 degrees 44 minutes 02 seconds West, a distance of 30.00 feet to the Westerly right of way line of Todd George Road, as it now exists being the Point of Beginning; thence North 88 degrees 44 minutes 02 seconds West, a distance of 1296.05 feet; thence South 01 degree 39 minutes 46 seconds West, a distance of 674.50 feet to a point of the Easterly right of way line of Todd George Parkway, as it now exists; thence along said Easterly right of way line the following (2) courses: 1) South 35 degrees 09 minutes 10 seconds East, a distance of 118.99 feet, 2) South 35 degrees 13 minutes 19 seconds East, a distance of 273.26 feet; thence South 88 degrees 44 minutes 01 seconds East, a distance of 1055.87 feet to a point on the Westerly right of way line of Todd George Road, as it now exists; thence along said Westerly right of way line North 01 degree 56 minutes 38 seconds East, a distance of 990.00 feet to the Point of Beginning.